

2. Moving beyond an approach based on crisis and disasters to address environmental chronic emergencies

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1. INTRODUCTION

For a long time, human beings have used and exploited natural resources in the absence of any significant international legal restraint. Rather, at the time of colonial and post-colonial expansionism, international law authorized the unlimited use of natural resources of other countries together with the imposition of an unequal and unjust model of economic development, based on the exploitation of local populations, women and nature, which ultimately resulted in the separation of the international community between a rich minority and a poor and disadvantaged majority of people. At that time, international rules legitimized a set of dominant interests, hierarchies and hegemonies that reflected the imperialist aims of western States but also established imbalanced power relations at different interrelated levels: inter-state, inter-human, especially between men and women, and between humans and the rest of the environment.¹ Prompted by economic globalization, the Western model of economic development has been spreading to a wide number of developing States, changing to a certain extent the geopolitical balance of international society and increasing the related environmental impact. While the environmental degradation caused by the unsustainable exploitation of natural resources still disproportionately impacts on a part of the world, it is progressively expanding everywhere.

¹ Antony Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27 (5) *Third World Quarterly* 739; Irene Watson, *Aboriginal Peoples, Colonialism and International Law* (Routledge 2015); Susan Harris Rimmer and Kate Ogg (eds), *Research Handbook on Feminist Engagement with International Law* (Edward Elgar Publishing 2019).

Under the pressure of scientists and a worried public opinion, States made some first attempts to slowly elaborate a few international legal norms for the protection of specific aspects of the global environment and to foster international cooperation in times of disasters. This chapter aims to demonstrate that these rules, comprehensively considered, albeit extremely important, focus on the more striking and flashy effects of the environmental degradation process, without holistically addressing environmental chronic emergencies (ECEs), which develop slowly and silently and harm the environment regardless of their resulting in disasters. These days, States are discussing how to translate the ILC Draft Articles on the Protection of Persons in the Event of Disasters (hereinafter 'Draft Articles on Disasters') into a general treaty.² While this development would represent a desirable step forward for international cooperation and humanitarian assistance in the case of calamitous and disrupting events, there is more to do to prevent chronic emergencies and protect the environment, including human beings and animals.³ Similarly, as this chapter will discuss in the next paragraphs, international courts and human rights monitoring bodies are paying increasing attention to the relationship between the environment and human rights, but they still mostly imply a limited conception of ECEs, which does not sufficiently consider their disproportionate impact on women. In our view, this approach reflects the prevailing conception that it takes a disaster to catalyze an international legal response. As reminded by Sara De Vido's quotation by Hilary Charlesworth in the first chapter, international law has been traditionally conceived as the law of crisis.⁴ This statement illustrates how States are cooperating to respond to disasters and major environmental damages, disregarding the structural causes and discriminatory societal patterns that provoke them. In tune with Hilary Charlesworth's view, this chapter advocates a more effective and proactive role for international law and investigates how international law could move beyond an approach based on crisis and disaster to become the law of everyday prevention of chronic emergencies. In particular, this chapter will focus on the concept of 'ECEs' in order to discuss what responding to chronic emergencies entails and why this concept is useful to shape the international law of tomorrow. Although part of this discussion could also be relevant for social chronic emergencies, such as

² ILC, 'Draft Articles on the Protection of Persons in the Event of Disasters, with Commentaries' (2016) 2 (Part Two) *Yearbook of the International Law Commission* 26.

³ On the concept of 'environment' that this chapter adopts, see in more detail Sara De Vido, 'Feminist Legal Methods and ECEs: Challenging the Anthropocentric and Androcentric International Legal System' in this Volume.

⁴ Hilary Charlesworth, 'International Law: A Discipline of Crisis' (2002) 65 (3) *Modern Law Review* 377, 382.

poverty or unemployment, this book (including the present chapter) will focus on ECEs only. Thus, the analysis of the international legal response to social chronic emergencies exceeds the scope of the present book and will hopefully be addressed by future research. Furthermore, this book (and chapter) will not deal with those chronic emergencies, including ECEs, that derive from armed conflicts and entail, *inter alia*, the application of international humanitarian law. The factual and legal peculiarities of chronic emergencies related to armed conflicts would deserve special research that could in the future be developed, taking inspiration from the change of perspective and approach advocated by this book.

2. THE THEORETICAL DIFFERENCE BETWEEN DISASTERS AND ECEs

This book defines as chronic emergencies the multiple phenomena of slow and silent environmental degradation caused by human exploitation of natural resources in the extractive, agricultural, and intensive animal farming sectors, deforestation, pollution and urbanization which may result, *inter alia*, in air, water, and soil contamination, sea level rise, global warming, acidification of oceans, land and forest degradation and loss of biodiversity. These phenomena, whose peculiarity is to develop gradually and silently, are likely to result in disasters in the long run, with a risk rate that increases in combination with the vulnerabilities of the territory and the human and non-human species involved.⁵ Although they are extremely dangerous for the ecosystem and the life of human and non-human animals, regardless of their transformation into disasters, international rules pay attention to them mainly if and to the extent that they result in disasters.

International law does not provide a general definition of ‘disaster but the latter can be easily drawn from the whole body of rules called the international law of disasters. This field of international law has developed since the beginning of the twentieth century. In 1927, a first international agreement, the now-terminated Convention establishing an International Relief Union, aimed at coordinating humanitarian assistance to the victims of disasters and encouraged studies on preventive measures against disasters.⁶ After the Second World War, the international law of disasters experienced a fragmented process of development, which resulted in the adoption of a sum of bilateral and

⁵ On the impact of chronic emergencies on women, see in more detail Enzamaría Tramontana, ‘ECEs, Women’s Inequality, and International Law’ in this Volume.

⁶ Convention and Statute Establishing an International Relief Union (adopted 12 June 1927, entered into force 23 March 1976) 135 LNTS 247.

multilateral agreements with different scopes and contents, as well as soft law documents.⁷ At the universal level, one of the most well-known treaties is the 1998 Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, and there are also a few regional agreements, such as the 1991 Agreement Establishing the Caribbean Disaster Emergency Response Agency. Among the soft law documents, one of the more authoritative and comprehensive is the Sendai Framework for Disaster Risk Reduction.⁸ In an attempt to codify such a fragmented body of practice, the International Law Commission adopted the 2016 Draft Articles on Disasters⁹ and, on 15 November 2024, the Sixth Committee of the UN General Assembly decided to elaborate and conclude a legally binding instrument for the protection of persons in the event of disasters by the end of 2027 at the latest.¹⁰ While these instruments provide for diverse definitions of disaster, they share a common understanding, at least of some qualifiers, that deserves a rapid illustration.

The majority of international instruments on disasters have overcome the distinction between natural and human-made events. Accordingly, the ILC draft article 3(a) provides: “disaster” means a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society’. As the ILC clarified in the Commentary, the provision does not introduce any limitation concerning the

⁷ Joseph F. Hutchinson, ‘Disasters and the International Order II: The International Relief Union’ (2001) 23 (2) *The International History Review* 253; Andrea De Guttry, ‘Surveying the Law’ in Andrea de Guttry, Marco Gestri and Gabriella Venturini (eds), *International Disaster Response Law* (Springer 2012) 3.

⁸ UNGA Res 69/283 (3 June 2015) UN Doc A/RES/69/283 (Sendai Framework for Disaster Risk Reduction). See also: UNGA Res. 43/131 (8 December 1988) UN Doc A/RES/43/131 (Humanitarian Assistance to the Victims of Natural Disasters and Similar Emergency Situations); UNGA Res 45/100 (14 December 1990) UN Doc. A/RES/45/100 (Humanitarian Assistance to the Victims of Natural Disasters and Similar Emergency Situations); UNGA Res 46/182 (19 December 1991) UN Doc A/RES/46/182 (Strengthening of the coordination of humanitarian emergency assistance of the United Nations).

⁹ ILC, ‘Draft Articles on the Protection of Persons in the Event of Disasters, with Commentaries’ (n 2).

¹⁰ UNGA, ‘Protection of Persons in the Event of Disasters’ (15 November 2024) UN Doc A/C.6/79/L.16. For an early comment on this, see Giulio Bartolini, ‘Toward a Universal Treaty on “Protection of Persons in the Event of Disasters”’, in (*EJIL:Talk!* 17 December 2024) <<https://www.ejiltalk.org/toward-a-universal-treaty-on-protection-of-persons-in-the-event-of-disasters/>> accessed 9 April 2025.

origin of the event, that is, whether it is natural or human-made, in recognition of the fact that disasters often arise from a complex set of causes that may include both wholly natural causes and contributions from human activities. This conceptualization implies that the relevant notion includes the events caused by the human exploitation of natural resources that may arise from 'chronic emergencies'. However, by disregarding the causes of disasters, this definition entails an equally neutral responsive approach. Indeed, despite the draft articles aiming at managing the overall operational process of humanitarian assistance, including even disaster prevention, the strategy of prevention is limited to requiring that States introduce managerial rules for preparation for disasters, such as early-warning mechanisms, and does not address the structural conditions and human behaviours that cause the process of environmental degradation.¹¹ The same logic applies to the humanitarian principles enshrined in draft article 6, which establishes that the 'response to disasters shall take place (. . .) on the basis of non-discrimination, while taking into account the needs of the particularly vulnerable'. The provision prohibits any discriminatory policies and measures in the operational response to disasters, but does not address the structural discrimination that lies at the heart of ECEs and that makes women, in all their differences, more vulnerable. It is valuable that the ILC commentary mentioned that the principle of non-discrimination includes within its scope the States' duty to adopt positive obligations to protect the more vulnerable groups.¹² However, it does not provide any further indication about what the positive obligations necessary to realize substantial equality in prevention, response and reconstruction policies are. This ambiguity is one of the weaker aspects of the international legal frameworks on disasters.¹³

¹¹ See, for example, article 9 of the Draft articles, entitled 'Reduction of the risks of disasters', according to which:

1. Each State shall reduce the risk of disasters by taking appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters. 2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information and the installation and operation of early warning systems.

¹² ILC, 'Draft Articles on the Protection of Persons in the Event of Disasters, with Commentaries' (n 2), para. 7.

¹³ Elaine Enarson, Lourdes Meyreles, 'International Perspective on Gender and Disasters: Differences and Possibilities' (2004) 24 (10–11) *International Journal of Sociology and Social Policy* 49; Maureen Fordham, 'Gender, Sexuality and Disaster', in Ben Wisner, Jean-Christophe Gaillard and Ilan Kelman (eds), *Handbook of Hazards and Disaster Risk Reduction* (Routledge 2012) 424; Gabrielle Simm, 'Disasters and Gender: Sexing International Disaster Law' (2019) 2 (1) *Yearbook of International Disaster Law Online* 144.

Furthermore, according to the majority of international instruments, disasters are described as calamitous and extreme events that result in widespread loss of life or otherwise seriously affect people, property,¹⁴ and the environment, causing large-scale human, material or environmental damage. While the relevant threshold has been left uncertain, the definition predicates that disasters ‘seriously disrupt the functioning of society’. It is even true that the most recent instruments, including the ILC Draft articles and the Sendai Framework, do not limit the definition of disasters to ‘sudden-onset events’ such as floods or earthquakes, but include ‘slow-onset events’, such as droughts.¹⁵ But these types of events differ only in the kind of insurgency and, in the end, both are meant to cause calamitous effects that seriously disrupt the functioning of society in order to catalyze the application of international rules.¹⁶ Differently from slow-onset events, chronic emergencies are legally relevant regardless of the verification of any disastrous event and entail a responsive approach that addresses the structural and systemic causes of the environmental degradation process. Therefore, although ‘slow-onset events’ and chronic emergencies have in common their slow emergence, the regulatory focus of ‘slow-onset events’ is on the management of the effects, disregarding the causes.

The conceptualization of what we call ECEs is still largely underestimated. The International Law Commission Study Group on Sea Level Rise in relation to international law recently defined sea level rise as a ‘permanent threat’ and suggested that ‘while the sea level rise phenomenon might not be fully classified as a disaster, within the meaning of the draft articles, many of its

¹⁴ Some instruments also refer explicitly to the cultural heritage, such as Article 2 of the 1998 ‘Agreement among the Governments of the Participating States of the Black Sea Economic Cooperation on Collaboration in Emergency Assistance and Emergency Response to Natural and Man-Made Disasters’ (15 April 1998).

¹⁵ As the commentary to the draft art. 3 (a) stresses: ‘The draft articles apply equally to sudden-onset events (such as an earthquake or tsunami) and to slow-onset events (such as drought or sea-level rise), as well as frequent small-scale events (floods or landslides)’ (ILC, ‘Draft articles on the Protection of Persons in The Event of Disasters, with Commentary’ (n 2), para. 4). According to the Sendai Framework: ‘The present Framework will apply to the risk of small-scale and large-scale, frequent and infrequent, sudden and slow-onset disasters caused by natural or man-made hazards, as well as related environmental, technological, and biological hazards and risks’ (UNGA Res 69/283 (3 June 2015) UN Doc A/RES/69/283 (Sendai Framework for Disaster Risk Reduction), para. 15).

¹⁶ Giulio Bartolini, ‘The project of articles of the International Law Commission on “protection of persons in the event of disasters”’ (2017) 100 (3) *International Law Review* 689; Id., ‘A Taxonomy of Disasters in International Law’, in Flavia Zorzi Giustiniani, Giulio Bartolini, Emanuele Sommario *et al.* (eds), *Routledge Handbook on Human Rights and Disasters* (Routledge 2018) 18.

manifestations did fall under such a category. Therefore, such manifestations, including the consequences of sea level rise, could be considered a disaster on a case-by-case basis'.¹⁷ This sentence clarifies that sea level rise, which may occasionally result in disasters, is something different from a disaster. However, it is not clear what this difference is, and it is still too early to predict whether the International Law Commission will adopt an innovative conceptual approach based on the chronic emergency nature of sea level rise.

Recently, the notion of 'slow-onset events' has been developed even by some technical and political papers on climate change at the UN level. For example, in the framework of the Convention on Climate Change, a technical paper adopted under decision 1/CP.16 of the Conference of the Parties included within the notion of 'slow-onset events' some of those phenomena that we also define as chronic emergencies (namely sea-level rise, global warming, ocean acidification, desertification...). The paper, which is meant to suggest innovative approaches to manage slow-onset events, focuses on adaptation strategies and tools that do not address the conditions that cause chronic emergencies, including structural discrimination and social injustice. Similarly, the UN policy briefing called 'OCHA and slow-onset emergencies', in spite of mentioning some of the emergencies that we conceptualize as 'chronic emergencies',¹⁸ focuses on early management processes and planning strategies necessary to grant efficient humanitarian assistance in the strict contingency of a disaster or to prevent the effects of disasters. It does not entail a chronic emergencies approach. This shows that the enlargement of the notion of disaster to include 'slow-onset events' does not change the nature of the latter as disasters or the responsive approach of international law. Even the response to 'slow-onset events' aims to grant humanitarian assistance in the immediate aftermath of a disaster and to increase the preparedness level for possible future calamitous events. This 'disaster-based approach' has too limited a scope. It is insufficient to arrest and regress

¹⁷ ILC, 'Report of the Study Group on Sea-Level Rise in Relation to International Law' (15 July 2024) A/CN.4/L.1002, paras 71, 75.

¹⁸ OCHA *Occasional Policy Briefing Series – Brief No. 6: 'OCHA and slow-onset emergencies'* (April 2011) <<https://www.unocha.org>> accessed 9 April 2025, para. 13: 'It is widely recognized that some of the world's worst humanitarian situations are not transitory problems but long-term chronic emergencies which continue to exist even in the absence of shocks like drought'. See also para. 15:

This issue reaches to the heart of the definition of 'humanitarian emergencies'. It is no longer possible to equate humanitarian emergencies solely with short, sharp disasters. Human suffering, when measured by the most agreed indicators such as acute malnutrition (wasting) or excess mortality, is often higher in situations of chronic vulnerability than in situations in which there is a clear trigger for humanitarian action.

the phenomena that precede and cause disasters, which have profound roots in the power dynamics and the discriminatory patterns of society.

From a certain point of view, the 'disaster or crisis-based approach' influences the international legal framework outside the law of disasters. The next paragraphs will focus on the approach taken by the international agreements in the field of environmental law and human rights in responding to the ongoing process of environmental degradation process.

3. THE LACK OF RECOGNITION OF ENVIRONMENTAL CHRONIC EMERGENCIES IN THE CURRENT FRAMEWORK OF INTERNATIONAL ENVIRONMENTAL LAW

Since the 1970s States have started to cooperate in the field of environmental law through treaties and soft legal instruments designed to cope with some of the more drastic effects of certain environmental crises. The first international agreements in this field aimed at preventing and regulating the risk of trans-boundary environmental damage and were premised on the traditional inter-state logic. They aimed to manage national unilateral interests and to prevent and regulate the consequences of territorial damage between neighbouring States. Over time, States have progressively become aware of the global externalities of their economic activities and have started to consider the protection of the environment as a global concern. However, even the agreements concluded to protect the global environment are rigorously premised on the principle of the sovereign freedom of each State to exploit the natural resources within its territory and on the acceptance of common (even if differentiated) responsibilities to adopt adequate measures of mitigation and adaptation.¹⁹ While there are many international treaties that follow this model,²⁰ the agreements concluded to address the effects of climate change are the best-known ones. The 1992 United Nations Framework Convention on Climate Change, for example, pursues 'the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to

¹⁹ For a comprehensive account of the underlying principles and regulatory approaches of International Environmental Law, see Philippe Sands, Jacqueline Peel, Adriana Fabra *et al.* (eds), *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018).

²⁰ See for a general recognition: <<https://guides.ll.georgetown.edu/InternationalEnvironmentalLaw/treaties>> accessed 9 April 2025.

proceed in a sustainable manner’.²¹ Although extremely important as the first step for the international protection of the environment, this approach aims at limiting the effects of climate change without addressing the structural causes that provoke them and their disproportionate impacts on women intersecting different grounds of vulnerabilities. Even the 2015 Paris Agreement aims to limit the temperature increase to a certain level and establishes a legal normative framework that does not challenge the causes of the slow and silent environmental degradation that leads to climate change. Other multilateral environmental agreements deal with different phenomena of slow and silent environmental degradation, such as the normative framework for the protection of biodiversity, which is mainly composed of the Convention on Biological Diversity, the Cartagena Protocol on Biodiversity and the Nagoya Protocol on Access and Benefit-sharing, the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention) and the Minamata Convention on Mercury (Minamata Convention). The approach resulting from their original texts is mostly effect-driven and not sufficiently focused on the disproportionate impact of ECEs on women and other groups of disadvantaged human groups.²²

Improving the focus on the structural causes of environmental degradation in the reading of these agreements could contribute to better tackling the features of ECEs and increase the understanding that most ECEs are chronic and laced with well-rooted dynamics of power based on alterity, superiority and anthropocentrism.²³

Yet, there are signs of a rising awareness in some technical papers adopted within the framework of environmental agreements. Documents such as the ‘Study on the Differentiated Impacts of Desertification, Land Degradation and Drought on Women and Men’, adopted in the context of the United Nations Convention to Combat Desertification and the guide ‘Addressing Gender Issues and Actions in Biodiversity Objectives’, in the context of the Convention on Biological Diversity, offer interesting insights.²⁴ These documents recommend

²¹ Article 3 of the United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

²² For a more extensive and detailed critical gendered analysis of these treaties and their relationship with ECEs, see Tramontana (n 5).

²³ For a theoretical insight into such ideologies from a feminist perspective, see more in detail De Vido (n 3).

²⁴ UNCCD, ‘Study on the Differentiated Impacts of Land Degradation, Desertification, and Drought on Women and Men’ (2022) and CBD, ‘Addressing Gender Issues and Actions in Biodiversity Objectives’ (2019).

interpreting international obligations by looking at the structural nodes of gender inequality and fostering a holistic strategy to reverse the phenomenon.²⁵

An interesting development has also been taking place within the framework of the Convention on Biological Diversity, where an open-ended working group established by the Conferences of the State Parties has adopted a strategic plan to implement broad-based action for a transformation of society's relationship with biodiversity.²⁶ This strategy, called 'theory of change' advocates a change of economic, social and financial models in order to stabilize and reverse the process of deterioration of biodiversity and acknowledges the need for appropriate recognition of gender equality and women and youth empowerment.²⁷

4. THE APPLICATION OF HUMAN RIGHTS IN TIME OF EMERGENCIES: THE STATES' POWER OF DEROGATION . . .

A responsive approach based more on effects than on causes of ECEs may also influence the interpretation and application of certain provisions for the protection of human rights. Although most of the treaties bind States to protect individual rights and do not explicitly deal with the environment, they have been progressively constructed in a wider way in order to protect the life and health of the victims of the most striking effects of the environmental crisis and disasters.²⁸ More specifically, most human rights monitoring bodies have interpreted the States' obligations to respect and protect human rights, especially the right to life, to health and to respect one's family and private life, as including environmental concerns. However, some authors criticized that the perspective adopted by most human rights bodies was anthropocentric and mainly premised on the recognition that States are entitled to respond to environmental crises and disasters in order to protect the life and health of human beings.²⁹ To this end, States are allowed either to adopt measures of derogation

²⁵ Mary B. Anderson, 'Understanding the Disaster-Development Continuum. Gender Analysis Is the Essential Tool' (1994) 2 (1) *Focus on Gender* 7.

²⁶ CBD, 'First Draft on the Post-2020 Global Biodiversity Framework' (5 July 2021) CBD/WG2020/3/3.

²⁷ *Ibid.*

²⁸ Giovanna Adinolfi, 'The Right to a Healthy Environment: Delineating the Content (and Contours) of a Slippery Notion', in Flavia Zorzi Giustiniani, Giulio Bartolini, Emanuele Sommario, et al. (n 16) 211.

²⁹ On ecocentrism as opposed to anthropocentrism, see Sara De Vido, 'A Quest for an Eco-centric Approach to International Law: the COVID-19 Pandemic as Game Changer' (2021) 3 (2) *Jus Cogens* 105; Francesca Cerulli,

of non-mandatory human rights in times of emergencies,³⁰ or due diligence measures to prevent individuals at risk from becoming victims of disasters.³¹

Regarding the States' power of derogation, some human rights treaties embody 'emergency clauses' that allow States to declare the existence of an exceptional situation of crisis and to adopt non-discriminatory measures of derogation to those provisions that do not grant absolute and mandatory human rights. In so doing, human rights treaties reflect the dichotomous conceptualization of reality as an opposition between normality and exceptions. Although the notion of 'emergency' may relate to the environment, it refers to calamitous and disruptive events that conceptually identify with disasters and do not accommodate the more complex concept of ECEs.³² In most cases, these public emergencies trigger a state of exception entailing the suspension of certain fundamental rights and the concentration of powers in the government to the extent necessary to ensure the survival of the State and the security of citizens.³³ Derogations normally concern civil and political rights, unless they are absolute and mandatory rights, such as the prohibition of torture and inhuman and degrading treatment. Instead, the protection of economic and social rights should be preserved and even strengthened in the event of a crisis that impacts the economic and social conditions of people, especially vulnerable

'Antropocentrismo vs ecocentrismo nella giurisprudenza della Corte interamericana dei diritti umani' (2023) 17 (2) *Diritti umani e diritto internazionale* 259; Vito De Lucia, 'Anthropocentrism and International Environmental Law' in Vincent Chapaux, Frédéric Mégret and Usha Natarajan (eds), *The Routledge Handbook of International Law and Anthropocentrism* (Abington 2023) 84.

³⁰ Anna-Lena Svensson-McCarthy, *The International Law of Human Rights and States of Exception: With Special Reference to the Travaux Préparatoires and Case Law of the International Monitoring Organs* (Martinus Nijhoff 1998); Jaime Oraa, *Human Rights in States of Emergency in International Law* (Clarendon Press 1992); Joan Fitzpatrick, *Human Rights in Crisis: The International System of Protecting Rights During States of Emergency* (University of Pennsylvania Press 1994).

³¹ *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*, 'Communication 155/96' (ACHPR, 27 October 2001), para. 51; *López Ostra v Spain* App no 16798/90 (ECtHR, 9 December 1994), paras 51, 55 and 58; *Guerra and Others v Italy* App no 14967/89 (ECtHR, 19 February 1998), paras 57, 58 and 60; *Hatton and Others v The United Kingdom* App no 36022/97 (ECtHR 8 July 2003), paras 96, 98, 104, 118 and 129.

³² Oraa (n 30); Emanuele Sommario, *Stati d'emergenza e trattati a tutela dei diritti umani* (Giappichelli 2018).

³³ Mark Klamberg, 'Reconstructing the Notion of State Emergency' (2020) 52 (1) *The George Washington International Law Review* 53.

groups.³⁴ For this reason, the International Covenant on Economic, Social and Cultural Rights, the European Social Charter and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador') do not contain emergency clauses. However, some specific provisions of these treaties allow States to adopt measures of limitation, provided that the restrictions are prescribed by law, pursue a legitimate aim (i.e., the protection of national security, public order, public health or public morals), are proportionate to the aim pursued, and are not incompatible with the nature of the rights at stake, that is, do not impair their minimum core or minimum essential levels.³⁵ The UN Committee on Economic, Social and Cultural Rights, for example, has affirmed that the core obligations regarding economic and social rights cannot be derogated during emergencies.³⁶ The concept of 'core protection' is strictly linked to the prohibition of discrimination. Policies and procedures that disproportionately impact women or other groups impair the core of social rights protection and are unreasonable.³⁷

Similarly, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not allow for derogation, and the CEDAW Committee has specified that treaty obligations do not cease in times of emergency resulting, *inter alia*, from natural disasters.³⁸

³⁴ Andrea Broderick, Jennifer Sellin, *Socio-economic Rights, Inequalities and Vulnerability in Times of Crises. Building Back Better* (Edward Elgar Publishing 2024).

³⁵ Amrei Müller, 'Limitations to and Derogations from Economic, Social and Cultural Rights' (2009) 9 (4) *Human Rights Law Review* 557.

³⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant)' (11 August 2000) UN Doc E/C.12/2000/4, paras 43 and 47; Id., 'General Comment No. 18: The Right to Work (Art. 6 of the Covenant)' (24 November 2005) UN Doc E/C.12/GC/18, para. 31; Id., 'General Comment No. 13: The Right to Education (Art. 13)' (8 December 1999) UN Doc E/C.12/1999/10, para. 57.

³⁷ Enzamaría Tramontana, 'Women's rights and gender equality during the COVID-19 pandemic' (2021) 87 *QIL, Zoom-in* 5. CESCR, 'General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights) (2 July 2009) UN Doc E/C.12/GC/20, para. 13.

³⁸ CEDAW Committee, 'General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (16 December 2010) UN Doc CEDAW/C/GC/28, para. 11.

When treaties contain emergency or limitation clauses, they entail a restrictive understanding of emergencies that identifies with crises and disasters. Accordingly, they focus on the power of derogation without, on the contrary, affirming the States' duty to adopt positive measures necessary to address the special needs of women and vulnerable groups and to dismantle the structural discrimination embedded in society.³⁹

A similar restrictive logic permeates other bodies of international law, such as international trade law. In particular, WTO agreements allow states to restrict trade under specific conditions when they aim at protecting the environment.⁴⁰ However, environmental concerns in trade agreements are addressed under the dichotomous alternative international rules/national exceptions and are not comprehensively and holistically integrated into the international normative framework. International environmental law and trade regimes have developed in autonomous treaty regimes and have ultimately become separate and fragmented bodies of law.⁴¹ In recent years, states have been debating the need to bring more coherence between trade and environmental rules and have coined the notion of sustainable development as a possible synthesis. However, the concept of sustainable development, whose normative meaning is vague and susceptible to different interpretations, risks supporting an anthropocentric and androcentric conception of human development premised on the instrumentalization of natural resources for all human needs and preferences.⁴²

5. . . . AND THE SHAPING OF 'POSITIVE OBLIGATIONS'

The inclusion of environmental concerns within the scope of certain human rights has also led some human rights bodies and courts to shape positive obligations to protect the victims of environmental degradation.

³⁹ See also Deborah Russo, 'The Istanbul Convention in Times of Emergency', in Micaela Frulli and Sara De Vido (eds), *Preventing and Combating Violence Against Women and Domestic Violence: A Commentary on the Istanbul Convention* (Edward Elgar Publishing 2023) 22; Id., 'Gender equality in the context of recovery plans after the Covid-19 pandemic' (2021) 87 *QIL*, *Zoom-in* 29.

⁴⁰ <http://www.wto.org/english/tratop_e/envir_e/envir_e.htm> accessed 9 April 2025.

⁴¹ ILC, 'Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law' (18 July 2006) A/CN.49/L.702.

⁴² Chris Speed, 'Anthropocentrism and sustainable development: oxymoron or symbiosis?' (2006) 93 *WIT Transactions on Ecology and the Environment* 323 <www.witpress.com/Secure/elibrary/papers/SC06/SC06031FU1.pdf> accessed 9 April 2025.

In a set of cases addressing the relationship between the protection of the environment and human rights, for example, the European Court of Human Rights condemned the respondent States for the failure to adopt adequate preventive measures, such as the failures to implement an emergency plan in the presence of a documented risk to health in a certain territorial area and to provide adequate information about the risks faced by the local population.⁴³ However, in this line of cases, the positive obligations concerned types of measures designed to prevent and prepare for the harmful effects of pollution and environmental degradation, without including a more comprehensive intervention on their causes. A slight change of perspective can be noticed in a couple of recent cases concerning chronic emergencies. In the *KlimaSeniorinnen* case, in particular, the Court emphasized that ‘decarbonisation of the economies and ways of life can only be achieved through a comprehensive and profound transformation in various sectors (. . .). Therefore, policies to combat climate change inevitably involve issues of social accommodation and intergenerational burden-sharing, both in regard to different generations of those currently living and in regard to future generations’.⁴⁴ While recognizing a margin of discretion to States in the choice of the mitigation strategy and mostly deferring to the international framework designed by the Paris Agreement, the Court made clear that States must follow a transformative approach. In the context of a different chronic emergency addressed in the *Cannavacciuolo* case, the European Court criticized the respondent State for the lack of a systemic, coordinated and comprehensive response to an environmental emergency that had been well known for decades by the national authorities.⁴⁵

A progressive emergence of positive obligations to respond to ECEs is also traceable in the practice of the UN Human Rights Committee and particularly in the more recent reading of the right to life. In its General Comment No. 36, for example, the Human Rights Committee emphasized that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. Thus, States parties are bound to implement positive measures ‘to ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other

⁴³ *Guerra and Others v Italy* (n 31), paras 58–60.

⁴⁴ *Verein KlimaSeniorinnen v Switzerland*, App no 53600/20 (ECtHR, 9 April 2024), para. 419.

⁴⁵ *Cannavacciuolo v Italy*, Apps nos 39742/14, 51567/14, 74208/14, (ECtHR, 30 January 2025), para. 384.

States concerned about natural disasters and emergencies, and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach'.⁴⁶ Despite these indications, which may still appear wide and generic, they entail a more advanced approach that moves beyond the urgency to respond to disasters. A similar rationale has been applied to the reviewing of individual communications. In the *Tetiota* case, for example, the Human Rights Committee affirmed that art. 6 of the International Covenant on Civil and Political Rights binds States to adopt positive measures to protect the right of individuals to enjoy a dignified life and to be free from acts or omissions that would cause their unnatural or premature death. Accordingly, the obligations to respect and ensure the right to life extend to all reasonably foreseeable threats and life-threatening situations that can result in loss of life, including environmental degradation, climate change and unsustainable development, which threaten the ability of present and future generations to enjoy the right to life.⁴⁷

Although the Committee recognized that environmental degradation and climate change constitute serious threats to the ability of present and future generations to enjoy the right to life, in the end, it found that the applicant had not provided evidence that he faced any real chance of being harmed in a land dispute. However, in *Billy*, the Committee came to a different conclusion and found that Australia failed to adopt adequate measures to respond to climate change. From the perspective of positive obligations, it is remarkable that the Committee emphasized that States parties should take all appropriate measures 'to address the general conditions in society' that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to a dignified life.⁴⁸

Although the Human Rights Committee did not elaborate more extensively on the types of measures that States should adopt, it is remarkable that States are called to address the general and structural conditions of society.

On these aspects, the more advanced approach stems from the jurisprudence of the Inter-American Court of Human Rights. In particular, since the adoption of its Advisory Opinion OC-23/17, the Court recognized the right to a healthy environment as an autonomous right under Article 26 of the American

⁴⁶ UN Human Rights Committee, 'General Comment No. 36 on article 6: Right to Life' (3 September 2019) UN Doc CCPR/C/GC/36, para. 62.

⁴⁷ UN Human Rights Committee, *Daniel Billy et al. v Australia* (22 September 2022) UN Doc CCPR/C/135/D/3624/2019, para. 8.7. See also *Id.*, *Ioane Teitiota v New Zealand* (23 September 2020) UN Doc CCPR/C/127/D/2728/2016, para. 9.4.

⁴⁸ *Daniel Billy et al. v Australia* (n 47), para. 8.12.

Convention and attributed to it even a collective and ecocentric dimension.⁴⁹ Read in this perspective, everyone enjoys a right to a healthy environment even in the absence of evidence of a risk to human beings.⁵⁰ As far as the positive obligations of States are concerned, the Inter-American Court stressed that States must take into account the differentiated impact of environmental degradation on the population, and they must ensure access to food, water and basic public services to all without discrimination.⁵¹ The Inter-American Court developed this approach in the *La Oroya* case, where it spelt out that States must comply with a set of procedural and substantial standards.⁵² While the former requires the duty to grant access to information, equal participation and access to justice, the latter includes the obligation to adopt laws, regulations and policies to identify the maximum level of tolerance for environmental degradation and to enforce and monitor these standards.

Increased attention to the structural conditions that cause chronic emergencies, including the gender dimension, can also be drawn from the Joint Statement of five human rights bodies on human rights and climate change. Despite focusing only on climate change, the Joint Statement pays attention to the role of women as agents of change and the need to address and regress structural social inequalities.⁵³ An interesting contribution can also be inferred from the interpretation of the UN Special Rapporteur on human rights and the environment, which considered mandatory for States to enact measures to ensure women's and girls' right to environmental information and participation, to eliminate environmental and gender-based violence, to regulate toxic substances and air pollution, and to grant equitable access to water and sanitation. More recently, the UN Special Rapporteur on the implications

⁴⁹ *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017), para. 59. See for a comment on this opinion Monica Feria-Tinta, Simon C. Milnes, 'The Rise of Environmental Law in International Dispute Resolution: The Inter-American Court of Human Rights Issues a Landmark Advisory Opinion on the Environment and Human Rights' (2018) 27 *Yearbook of International Environmental Law* 64.

⁵⁰ *Ibid.*, para. 61.

⁵¹ *Ibid.*, para. 68.

⁵² *Case of La Oroya Population v Peru*, Preliminary Objections, Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No. 511 (27 November 2023).

⁵³ UN Treaty Bodies, 'Five UN human rights treaty bodies issue a joint statement on human rights and climate change' (14 May 2020) UN Doc HRI/2019/1.

for human rights of the environmentally sound management and disposal of hazardous substances and wastes issued a report on 'gender and hazardous substances'.⁵⁴ Considering that women are especially affected by toxic exposures both for biological reasons and because they do more caregiving work, the report called for States to adopt adequate measures to grant maternal and other reproductive health services and to improve social and environmental determinants of health.⁵⁵

Speaking about sexual and reproductive health rights, the UN working group on discrimination against women and girls also recommended that States prioritize sexual and reproductive rights, particularly in times of emergencies.⁵⁶

A particular field where the strengthening of positive obligations is evident concerns the duty to ensure equal participation of women in all phases of the decision-making process aimed at responding to disasters. In general, the equal participation of women in all aspects of political and public life is provided for by all treaties that deal with the protection of civil and political rights.⁵⁷ This requirement is gaining increasing attention in the context of response and recovery from disasters.⁵⁸ Recently, the CEDAW Committee has

⁵⁴ UN Special Rapporteur on Human Rights and the Environment, 'Women, Girls and the Right to a Healthy Environment: Good Practices. Supplementary information to the report of the Special Rapporteur, David R. Boyd, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment' (3 March 2023). Annex to UN Doc A/HRC/52/33.

⁵⁵ UN Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes, Marcos Orellana: Gender and Hazardous Substances (16 July 2024) UN Doc A/79/163.

⁵⁶ UN Working Group on Discrimination Against Women and Girls Report, 'Women's and girls' sexual and reproductive health rights in crisis' (28 April 2021) UN Doc. A/HRC/47/38.

⁵⁷ *Mathieu-Mohin and Clerfayt v Belgium* App no 27129/95 (ECtHR, 2 March 1987); UN Human Rights Committee, 'General Comment No 25: Article 25 (Participation in Public Affairs and the Right to Vote, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service)' (12 July 1996) UN Doc CCPR/C/21/Rev1/Add.7; CEDAW Committee, 'General Recommendation No 23: Political and Public Life' (1997) UN Doc A/52/38, para. 17.

⁵⁸ CEDAW Committee, 'General Recommendation No 37 on Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change' (7 February 2018) UN Doc CEDAW/C/GC/37, para. 8; CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Seychelles' (12 November 2019), UN Doc CEDAW/C/SYC/CO/6, para. 45; CEDAW Committee, 'Concluding Observations on the Ninth Periodic Report of Cabo Verde' (30

released its General Comment No. 40 (2024) on the equal and inclusive representation of women in decision-making systems,⁵⁹ which develops the analysis provided by General Comment No. 37 (2018) on the gender-related dimension of disaster risk reduction in the context of climate change.⁶⁰ According to General Comment No. 40, research shows that women's participation in decision-making leads to a heightened level of attention to environmental issues. Hence, countries with more women parliamentarians are more likely to adopt policies and ratify treaties for the protection of the environment. Similarly, when women participate equally on corporate boards, business results in more energy efficiency improvements and a reduced environmental footprint. However, given that the goal of equal participation worldwide is far from being implemented, the CEDAW Committee urges the State parties to adopt positive obligations to achieve this target in all decision-making systems across all sectors. In particular, the Committee considers that to achieve systemic change, States must ensure fifty-fifty parity between women and men in all their diversity and in all formal and informal decision-making processes.

Despite being an incomplete process, the evolution from a responsive approach focused on crisis and disaster to an increasing concern toward the structural and systemic causes of environmental degradation is coherent with the progressive recognition of the peculiarities of chronic emergencies in human rights law.

July 2019) UN Doc CEDAW/C/CPV/CO/9, paras 36–7; CEDAW Committee, 'Concluding Observations on the Combined Eighth and Ninth Periodic Reports of Haiti' (9 March 2016) UN Doc CEDAW/C/HTI/CO/8–9, paras 39 and 40; CEDAW Committee, 'Concluding Observations on the Sixth Periodic Report of Cambodia' (19 November 2019) UN Doc CEDAW/C/KHM/CO/6, para. 42; UN Human Rights Council Advisory Committee, 'Final Research-based Report of the Human Rights Council Advisory Committee on Best Practices and Main Challenges in the Promotion and Protection of Human Rights in Post-disaster and Post-conflict Situations', (10 February 2005) UN Doc A/HRC/28/76, para. 69. It is also worth reminding that in the aftermath of the Covid-19 pandemic, Resolution No. 2532 of the UN Security Council called on States to ensure the 'full, equal, and meaningful' participation of women in the development and implementation of an adequate and sustainable response to the pandemic. Similarly, UNGA Res 75/216 (21 December 2020) UN Doc A/RES/75/216, para. 41.

⁵⁹ CEDAW Committee, 'General recommendation No. 40 on the Equal and Inclusive Representation of Women in Decision-Making Systems' (25 October 2024) UN Doc CEDAW C/GC/40, 5.

⁶⁰ CEDAW Committee, 'General recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change' (n 58).

6. CONCLUDING REMARKS

This chapter has highlighted that the international normative framework has so far mostly aimed to respond to crises and disasters, considered as exceptionally disruptive events that require a coordinated management strategy among States to assist the victims and to mitigate the effects. By clarifying the conceptual difference between disasters and ECEs, this chapter has underlined the need to overcome the radical dichotomy of exception/normality, which mystifies the reality of everyday ECEs. Despite being as destructive as disasters, chronic emergencies are silent and slow, and have their causal roots in the structural imbalances of power, hierarchies and hegemonies embedded in society. Preventing chronic emergencies requires much more than coordinated humanitarian efforts, operational preparedness and mitigation tools. It implies the rereading of the existing international obligations and the rethinking of the future normative strategy in order to address the systemic and chronic dimensions of ECEs and dismantle the structural conditions that cause an otherwise endless spiral of environmental degradation. Enhancing the more advanced knowledge of different sciences, the international law of everyday prevention of chronic emergencies should promote a precautionary and gender-based legal approach. This may be possible, for example, by prohibiting activities that are overly risky for the environment and by shaping positive obligations that regress the structural intersectional discrimination of women, ensuring their full protection of economic and social rights, including sexual and reproductive rights, freedom from violence, access to justice and equal participation in all decision-making procedures.