Editorial

We live in times when environmental law is moving quickly, both internationally and nationally. A number of important developments have taken place in the few months since our last issue went to press. On 10 May 2018, the UN General Assembly adopted a resolution which established a negotiation process towards the adoption of a Global Pact for the Environment.¹ A call for action, signed by a hundred jurists from around the world, has been issued to engender national support for this process.² Further, some 20 members of the Pact's drafting group have contributed short opinion pieces to a climate law blog concerning the development of the Pact.³ Meanwhile, negotiations have begun towards the adoption of a legally binding instrument under the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction.⁴ Also, an additional intersessional meeting was held in September 2018 to finalize the preparation of the 24th Session of the Conference of the Parties to the UN Framework Convention on Climate Change, to be held in Katowice, Poland, in December 2018, where the modalities of application of the Paris Agreement are due to be adopted.⁵

New academic ideas as well as practical initiatives continue to shape these political processes in powerful ways. In this issue, we present three strong research articles. The first article, authored by Justice Brian PRESTON, Chief Judge of the Land and Environment Court of New South Wales in Australia, is an insightful and broad-ranging survey of the many climate cases that have emerged in many jurisdictions around the world, against a backdrop of an increasing emphasis on environmental rights. PRESTON notes that

1 UNGA Resolution 72/277, UN Doc A/RES/72/277 (10 May 2018).

2 '100 Jurists call for a for the adoption of a Global Pact for the Environment' (9 October 2018) <http://www.leclubdesjuristes.com/wp-content/uploads/2018/10/Jurists-Call-for-action_Globact-Pact-for-Environment.pdf>.

3 'Global Perspectives on the Global Pact for the Environment,' Climate Law Blog, Sabin Center for Climate Change Law, Columbia Law School, 20 September 2018 <<http://blogs.law.columbia.edu/climatechange/2018/09/20/global-perspectives-on-a-global-pact-for-the-environment/>>.

4 Earth Negotiations Bulletin 25:179 (20 September 2018) <<http://enb.iisd.org/oceans/bbnj/igc1/>>.

5 Earth Negotiations Bulletin 12:733 (12 September 2018) <<http://enb.iisd.org/climate/sb48-2/>>.

environmental rights are derived from the public trust doctrine, primarily in the United States, constitutional rights, especially the 'right to life' in some Asian constitutions, and the general area of human rights. Further, it looks at rights arising out of more traditional environmental litigation such as vehicular air pollution in cities, which is of course also related to climate change.

One striking aspect of the litigation that Preston surveys is the number of cases around the world being brought on behalf of younger people, as representatives of future generations, over the past few years. We recall that this trend was begun with the case of *Minors Oposa v Factoran*⁶ in the Philippines, establishing the concept of intergenerational justice.⁷ The United States has the highest number of such children's cases, with the non-government organisation Our Children's Trust initiating and cataloguing high-profile actions such as *Juliana v USA* at the federal level,⁸ but also cases and other legal measures in all US states.⁹ With regard to the *Juliana* case, we note the US government's several attempts in the Supreme and Federal Courts to stay the proceedings have failed to date, with a further motion for a temporary stay pending at the time of writing. This continuing legal saga is being closely watched, both within the US and around the world.

The second article, by Evan HAMMAN, explores the protection of the coastal wetlands on China's shore of the Yellow Sea, an environment of the highest importance for the protection of various species of migratory birds. HAMMAN shows that, although China has adopted relevant laws and policies, their implementation has been insufficient to avoid the rapid decline of these fragile ecosystems. The author suggests three complementary steps for reform. Firstly, a clearer, more consistent statutory framework should be adopted. Secondly, learning from the experience of other countries, he recommends that a strategic environmental assessment of the entire Yellow Sea-Bohai ecoregion be conducted to identify and address cumulative environmental damage. Lastly, HAMMAN notes the essential role of communities and the need for education, awareness and participation.

The third article, by David DEVLAE MINCK, focuses on the role of reciprocity in the international law on the management of China's fourteen transboundary rivers. The discussion of China's approach to sovereignty with respect to its transboundary waters and the development of the concept of

6 Supreme Court of the Philippines, GR No. 101083, 30 July 1993.

7 See generally Peter Lawrence *Justice for Future Generations: Climate Change and International Law* (Edward Elgar 2014).

8 217 F Supp 3d 1224, 1241 (D Or, 2016).

9 See Our Children's Trust, 'State Legal Actions' (nd) < <https://www.ourchildrenstrust.org/state-legal-actions/> >.

'common interests' in China's water treaty practices is of particular interest. Devlaeminck uses the 2015 Lancang-Mekong Cooperation Mechanism negotiated between China and the Lower Mekong countries as an illustration of the 'common interests' approach that China is adopting, and mentions the mechanism as being linked to China's fast-developing Belt and Road Initiative (BRI). He concludes that 'China's long-term intentions remain unclear and it has yet to be seen how cooperation based on the principles it embodies will work in practice.'

Lastly, this issue includes a review of the *Routledge Handbook of Human Rights and Climate Governance* by Michael ADDANEY.

As our Journal completes its second year of publication, we look ahead to further exciting developments in environmental law in the Asian region and around the world. We encourage our readers to continue to submit research articles and notes on recent developments in their region or area of expertise.

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