Editorial

Since the final issue of 2019 went to print, a number of environmental law developments have taken place around the world. We have also seen the devastating impact global and nationally on human health and every aspect of life as a result of the rapid spread of the disease now known as COVID-19.

1 Climate Change: COP25

Further to climate change discussions in previous editorials of our journal, the 25th COP of the United Nations Framework Convention on Climate Change (UNFCCC, COP25) met in Madrid in early December 2019. COP25 was also the first time all Parties to the *Paris Agreement* had met since the completion and adoption of almost all of the Paris Rulebook at the 2018 COP24 in Katowice, Poland. While operationalisation of the Paris Agreement, through the Rulebook, will unfold throughout 2020 and beyond, it was disappointing to see that yet again, Parties have been unable to reach a consensus on the final content of Article 6. Referred to colloquially as the ‘carbon markets’ provision, Article 6 is intended to provide both market and non-market pathways for emissions mitigation. Similar to COP24 in Katowice, the negotiations at COP25 in Madrid were fraught with disagreement and ultimately resulted in an ongoing lack of certainty about this important article of the Paris Agreement.

During the COP25, it was deeply concerning to see Australia’s continued attempts to use ‘carry over credits’—emissions achieved in previous years, over and above the agreed targets under the Kyoto Protocol—to meet its current and future mitigation requirements. This unilateral attempt to reduce Australia’s international climate change obligations is misguided on several fronts. First, it is well outside the object and purpose of the Paris Agreement. Secondly, many other Annex II State Parties have achieved mitigation reductions well below their Kyoto Protocol targets. If all such State Parties sought to follow Australia’s attempts to minimise their future mitigation efforts, then the adverse impact on global emissions and the climate system would be catastrophic. More pointedly, given the recent and ongoing environmental harms experienced across much of Australia—including unprecedented severe and

extensive bushfires, enduring drought across large swathes of previously productive agricultural lands, and a third extensive bleaching of the Great Barrier Reef—it is clear that Australia has far more to lose than gain through this short-sighted, and seemingly politically motivated, action.

2 Climate Change Litigation: *Urgenda Case*

Readers will recall the 2015 case of *Stichting Urgenda v The State of the Netherlands*, in which The Hague District Court was asked to provide an order directing the State to take action to reduce its greenhouse gas emissions in line with its international and regional treaty obligations. In late December 2019, the Dutch Supreme Court upheld earlier decisions of the Court of Appeal and District Courts,¹ and made an order to the effect that ‘the Dutch State is obliged to reduce, by the end of 2020, the emission of greenhouse gases originating from Dutch soil by at least 25% compared to 1990’.² In rejecting the State’s arguments,³ the Supreme Court referred to, inter alia, the climate change obligations of the Netherlands under both the Convention and the Agreement. More specifically, in pointing out that the Agreement ‘calls on each contracting state to account for its own responsibilities’, the Court drew attention to the Agreement’s objective of keeping global warming ‘well below 2°C as compared to the average preindustrial levels, striving to limit the temperature increase to 1.5°C’ and the obligation of Parties to ‘prepare ambitious national climate plans and of which the level of ambition must increase with each new plan’.⁴ The Supreme Court also confirmed that pursuant to its human rights obligations, the Dutch State is ‘obliged to achieve that reduction, due to the risk of dangerous climate change that could have a severe impact on the lives and welfare of the residents of the Netherlands’.⁵

1 *Stichting Urgenda v The State of the Netherlands (Ministry of Economic Affairs and Climate Policy)* (Judgment, 24 June 2015) The Hague District Court, Case C/09/456689/HA ZA 13-1396, ECLI:NL:RBDHA:2015:7145; *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda* (Judgement 9 October 2018) The Hague Court of Appeal, Case 200.178.245/01, ECLI:NL:GHDHA:2018:2591.

2 *The State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda* (Judgment, 20 December 2019) Supreme Court of the Netherlands Civil Div. Case 19/00135, ECLI:NL:HR:2019:2007.

3 Ibid [3.1–3.6].

4 Ibid [2.1].

5 Ibid, *Summary of the Decision—Conclusion*; see also [5.2.1–5.5.3].

3 Human Right to Life and the Environment

In its recent General Comment No 36 on the right to life, the UN Human Rights Committee (UNHRC) recognises the linkage between the fundamental human right to life and the environment.⁶ Relevantly, the UN HRC observes that State Parties' duty to protect life implies that they 'should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. In addition to recognising 'degradation of the environment' as one such general condition,⁷ the UNHRC also recognises that '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'.⁸

In two recent decisions, the UNHRC has taken the opportunity to consider the application of its reasoning—set out in General Comment 36—to circumstances involving claims of violation of the right to life as a result of environmental degradation and climate change. In considering the merits in the case of *Norma Portillo Cáceres and others v Paraguay*,⁹ the UN HRC 'observes that a narrow interpretation does not adequately convey the full concept of the right to life and that States must take positive action to protect that right'.¹⁰ In support of this, the UNHRC referred to its General Comment No 36, pointing out that in this instrument, 'it has established that the right to life also concerns the entitlement of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death'.¹¹

6 UN Human Rights Committee, *General Comment No. 36—Article 6: right to life* (3 September 2019) UN Doc CCPR/C/GC/36.

7 UN Human Rights Committee, *General Comment No. 36—Article 6: right to life* (3 September 2019) UN Doc CCPR/C/GC/36, para 26, where the Committee cite the case of *African Commission on Human and Peoples' Rights, Social and Economic Rights Centre (SERAC) and Centre for Economic and Social Rights (CESR) v. Nigeria (Communication No. 155/96)*, decision of 27 October 2001, para 67.

8 UN Human Rights Committee, *General Comment No. 36—Article 6: right to life* (3 September 2019) UN Doc CCPR/C/GC/36, para 62, where the Committee references the Declaration of the United Nations Conference on the Human Environment, Para. 1; Rio Declaration on Environment and Development, Principles 1–2, 11, 15 and 17–18; United Nations Framework Convention on Climate Change, Preamble, and Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

9 (CCPR/C/126/D/2751/2016) Adopted 25 July 2019.

10 Ibid para 7.3.

11 Ibid.

The UNHRC again referred to its General Comment No 36 in the more recent case of *Ioane Teitiota v New Zealand*.¹² Although the case was dismissed on the merits, the UNHRC took the opportunity of reinforcing its position on the relationship between the right to life and the environment:

9.4 The Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures. The Committee also recalls its general comment No. 36, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death. The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. Furthermore, the Committee recalls 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.

9.5 The Committee also observes that it, in addition to regional human rights tribunals, has established that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life. [footnotes omitted]

4 SDGs—Global Monitoring Framework for 2030

As we head into the decade of opportunity to implement the Sustainable Development Goals (SDGs), it is worth recalling action to date. In July 2017, the UN General Assembly adopted the 'global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development'.¹³ Pursuant to that resolution and the collection of relevant data,

12 (CCPR/C/127/D/2728/2016) Adopted 24 October 2019, Advance unedited version (7 January 2020), see especially para 3 (complaint), para 8.5 (admissibility), and para 9.8 (dismissed on the merits).

13 UN General Assembly, Res 71/313—*Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development* (6 July 2017) UN Doc A/RES/71/313, para 1.

last year's report—*The Sustainable Development Goals Report 2019*—provides an insightful, yet sobering commentary on the implementation of the SDGs during the past four years.¹⁴ Using the global indicator framework to track the global progress on the 17 SDGs, this report 'highlights challenges and identifies many areas that need urgent collective attention to realize the 2030 Agenda's far reaching vision'.¹⁵ For instance, there has been a considerable decline in extreme poverty, increased access to and provision of immunization has saved millions of lives, access to electricity has risen dramatically around the world, and there is widespread global and national action on environmental protection and conservation. The report also highlights a growing transition towards more sustainable approaches to consumption and production. Even so, the report draws attention to the many issues that demand the urgent attention and response of the International Community.¹⁶ Relevantly, António GUTERRES, the UN Secretary-General observes: 'The natural environment is deteriorating at an alarming rate: sea levels are rising; ocean acidification is accelerating; the past four years have been the warmest on record; one million plant and animal species are at risk of extinction; and land degradation continues unchecked'.¹⁷ While echoing the Secretary-General's comments, LIU Zhenmin, the Under-Secretary-General for Economic and Social Affairs, observes that climate change is the 'most urgent area for action':

If we do not cut record-high greenhouse gas emissions now, global warming is projected to reach 1.5°C in the coming decades. As we are already seeing, the compounded effects will be catastrophic and irreversible: increasing ocean acidification, coastal erosion, extreme weather conditions, the frequency and severity of natural disasters, continuing land degradation, loss of vital species and the collapse of ecosystems. These effects, which will render many parts of the globe uninhabitable, will affect the poor the most. They will put food production at risk, leading to widespread food shortages and hunger, and potentially displace up to

14 United Nations, *The Sustainable Development Goals Report 2019* (United Nations, New York, 2019) <<https://unstats.un.org/sdgs/report/2019/>>. This report is accompanied by a database of available global, regional and country data and metadata for the SDG indicators, available at <<https://unstats.un.org/sdgs/indicators/database/>>.

15 António GUTERRES, Secretary-General of the United Nations, 'Foreword' in *The Sustainable Development Goals Report 2019* *ibid.*

16 *Ibid.*

17 *Ibid.*

140 million people by 2050. The clock for taking decisive actions on climate change is ticking.¹⁸

In this next decade, as the report makes clear, it is imperative that the international community adopt 'a much deeper, faster and more ambitious response' to these challenges, so as to ensure that 'the social and economic transformation needed to achieve our 2030 goals' is fully supported.¹⁹

5 This Issue of CJEL

This issue of our journal contains three important research articles, one from Europe, and two from the African region. Marjan PEETERS, a member of CJEL's Editorial Board, prepared the first article, entitled 'Judicial Enforcement of Environmental Democracy: A Critical Analysis of Case Law on Access to Environmental Information in the European Union'. Her article notes that since the 1970s, the concept of environmental democracy, including the right to gain access to environmental information, has emerged as an important concept to promote and ensure public engagement in governmental environmental decision-making. She argues that while it is generally understood that environmental procedural rights deserve protection across the globe, the extent to which, in practice, the application of such rights differs across jurisdictions remains to be identified. She records that such differences may be caused by specific understandings of democracy and institutional characteristics. In light of this, her article analyses the case law of the Court of Justice of the European Union (CJEU) regarding the right of access to environmental information. She observes that the EU legislature has implemented the right of access to environmental information more ambitiously than required under the 1998 Aarhus Convention, particularly with regard to legislative information. Moreover, the CJEU has steered EU institutions, including the European Commission, towards even greater transparency. PEETERS notes that the judicial developments she discusses also highlight the importance of promoting discourse on the implications of a rigorous approach to the right of access to environmental information, including the question of whether enabling wider public engagement necessarily leads to better decision-making. Importantly, she concludes that the ideas and application in practice regarding access to environmental information may differ greatly within the EU, and that such

18 Ibid LIU Zhenmin, 'Introduction' in *The Sustainable Development Goals Report 2019*.

19 GUTERRES (n 15).

differences may also become evident when comparative research on the right of access to environmental information is carried out in jurisdictions in other regions across the world.

The second article, by Tatenda Leopold CHAKANYUKA, focuses on poaching and trade concerning the African Elephant. In particular, it looks at the impact of the ban of international trade of the ivory of the African elephant under the 1973 Convention on International Trade in Endangered Species (CITES). He notes that this species is overpopulated in some countries and threatened in other countries, and that its current population and the level of decline suggest a species that is endangered. The population disparities from one country to another have created misunderstandings in terms of how to address the issues. He argues that the controversy surrounding the two instances of legal sales of ivory, and the continuing ban on ivory trade from 1989, has contributed to animosity between pro-ban Western 'conservationists' and 'anti-ban' African countries, with accusations of 'ecological imperialism' being levelled at some of the protagonists. The article observes that the vast global ivory market has largely been sustained by countries that have failed to effectively enact laws and/or enforce them, as well as failing to deal with corruption and illegal markets within their jurisdictions. The author argues that identifying such culprit countries and their role in promoting elephant poaching and ivory trade, and identifying the reasons behind the poaching and illegal trade, is crucial in reducing the incidence of poaching. He proposes that with a better understanding of the illegal trade, CITES can take deliberate steps to assist countries involved in the ivory trade where they need assistance and support.

The third article, prepared by Ibibia Lucky WORIKA and Uzuazo ETEMIRE, addresses the legal aspects of achieving environmental sustainability in Rivers State, in the Niger Delta region of Nigeria. It notes that over the years, the overall quality of the environment in Rivers State has taken a significant downturn that has attracted both national and international attention. This situation, the authors maintain, raises questions about the quality of environmental laws and institutions in the state, with respect to their capacity to promote environmental sustainability. Their analysis, with specific reference to certain standards, broadly reveals that on the whole, the current status and quality of environmental laws and institutions in Rivers State are largely incapable of ensuring environmental sustainability in terms of securing a healthy environment conducive to human wellbeing and development. The authors put forward recommendations regarding extensive law review and revision, the faithful implementation of improved laws, and the proper allocation and employment

of adequate material and human resources with a view to strengthening the environmental regulatory system of Rivers State.

We have also included a note on a recent development in Indonesia concerning the 2019 Omnibus Bill on Job Creation. The authors, Raynaldo SEMBIRING, Isna FATIMAH and Grita Anindarini WIDYANINGSIH are from the Indonesian Centre for Environmental Law in Jakarta. They examine the drawbacks of the new Bill for the implementation of environmental law in Indonesia. This is the first contribution to our journal from Indonesia, and for this reason it is especially welcome.

Two books reviews are also included. Rob FOWLER has reviewed the book *Environmental Law in Singapore*, the first comprehensive treatment of the subject researched and written by Joseph CHUN and LYE Ling Heng. The second review, prepared by Menes Abinami MUZAN is of the book *Ecological Restoration in International Environmental Law* by Anastasia TELESETSKY, An CLIQUET and Afshin AKHTAR-KHAVARI (eds).

6 The COVID-19 Pandemic and Environmental Law

This issue has been prepared during a time of unprecedented global calamity under the duress of the COVID-19 pandemic in most countries around the world. China, many European countries, the United Kingdom and the United States have suffered, and are suffering, the highest rates of infections and mortality. At the time of writing, over five million people have contracted the virus, and over 350,000 people have died.²⁰ A high percentage of the world population is currently in some form of lockdown, with social interaction, work and travel severely restricted, with devastating economic consequences.

In February, as part of many initiatives to address the COVID-19 situation in China, the Chinese Government imposed a total ban on trade and consumption of wild animals, in order to curb activities that caused the virus to transfer from animals to people. The phenomenon of diseases jumping from some types of animal to people is known as 'zoonosis'. As one of CJEL's international advisory board members, Professor Nicholas Robinson, has written,²¹ there have

20 World Health Organization, Coronavirus (COVID-19), statistics updated at <<https://who.sprinkl.com/>>.

21 Nicholas A. Robinson and Christian Walzer 'How Do We Prevent the Next Outbreak?' Scientific American Blog Network March 25, 2020 <<https://blogs.scientificamerican.com/observations/how-do-we-prevent-the-next-outbreak/>>.

been many instances of zoonosis around the world. He points to the examples of the HIV/AIDS pandemic, a 'lentivirus' which was found to linked to human contact with infected chimpanzees and sooty mangabeys in West Africa in the 1980s, the SARS (Severe Acute Respiratory Syndrome)²² epidemic in 2002, which began in Guangdong Province through human contact with civets, a cat-like animal that bats had infected with a coronavirus. In Australia in 2004, the Hendra virus spread from flying foxes (a megabat native to Australia), to horses and then to humans. The MERS (Middle Eastern Respiratory Syndrome) epidemic began around 2012, and some infections continue to be recorded, particularly in Saudi Arabia. These viruses occur naturally in various animals in many parts of the world, but, as seen in the above examples, can result in widespread infection of humans and cause severe and deadly diseases. The current corona virus, which has caused the disease now known as 'COVID-19', is one of these. The most likely source of the corona virus that causes COVID-19 is acknowledged to be a 'wet' seafood market in the city of Wuhan in Hubei Province, though more scientific evidence is required before this can be definitively established.

With the spread of COVID-19 in mind, we welcome the swift precautionary response of the central Chinese Government in mid-February 2020, with the Decision of the Standing Committee of the National People's Congress on Comprehensively Banning the Illegal Wildlife, Eliminating the Bad Habits of Wild Food Eating, and Effectively Protecting the People's Safety.²³ The purpose of this Decision is set out in its preamble: '... prohibiting and punishing illegal wildlife trade, eliminating the unhealthy habit of indiscriminate wild animal meat consumption, ensuring biosafety and ecological security, preventing major public health hazards, protecting human life and health, and improving ecological conservation for greater harmony between humans and nature'.

In summary, the Decision bans the hunting, trading, transporting of wild animals or consuming their meat; bans eating the meat of 'terrestrial wild animals of significant ecological, scientific, or social value'; and bans hunting, trading or transporting for meat terrestrial wild animals that grow and reproduce naturally in the wild. The non-food use of wild animals required for research, medicinal use, exhibition, or any other special purpose is subject to strict

22 World Health Organisation 'SARS (Severe Acute Respiratory Syndrome)' <<https://www.who.int/ith/diseases/sars/en/>>.

23 Adopted at the 16th meeting of the Standing Committee of the 13th National People's Congress on February 24 2020. The full Decision can be accessed here: <<http://www.npc.gov.cn/englishnpc/lawsoftheprc/202003/e31e4fac9a9b4df693d0e2340d016dcd.shtml>>.

review and approval, together with quarantine and inspection. The Decision provides that acts in violation of the above bans shall be subject to penalties by reference to the relevant provisions of existing laws.

We note that this strongly-worded Decision is intended to be the basis for the reform of China's Wildlife Protection Law when the delayed National People's Congress is able to meet, after the pandemic crisis has passed.²⁴ We trust that this reform, consistent with the now constitutionally enshrined concept of 'ecological civilization'²⁵ will result in much tighter control of the wildlife trade in China. It is also hoped that such legislation will have the broader effect of eliminating the supply chain of illegally traded animal species, both within China and from other countries into China. All countries must also play their part in strengthening their legislative frameworks to prevent zoonosis at a domestic level and to reduce the possibilities of the illegal transnational transfer of species from one jurisdiction to another.

We sadly record that, as a result of the current pandemic, many scheduled international meetings concerning environmental issues have been delayed. In particular, the dates of the fifteenth Conference of the Parties to the Convention on Biological Diversity (COP 15), originally scheduled to take place in Kunming, Yunnan Province, in October 2020 are being revised because of the Covid-19 pandemic.²⁶ When COP 15 is eventually convened, we would certainly expect that the legal issues concerning zoonotic diseases will be part of the agenda, and that appropriate resolutions will be prepared, debated and passed by the State members of the Convention at the Conference.

In the same vein, we also note that the COP Bureau of the UNFCCC, with the UK and its Italian partners, recently announced the decision to defer COP26 from December 2020 in Glasgow, to a new date sometime in 2021. According to the UK Government:

In light of the ongoing, worldwide effects of COVID-19, holding an ambitious, inclusive COP26 in November 2020 is no longer possible. Rescheduling will ensure all parties can focus on the issues to be discussed at this vital conference and allow more time for the necessary

24 Christine LOH, 'Lessons learnt on wildlife protection' *China Daily* 23 March 2020; we note that the Congress was meeting as CJEL went to print near the end of May 2020.

25 Article 89(6) Chinese Constitution as amended in 2018.

26 Secretariat of the Convention on Biological Diversity, 'Revised dates and venue announced for two critical UN Biodiversity Convention meetings', Press Release <<https://protect-au.mimecast.com/s/z-1wCROND2uR8BxpF9B17C?domain=cbd.int>>.

preparations to take place. We will continue to work with all involved to increase climate ambition, build resilience and lower emissions.²⁷

This delay is, on the one hand, disappointing. On the other hand, further to the comments of the UK Government, it is hoped that the Parties use this extended time, albeit without face-to-face negotiation opportunities, to be well placed to reach a conclusive position in particular on the troublesome Article 6 at COP26 in 2021.²⁸

This issue of CJEL is the first to be prepared without the capable guidance of Professor Benoit MAYER, our managing editor for the past three years. Benoit began working with us in developing the Journal back in 2016, and we are grateful for his dedication and hard work since that time. We are glad that he has acceded to our request to stay on the Editorial Board and we look forward to continuing to work with him over the coming years.

We note that during the preparation of this issue of CJEL, Earth Day was celebrated, on April 22, 2020. We wish all of our readers, authors, colleagues and their families, and the Earth itself, the very best of health in these challenging times.

Ben BOER, Rowena CANTLEY-SMITH and QIN Tianbao

27 Department for Business, Energy & Industrial Strategy and The Rt Hon Alok Sharma MP, 'COP26 postponement' (UN Government, Press release, 1 April 2020) <www.gov.uk/government/news/cop26-postponement>.

28 See for example, recent advancements achieved at the 52nd Session of the Intergovernmental Panel on Climate Change (IPCC-52) held on 24–28 February 2020 at the Headquarters of the UN Educational, Scientific and Cultural Organization (UNESCO), Paris, France, an overview of which is available at <<https://enb.iisd.org/climate/ipcc52/>>.