The Rights of the Ecosystem and Future Generations as Tools for Implementing Environmental Law

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The threats of ecological destruction and the annihilation of the very possibility of conservation of the way of being-in-the-world, which is caused by climate change, poses a theoretical challenge to both political philosophy and applied ethics in the investigation on the normative assumptions of intergenerational justice. The first part of this chapter examines the difference between a right of the ecosystem and a right to the environment under a framework of the third generation of rights. Do non-living beings enjoy the right of inviolability? What kind of collective right is involved? How does the right to a healthy environment relate to the system of rights promoted at the international level? Is it a human right? The second part of this chapter outlines the difference between the right to the future and the right of future generations. Starting from this double taxonomy, I defend a cogent interpretation of collective responsibility, which is politically justified and inferred from the new doctrine born around the international responsibility of states.

Introduction

Nowadays, the threat of global warming is not only recognised by the vast majority of the scientific publications and by mainstream national political agendas, but it has also become central to public debate at all levels. This chapter assumes that anthropogenic climate change exists and is an urgent problem. This chapter aims to question philosophically the relevance of the environment for human rights. More precisely, I ask whether recent legal developments related to climate change might prompt us as philosophers and jurists to justify the rights of non-human entities, on the one hand, and the rights of future generations on the other. As can be seen, here climate change is linked explicitly to the concept of environment (I specify this term below). The aim is to answer a series of questions that straddle the line between political and legal philosophy. I examine these two disciplines together because I believe that in the literature they often get confused. In order to sustain a critique of anthropogenic ecological exploitation, it is essential to distinguish between the rights to the future, rights of future generations and rights of the ecosystem. The latter two set of rights constitute the object of this work: if national constitutions tend, in general, towards a protection of the latter, international charters underpin the existence of the former.

1. Why Does the Environment Matter?

Environment and Values

A preliminary question is how to conceive of the ‘environment’ when we talk of ‘the right to the environment’. And it is not idle to wonder whether there exists a right of entities of nature *strictu sensu* that differs from the right to the enjoyment of the environment by human beings. The question of value is crucial in also determining the type of rights with which we are dealing. As Brennan and Yeuk-Sze (2021, 3) state:

In the literature on environmental ethics the distinction between *instrumental value* and intrinsic value (in the sense of

'non-instrumental value') has been of considerable importance. The former is the value of things as *means* to further some other ends, whereas the latter is the value of things as *ends in themselves* regardless of whether they are also useful as means to other ends. For instance, certain fruits have instrumental value for bats who feed on them, since feeding on the fruits is a means to survival for the bats. However, it is not widely agreed that fruits have value as ends in themselves… [A] certain wild plant may have instrumental value because it provides the ingredients for some medicine or as an aesthetic object for human observers. But if the plant also has some value in itself independently of its prospects for furthering some other ends such as human health, or the pleasure from aesthetic experience, then the plant also has intrinsic value.

Insofar as an entity is endowed with intrinsic value, it is reasonable to consider certain effort to protect, caring for and preserve it. If we take the example cited above, we would perhaps instinctively be inclined to consider plants useful for our well-being. Human beings are one of the classic examples of entities endowed with intrinsic value not only in the philosophical literature, but also in international declarations of human rights. The position of theoretical privilege can take the guise of a strong or weak anthropocentrism depending on the exclusivity or not of the intrinsic value assigned to human beings (Brennan and Yeuk-Sze 2021). A typical intermediate solution proposed by environmental ethicists is the adherence to what has been labelled enlightened or prudential anthropocentrism, which assumes an immediate practical implication and is justified as necessary and sufficient for preserving the environment (see Norton 1991; de Shalit 1994; Light and Katz 1996).

Beyond the different internal positions, it is useful to schematise the theses at the basis of enlightened or prudential anthropocentrism so as to compare them with the positions advocated in this work:

1. Duties to the environment are not prima facie duties, but rather derive from duties to other human beings.
2. Such duties provide necessary and sufficient reasons to construct more pragmatic policies and actions and provide moral grounds for environmental protection.

Within this overall approach, it would not be necessary to inflate the value of non-human environmental entities to justify our actions towards them.

The Environment and European Law

The Treaty of Rome (1957) did not contain any explicit mention of community competences in the environmental sector. Growing awareness of environmental problems, beginning the early 1970s, has led to the recognition of the need to develop a continental policy in this field. As a result of this change in awareness, the European Council adopted the 'First Action Programme on the Environment' in 1973, which was soon followed by others. However, although through this activity the European Economic Community (EEC) had taken on an increasingly important role in environmental protection, the legal bases for EEC-wide competence in environmental matters remained uncertain. Consequently, the only viable way to anchor the requirements of environmental protection in the EEC's legal order seemed to be to resort to an extensive interpretation of some provisions of the Treaty of Rome, such as Articles 100 and 235.

The first article of the Treaty of Amsterdam (1997) explicitly includes the 'principle of sustainable development' in the seventh recital of the Preamble of the Treaty of the European Union, in the framework of the promotion of 'economic and social progress' of the peoples of the member states and more explicitly as an objective of the union in order to achieve 'balanced and sustainable development' (Treaty of Amsterdam, art. 2 ex art. B, 8). The needs of the environment become a necessary element in the evaluation of policies and actions likely to damage the environment. Article 191 of the Treaty on the Functioning of the European Union specifies the objectives of EEC's environmental policy by defining the basic principles on which the EEC's environmental action should be based, listing the factors that should be taken into account in environmental policy development.

The Single European Act (1987), the Regulation of 7 May 1990 No. 1210/90/ EEC and related documents until the Regulation (EC) No. 401/2009 state that the preservation, protection and improvement of the quality of the environment – including the conservation of natural habitats and of wild fauna and flora – constitute a core mission of

general interest pursued by the EEC. These objectives include and refer to the protection of human health and the prudent and rational utilisation of natural resources.

Fundamental principles of the Treaty state the following: i) preventive action is needed; ii) damage caused to the environment must be rectified at the source; iii) the polluter pays principle must be applied; iv) requirements of environmental protection are a component of other EEC policies, which the EEC must take into account in developing its own environmental policy, establishing the respective powers of the EEC and its member-states in the field of environmental protection; and v) environmental policy should be set at the core of international relations . The centrality of environmental protection within the fundamental principles of the European Union has also been recognised by the well-established jurisprudence of the European Court of Justice (see, e.g., van Zeben and Rowell 2020; Lee 2014; Gunningham 2009; Cichowski 1998).

Towards Constitutional Rights for Natural Entities?

As we noted previously, the use of notions such as 'resources' in connection with natural objects and systems has been accused of treating wild and free things as tools at the disposal of human beings. The objection is that such language could promote a 'property bias': natural goods are in human hands, and this generates human ownership (Plumwood 1993; Sagoff 2004). If natural things are endowed with intrinsic value and recognised by constitutional laws and, thus, create international obligations, is it possible to imagine a non-anthropocentric discourse on environmental law? Is it possible to claim an autonomous status of rights for those who are not yet born and will inhabit the planet earth?

Following the acknowledgment of there being 'moral, ethical, cultural, aesthetic, and purely scientific reasons for conserving wild beings' (WCED 1987, Overview, paragraph 53, 20) over time, strong sustainability has come to be focused not only on the needs of human and other living things, but also on their rights (Redclift 2004, 218). Thomas Berry (1999), in particular, has endeavoured to outline a new conception of human being by translating recent scientific insights – primarily those of ecology – into narrative form with the goal of expanding the reach of human ethics and elaborating an ecocentric cosmology. Cormac Cullinan (2002; 2011) has further developed this approach specifically in relation to the idea of law. He emphasises how 'any given legal order is constrained by its tacit frame of reference, by the deep structure of the prevailing social values' (Cullinan 2002, 45). This is evident as regards the theme of property in this field of so-called 'Earth Jurisprudence', or EJ (Bell 2003; Burdon 2010; Burdon 2011). Western law 'thinks' in terms of 'property rights and property relations: land and nature are automatically conceived as consisting of parcels and objects to be owned'(De Lucia 2013, 173).

The starting point of EJ reflects a reversal of legal reasoning, overturning the main anthropocentric assumption 'that nature is here to be exploited for human ends, but [needs] to be protected when the destruction of nature threatens human survival or some other human interest' (Filgueira and Mason 2009, 4). By contrast, nature is inviolable, so departures from this principle are to be considered exceptional '[i]n that sense [EJ] is a radical departure from the norms of modern legal thought' (Filgueira and Mason 2009, 4; see also De Lucia 2013). The codification of rights granted to natural things goes precisely in the direction indicated by this approach.

If we place ourselves in the dilemma of whether there is a right of natural entities or of the ecosystem as such, we should establish the extent to which these rights can be defined as inviolable. Obviously, we would not be willing to accept that every organism or natural entity on the planet has inviolable rights. Recently, there has emerged a recognition of the principles that do not seem to reduce the possession of rights to Homo sapiens, except in explicit and necessary references to the culture and local traditions of a community. The first attempts to protect the rights of non-human and non-animal entities saw (some) states as promoters of an articulated process of promulgation and constitutional revision. We are not yet at the supranational level, but we must note how some traditional and local recognitions are transmuted to the constitutional level.

Article 5 of the Bolivian *Ley de derechos de la Madre Tierra* (2010) defines nature as a 'collective subject of public interest'. Article 7 of the same law affirms the rights to life, diversity of life, water, clean air, balance and restoration. Article 5 affirms that additional rights may be provided.

Article 10 of Ecuador's 2008 constitution states: '[N]ature shall be the subject of those rights recognized by the Constitution'. Articles 71 and 72 lay the foundations for the rights of nature, distinguishing between those rights that concern existence and those that concern restoration (on 'Pachamama politics' see, e.g., Humphreys 2017). In New Zealand, the Whanganui River (Te Awa Tupua) is recognised as a living being through an agreement entered into on 5 August 2014 between representatives of the Whanganui River Iwi People and the New Zealand government. Through further agreements and acts, the same river is recognised as a legal person. In 2014, Te Urewera National Park became a legal entity with the rights, powers, duties and responsibilities of a legal person (Te Urewara Act 2014, s. 11(1)). In Australia, the Yarra River and its surrounding territories are defined as a 'living and integrated natural entity' (Yarra River Protection Bill 2017, 5). In Colombia, a 2016 ruling of the Constitutional Court held that the Atrato River and its its basin and tributaries is bearer of rights (*sujeto de derechos*). It remains up to the state and the ethnic communities to provide legal representation to the rights of the river and implement the environmental protections and the restoration in case of damage.

In 2017, the High Court of Uttarakhand at Nainital in India stated that the Ganga and Yamuna Rivers are legal and living persons. In 2019, the High Court Division of the Supreme Court of Bangladesh recognised all rivers in the country as living entities with legal personalities. With Mexico City's 2017 constitution, natural ecosystems and species were recognised, in Article 13, as a 'collective entity subject to rights'. In Brazil in 2017, the Bonito City Council amended Article 236 of the *Lei Orgânica No. 01/2017* to recognise nature's right to exist, prosper and evolve. Article 1 of the 2010 Pittsburgh City Code read, 'All residents, natural communities and ecosystems in Pittsburgh possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City'. In Tamaqua and Schuylkill counties in Pennsylvania, Section 7.6 of Ordinance No. 612 recognises natural communities and ecosystems as persons for the purpose of civil rights enforcement. In Lafayette, Colorado, Section 1(a) of Ordinance No. 02 ensures the right of residents to a healthy climate and ecosystem. In Uganda, Article 4 of the National Environment Act 2019 states, 'Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution' (see Perra 2020, 459–464 for all references).

I am aware that many domestic laws do not provide such protections, but we should not underestimate the ability of jurisdictions to influence each other and reshape national principles of law through an ongoing, two-way engagement with international law (see Shaffer and Bodansky 2012). Based on the legal evidence gathered from the above-mentioned cases, and drawing from EJ assumptions, I advance the following thesis:

Thesis: Every ecosystem possesses inviolable rights in terms of preservation, existential continuity and conservation of biotic capacities.

Definition: An ecosystem 'consists of the biological community that occurs in some locale, and the physical and chemical factors that make up its non-living or abiotic environment. (University of Michigan 2017, 3).

Defining the ecosystem in this way implies the ecosystem is a systemic concept in itself, in which *Homo sapiens* are fully inserted and, as a moral and political subject, she/he has a duty of care towards ecosystems (see Corrigan 2021; Sumudu and Andrea 2019; Boyd 2017). Recent development in Environmental law shows us it is possible to engage the international community in codifying ecosystems rights as human rights of the future. Here, I use the term 'future' in reference to both the right of an ecosystem to have a future and for humans of the future (for the last, see next section).

Argument 1: Every ecosystem has a natural tendency to regenerate its biotic capacity, and any reduction in this capacity represents direct harm to the biosphere in all its components.

Corollary 1: As members of the ecosystem, humans suffer damage to their present capacity and expectations for life and well-being.

Corollary 2: The human species in its world inhabitation must have reasonable expectations of coexistence with other species and in a system of multiple relationships as balanced as possible and suitable for the preservation of life

itself on earth.

Conclusion: At the constitutional level, the protection of ecosystem rights is justified in order to preserve local biospheres.

2. The Role of the Future: Us and Them, Today and Tomorrow: Some Considerations on International Law of the Environment

So far, I have dealt with the normative and principle-based assumptions that allow us to justify the protection of local ecosystem rights. Now, I turn to international agreements to see whether and how the human rights of the unborn are treated. If the protection of local biospheres can already be implemented at the national level, the place where positions on the rights of future generations are expressed can only be that of international law.

Among the first constitutions to recognize the rights of future generations are the Japanese constitution ('these fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolable rights'); the 1922 Norwegian constitution ('every person has a right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well'); and the Bolivian constitution ('[all citizens have a fundamental right] to enjoy a healthy environment, ecologically well balanced, and appropriate to her well-being, while keeping in mind the rights of future Generations' (Gosseries 2008, 448).

Otherwise, the Paris Agreement (2015) constitutes an international law. All contracting parties also constitute parties to at least one of the major international human rights treaties recognised by the United Nations. We must point out that some of the explicit language referring to future generations in the Paris Agreement was expunged prior to the approval of the final text of the agreement. This is the case with Article 2, for example, which referred to future generations in draft (see Lewis 2018, 7–8), but which ultimately read:

This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances (Paris Agreement 2015, art. 2).

A similar fate befell more stringent references to human rights in the same article. The following passage – here indicated with brackets – was removed from the final text of the agreement:

This Agreement shall be implemented on the basis of equity and science, in [full] accordance with the principles of equity and common but differentiated responsibilities and respective capabilities [in light of national circumstances … the principles and provisions of the Convention], while ensuring the integrity and resilience of natural ecosystems, [the integrity of Mother Earth, protection of health, a just transition of the workforce and creation of decent work and quality jobs in accordance with nationally defined development priorities] and the respect, protection, promotion and fulfillment of human rights for all, including the right to health and sustainable development, [including the right of people under occupation] and to ensure gender equality and the full and equal participation of women [and intergenerational equity] (Lewis 2018, 6).

This context reveals an explicit link between climate and rights entitlement, not only in terms of an enjoyment of the right to a healthy environment but also in the relationship of promoting fundamental human rights through environmental obligations. We saw here in action the propagative force of the rights system. Future generations are named as beneficiaries of current actions for environmental protection in United Nations documents preceding the Paris Agreement (WCED 1987; Rio Declaration 1992). These documents mention the 'abilities' of future generations to pursue their respective needs. To understand the normative scope of these passages, it is necessary to refer to the capabilities of future generations.

The aspect that remains for us to consider, now, is in what terms a rights- centered approach can involve future human beings:

[R]ights serve as a label of significance. Upgrading an interest to the status of right is a sign of its special importance in the same way as constitutionalising a merely legal right is. It signals something about the significance of the duties to which it correlates. Second, correlating a duty to a right tells us something about the purpose of such a duty. It gives a direction to that duty. Using the language of rights is thus quantitatively (significance) and qualitatively (purpose) important (Gosseries 2008, 453).

Note that references to 'the future' need not be limited to the future of human beings only. In keeping with the non-anthropocentric focus of much environmental philosophy, a concern with sustainability and biodiversity can embrace a concern for opportunities available to non-human beings. The future we have to take care of is the future of the biosphere (and its multiple ecosystems) as such, as well as its human inhabitants. If we dwell on the ecological belonging of human beings, some contradictions in the arguments against taking on an environmental responsibility for future generations would emerge. Let us take for granted the well-justified view that we cannot reason in terms of separating our needs, desires and motivations from our surroundings. Thornier is the question that justifies the terms of political-legal responsibility we are defining. In particular, I focus on two criticisms of environmental law's emphasis on protection of future generations.

A: Intergenerational Overlap

As Gosseries (2008, 447) maintains:

The intergenerational context exhibits a unique set of features that make it especially challenging. The temporal direction of causation generates problems of asymmetry of power as well as restrictions to the possibility of giving back to the past. The lack of coexistence among remote generations raises the question whether obligations of justice obtain at all between non-overlapping generations. Distance between some of the generations increases uncertainty as to the effects of our actions or the nature of future generations' preferences or their environment.

Preconception torts illustrate the fact that future rights can make perfect sense whenever the existence of the victim and the wrongdoer overlap after harm has taken place. 'Preconception torts' refer to situations where wrongful actions take place before conception, i.e., before victims exist (Gosseries 2008, 465; see also Bambrick 1987; Banashek 1990; Kennedy 1991). If an agent *X*, through his or her conduct, causes harm that compromises the health of a human being who has not yet been born, he or she is responsible for that conduct because he or she has infringed not only the rights of the parents, but also the expectations, desires and possibilities that the newborn could have developed in the absence of the harmful conduct. Such a right can be invoked after the unborn child has come to inhabit the world: 'We can say that at the moment the harmful action takes place, the baby's right is still a future one (hence, it does not exist); but when the injury takes place, there is contemporaneity of the harmdoer and the victim' (Gosseries 2008, 466).

A similar right therefore can be configured as present even in the absence of the bearer and claimed directly by the bearer in the future. This is the kind of condition I pose to justify the viability of the environmental rights of future generations: '[T]he future-rights-of-future-people one. Here, the right-holders are also the primary interest-holders themselves. And the idea of future rights can do a significant amount of the work that present rights do' (Gosseries 2008, 455).

B: Actionability of Environmental Rights

First, recent developments in international law and state responsibility suggest that the polluter pays principle has become increasingly limited and that there has been an attempt to direct more attention towards a global takeover of prevention, protection and deterrence against environmental risks (Davanlou et al. 2018, 199).

Prevention also plays a significantly greater role in the framework of international law and, specifically, in international environmental law. Commitments are clearly expressed in the latest relevant documents in this field: the United Nations Framework Convention on Climate Change (1992), the Kyoto Protocol (1997) and the Paris Agreement (2015). The commitment required is to be implemented through a multilateral system (Dupuy and Jorge 2018). The

skepticism about this framework would seem to lie in the voluntaristic nature of international agreements, which remain little more than declarations of intent. Davanlou et al. (2018, 200) state: 'Of course, given the voluntary nature and lack of a guarantee of the implementation of these documents, we cannot expect any positive developments to take place. As stated, international responsibility is one of the areas of international law with many uncertainties'.

To this fear, we can answer with some encouraging data from the recent jurisprudence of the International Court of Justice (ICJ). The ICJ has somewhat modernised the conception of what is reparable and indeed compensable in Costa Rica v. Nicaragua (2018), where the court noted that 'damage to the environment, and the consequent impairment or loss of the ability of the environment to provide goods and services, is compensable under international law' (para. 42, 14). The court recognised, without implying any change in customary law, that the ordinary rules of reparation are flexible enough to encompass notions such as ecosystem services, as argued by Costa Rica.

The state is responsible for damage caused to the climate, not just for damage to current or future citizens, but also towards other states and the international community as a whole. If an obligation of protection and prevention is recognised, then any serious breach of this obligation implies sanctions and duties, the nature of which is debated.

The approach to climate change in international law has slowly changed from a horizontal to a community approach in which International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA 2009) attempt to provide a response:

The UN International Law Commission (ILC) completed the first reading of the draft articles on responsibility of international organizations in August 2009. The Commission submitted a full set of draft articles together with a commentary to governments and international organizations for comments and observations by 1 January 2011. One important part of the ILC's work relates to the responsibility of an international organization in connection with the act of a state. In particular, this touches upon sensitive questions of attribution and responsibility when a member state carries out its membership obligations (Hoffmeister 2010, 723).

Article 1 of the ARSIWA states that 'any internationally wrongful act of a State shall give rise to the international responsibility of that State'. There is an 'internationally wrongful act of a State when: (a) conduct consisting of an act or omission is attributable to the State, and (b) such conduct constitutes a violation of an international obligation' (ARSIWA, Article 2).

With respect to the triggering event, the attribution and diligence-related problems discussed in relation to the bilateral framing remain relevant, and they are further complicated by the need to determine what primary rules protecting the environment may amount to a 'peremptory norm' and what composite acts/omissions may amount to a 'serious breach' under Article 40 of the ARSIWA. There is evidence that the prevention principle entails *erga omnes* obligations (Responsibilities in the Area 2011, para. 180), but there is also evidence that it is not a peremptory norm (ILC, Study on the Fragmentation of International Law 2006, Conclusion 38 ILC; Responsibilities in the Area 2011, para. 125–135; Indus Waters Kishenganga case, Final Award, 2013, para. 111). But if we look carefully, we could agree that:

a) With climate change, a state's failure to formulate and implement climate change laws and industry regulations constitutes an omission (ILC 1971, 264, 283); and,

b) On the other hand, the causal chain of voluntary actions (or omissions) can also lead to the recognition of state responsibility for climate change. This is the so-called 'cumulative causation' argument supported, as I suggest, by Article 15 of ARSIWA, where the duty could be breached through a series of acts and omissions. It is added that it is not essential in international law to prove the 'fault element':

[T]he law of state responsibility does not require proof of subjective knowledge about the wrongdoing state. The advantage of this argument is that, even if the harm caused is not reasonably foreseeable by any human agent of the wrongdoing state, it does not preclude a finding of state responsibility to mitigate climate change (Tsang 2021, 15).

Relying on these two interpretations of responsibility, I accept not only retrospective state responsibility, but also I defend

Thesis 2: Prospective responsibility to future generations' rights to live in a reasonably healthy ecosystem that should be placed under protection at the local level by the institutions that represent previous generations.

Conclusions

This chapter offered critical insights to answer the questions posed at the beginning. Specifically, I have outlined a right of the ecosystem and a right to the environment by evaluating in national and international legal frameworks whether there could be defended an autonomous entitlement of non-living beings to enjoy the right of inviolability and how the right to a healthy environment relates to the system of rights promoted at the international level. I also outlined the difference between our right to the future and the right of future generations. I opted for a cogent interpretation of collective responsibility, justified in politics and international law, and the positively binding expression of the new doctrine born around the International Responsibility of States (ARSIWA). The topic is by no means exhausted, and legal developments will need to be watched carefully. However, the time is right to advance more robust arguments for the existence of ecosystem rights *per se* and the rights of future generations regarding environmental issues, as well as robust arguments for asserting such rights in appropriate international legal courts.

References

Bambrick, G. 1987. "Developing maternal liability standards for prenatal injury". *St. John's Law Review* 61 (4): 592–614.

Banashek, K. 1990. "Maternal prenatal negligence does not give rise to a cause of action".*Washington University Law Quarterly* 68: 189–202.

Bell, M. 2003. "Thomas Berry and an Earth Jurisprudence: An Exploratory Essay." *The Trumpeter: Journal of Ecosophy* 19 (1): 69–96.

Berry, T. 1999. *The Great Work: Our Way into the Future.* New York: Bell Tower.

Boyd, David R. 2017. *The rights of nature: a legal revolution that could save the world*. Toronto: ECW Press.

Certain Activities carried out by Nicaragua in the Border Area, Costa Rica v Nicaragua, Compensation owed by Nicaragua to Costa Rica, ICJ GL No 150, [2018] ICJ Rep 15, ICGJ 520 (ICJ 2018), 2nd February 2018, United Nations [UN]; International Court of Justice [ICJ]

Corrigan, D.P., and M. Oksanen. 2021. *Rights of nature a re-examination*. London New York: Routledge.

Council of the European Union, Council Regulation (EEC) No 1210/90 of 7 May 1990 on the establishment of the European Environment Agency and the European Environment Information and Observation Network.

Cullinan, C. 2002. *Wild Law: A Manifesto for Earth Justice.* South Africa: Siber Ink.

Brennan, Andrew and Yeuk-Sze Lo- 2021. "Environmental Ethics". In *The Stanford Encyclopedia of Philosophy* (Winter 2021 Edition), edited by Edward N. Zalta (ed.), https://plato.stanford.edu/archives/win2021/entries/ethics- environmental/

Encyclopedia Britannica. "ecosystem", August 11, 2021. https://www. britannica.com/science/ecosystem

Burdon, P.D. 2010. "Wild Law: The Philosophy of Earth Jurisprudence." A*lternative Law Journal.* 35 (2).

Burdon, P.D. 2011. *Exploring Wild Law: The Philosophy of Earth Jurisprudence. Kent Town.* Wakefield Press.

Chong, Chit. 2006. "Restoring the Rights of Future Generations." *Int. J. Green Economics* 1 (1–2): 103–120.

Cichowski, Rachel A. 1998. "Integrating the environment: the European Court and the construction of supranational policy". *Journal of European Public Policy* 5 (3): 387–405.

Cullinan, C. "A History of Wild Law" in Burdon, P.D. 2011. *Exploring Wild Law: The Philosophy of Earth Jurisprudence. Kent Town:* Wakefield Press.

Davanlou, Mona, Seyed Abbas Poorhashemi, Ali Zare, and Mohsen Abdollahi. 2018. "Analysis of the International Responsibility System of Climate Change". *Current World Environment* 13 (2): 194–205.

De Lucia, V. 2013. "Towards an Ecological Philosophy of Law: a Comparative Discussion."*Journal of Human Rights and the Environment* 4 (2): 167–190.

de Shalit, A., 1994. *Why Does Posterity Matter?* London: Routledge.

Dupuy, Pierre-Marie, and Jorge E. Viñuales. 2018. *International environmental law*. Cambridge: Cambridge University Press.

European Union, *Treaty on European Union (Consolidated Version), Treaty of Amsterdam*, 2 October 1997. https://www.refworld.org/docid/3dec906d4.html

European Union, *Treaty Establishing the European Community (Consolidated Version), Rome Treaty,* 25 March 1957.

European Community, *Single European Act*, 29.6.87, Official Journal of the European Communities, No L 169/1

Filgueira, B. and Mason, I. 2009. "Wild Law: Is There Any Evidence of Principles Of Earth Jurisprudence In Existing Law And Legal Practice?". UKELA And Gaia Foundation Research Paper. https://www.ukela.org/common/Uploaded%20files/Wild%20Law%20Research%20Report%20 published%20March%202009.pdf

Gosseries, Axel. 2008. "On future generations' future rights". *Journal of Political Philosophy* 16 (4): 446–474.

Gunningham, Neil. 2009. "Environment law, regulation and governance: Shifting architectures." *Journal of Environmental law* 21 (2): 179–212.

Hoffmeister, F. 2010. "Litigating against the European Union and Its Member States – Who Responds under the ILC's Draft Articles on International Responsibility of International Organizations?".*European Journal of International Law* 21 (3): 723–747.

Humphreys, D. 2017. "Rights of Pachamama: The emergence of an earth jurisprudence in the Americas"*Journal of International Relations and Development* 20 (3): 459–484.

Indus Waters Kishenganga Arbitration, Pakistan v India, Partial Award, ICGJ 476 (PCA 2013), 18th February 2013, Permanent Court of Arbitration [PCA].

International Law Commission. 1971. Yearbook of International Commission of Law Commission. Volume 2 Part 1. A/CN.4/SER.A/1971/Ad(U (Part 1).

International Law Commission 2006. ILC, *Report of the Study Group, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Conclusions* (A/CN.4/L.702) (18 July 2006).

International Law Commission. 2001. D*raft Articles on Responsibility of States for Internationally Wrongful Acts* , November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1.

International Tribunal of the Law of the Sea. 2011. *Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion,* 1 February 2011, ITLOS Reports 2011, p. 10.

Kennedy, M. 1991. "Maternal liability for prenatal injury arising from substance abuse during pregnancy: the possibility of a cause of action in Pennsylvania". *The Pennsylvania Issue* 29 (3): 553–78.

Lee, M. 2014. *UE Environmental Law, Governance and Decision–Making*, Oxford: Hart Publishing, Second Edition.

Lewis, Bridget. 2018. "The rights of future generations within the post-Paris climate regime." *Transnational Environmental Law* 7(1): 69–87.

Light, A. and Katz, E. 1996. *Environmental Pragmatism*, London: Routledge.

Mayer, Benoit. 2014. "State Responsibility and Climate Change Governance: A Light through the Storm."*Chinese Journal of International Law* 13 (3): 539–575.

Norton, B.G. 1991. *Toward Unity Among Environmentalists*, New York: Oxford University Press.

Perra, L. 2020. "Protezione ambientale: abbandono dell'antropocentrismo giuridico e evoluzione del Diritto".*Revista Brasileira de Estudos Políticos* 121: 455–476.

Plumwood, V. 1993. *Feminism and the Mastery of Nature*. London: Routledge.

Redclift, M. 2005. "Sustainable Development (1987–2005): An Oxymoron Comes of Age". *Sustainable Development* 13: 212–27.

Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version).

Sagoff, M. 2001 "Consumption". In *Companion to Environmental Philosophy*, edited by D. A. Jamieson. Oxford: Blackwell.

Shaffer, G., and Bodansky, D. 2012. "Transnationalism, Unilateralism and International Law". *Transnational Environmental Law* 1 (1): 31–41.

Sumudu, A., & Andrea, S. 2019. *Human Rights and the Environment: Key Issues* (1st ed.). London: Routledge.

Tsang, Vanessa S.W. 2021 "Establishing State Responsibility in Mitigating Climate Change under Customary International Law" (LL.M. Essays & Theses. 1. https://scholarship.law.columbia.edu/llm_essays_theses/1

United Nations- 1997. *Kyoto Protocol to the United Nations framework convention on climate change* , FCCC/CP/1997/L.7/Add.1. 10 December 1997.

United Nations. 2015. *Paris Agreement to the United Nations Framework Convention on Climate Change* , Dec. 12, 2015.

United Nations. 1987. *Report of the World Commission on Environment and Development: "Our common future" Our common future* [Brundtland report]. New York], Aug. 4, 1987.

United Nations- 1992. *Report of the United Nations Conference on environment and development* , A/CONF.151/26

(Vol. I) 31 ILM 874, General Assembly, Distr. GENERAL.12 August 1992.

United Nations, and Canada. 1992. *United Nations Framework Convention on Climate Change.* [New York]: United Nations, General Assembly.

University of Michigan. 2017. *The Ecosystem and how it relates to Sustainability* . https://www.globalchange.umich.edu/globalchange1/current/lectures/kling/ecosystem/ecosystem.html#:~:text=An%20ecosystem%20consists%20of%20the,%2C%20an%20estuary%2C%20a%20grassland

van Zeben, J., & Rowell, A. 2020. *A guide to EU environmental law.* (1 ed.) Berkeley: University of California Press. https://doi. org/10.1525/9780520968059

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