

THE ARCHITECTURE OF INEQUITY: INTERNATIONAL ENVIRONMENTAL LAW AND THE UNMET PROMISE OF CLIMATE JUSTICE

Devarchit Singh¹

ABSTRACT

Climate change at the global level, among other issues, is one of the greatest examples of an asymmetric situation. The developed states have been industrializing their economies through fossil fuel-based development for almost two centuries and half, gaining power and prosperity in the process. The environmental effects caused by such an economic system have disproportionately affected countries from the Global South, who played only a minor role in the process. The international environmental law, which should have served as a correction to this system, has often served as its reinforcement. From the structure of compromises contained in the UNFCCC framework to the structure of voluntary pledges included in the Paris Agreement, international climate governance is shaped by the negotiating capacity of their creators. The aim of this article is to discuss the undue burden on developing countries, analyze the concept of common but differentiated responsibilities and its political watering down, carbon colonialism in today's green economy transition process, loss and damage mechanism at COP27 & COP28, and finally India's nuanced stance on climate issues against the larger backdrop of Global South politics. The main point here is that, without any radical restructuring of climate finance, legal emission obligations on historical polluters, and reparative justice, international environmental law would only be a tool for managing inequalities.

Keywords: Climate Justice; Carbon Colonialism; Loss and Damage; Climate Finance; International Environmental Law; Climate Litigation

I. INTRODUCTION

There is a particular cruelty in the geography of climate change. The nations most devastated by rising seas, erratic monsoons, intensifying droughts, and collapsing agricultural seasons are, almost without exception, the nations that burned the least

¹ Devarchit Singh, 2nd Year Law Student Dr. Ram Manohar Lohiya, National Law University, Lucknow

carbon to produce them.² Bangladesh did not industrialise its way to global economic dominance. The Maldives did not build an automotive economy. Sub-Saharan African nations did not power their growth through coal-fired electricity grids for over a century. And yet these are the places where climate change is already killing people, destroying livelihoods, and threatening the physical continuity of human settlement.³

This was highlighted by the Sixth Assessment Report from the Intergovernmental Panel on Climate Change, published over 2021 and 2022, in a scientifically accurate way, that is, climate risks are not distributed proportionally according to historical emissions and the most vulnerable groups exist in poor countries.⁴ This is not a new finding. It has been documented for decades.⁵ The more pressing question is why international law has proven so persistently incapable of addressing it.⁶

The answer lies partly in law and partly in power. International environmental law does not exist in a vacuum. It is negotiated by states whose delegations reflect their domestic political economies, their relationships with fossil fuel industries, their debt obligations, and their geopolitical ambitions.⁷ The result is a body of law that speaks frequently of equity and justice but rarely compels either.⁸ This article traces that failure through its historical roots, its institutional expressions, and its contemporary political contests.

The stakes of this failure cannot be overstated. We are not debating the fine print of treaty obligations in some abstract diplomatic register. We are debating whether the international legal order is capable of responding to the most consequential collective action problem in human history in a manner that does not simply reproduce the inequalities that characterise global economic and political life.⁹ The evidence, examined honestly, gives considerable cause for pessimism. But pessimism is not the

² Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) ch 16.

³ United Nations Development Programme (UNDP), *Human Development Report 2021/2022*.

⁴ IPCC (n 1) Summary for Policymakers, B.2 and C.2.

⁵ United Nations Framework Convention on Climate Change, adopted 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) *preamble*.

⁶ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (United Nations University 1989).

⁷ Peter Newell and Matthew Paterson, *Climate Capitalism: Global Warming and the Transformation of the Global Economy* (Cambridge University Press 2010).

⁸ Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press 2006).

⁹ Henry Shue, 'Climate Justice: Vulnerability and Protection' (2014) 13(1) *Oxford Handbook of Climate Change and Society*.

same as fatalism. The legal and political tools to do better exist.¹⁰ The question is whether there is sufficient political will among those with the power to deploy them.

II. HISTORICAL RESPONSIBILITY AND THE CARBON DEBT

A. THE ACCUMULATION PROBLEM

There is no real debate regarding the scientific basis of historical responsibility. The concentration of carbon dioxide in the atmosphere takes place over many years. The greenhouse gases that are contributing to global warming today do not emanate from the industrialization of developing countries, but rather from about 150 years of intense burning of fossil fuels in relatively few rich nations.¹¹ Data from the Global Carbon Project confirms that the United States alone is responsible for approximately 25% of cumulative CO₂ emissions since industrialization began, while the entire African continent, with over a billion people, contributes less than 4%.¹²

This matters because the greenhouse effect is cumulative. Every tonne of carbon dioxide emitted in 1900 by a coal-fired power plant in the English Midlands is still, in some physical sense, contributing to contemporary warming.¹³ Developed nations built their infrastructure, financial systems, universities, and welfare states partly on the proceeds of carbon-intensive industrialisation.¹⁴ As Srinivasan and colleagues documented in the Proceedings of the National Academy of Sciences,¹⁵ the ecological debts incurred through industrial accumulation are disproportionately concentrated in wealthy economies. The developing world is being asked to forego a comparable developmental pathway in the interests of a global commons they did not disproportionately exploit.¹⁶

The term “carbon debt” is more than a slogan. It uses the metaphor of debt in a financial context: where one side uses up the common resource beyond their fair share,

¹⁰ Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (Oxford University Press 2017)

¹¹ IPCC, *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2021) ch 5.

¹² Pierre Friedlingstein and others, 'Global Carbon Budget 2023' (2023) 15 *Earth System Science Data*.

¹³ IPCC (n 10).

¹⁴ Andreas Malm, *Fossil Capital: The Rise of Steam Power and the Roots of Global Warming* (Verso 2016).

¹⁵ Srinivasan, U.T. et al., 'The debt of nations and the distribution of ecological impacts from human activities' (2008) 105(5) *Proceedings of the National Academy of Sciences* 1768.

¹⁶ Henry Shue, 'Subsistence Emissions and Luxury Emissions' (1993) 15(1) *Law & Policy*.

and gains from it, they have a debt to those who lost out because of it.¹⁷ When applied to the atmosphere as a common resource of humanity, this will result in a duty for the early and extensive industrializers to pay for the damage they have done to others.¹⁸ The legal architecture of international climate governance has partially acknowledged this logic, principally through the CBDR principle,¹⁹ but has systematically avoided its more demanding implications: quantified reparative obligations, binding compensation mechanisms, and enforceable limits on legacy emitters' future consumption of atmospheric space.²⁰

B. CBDR AND ITS POLITICAL EROSION

The principle of Common but Differentiated Responsibilities, enshrined in Principle 7 of the Rio Declaration²¹ and incorporated into the UNFCCC framework,²² was meant to codify this historical asymmetry into binding legal obligation. Developed countries were to take the lead in emissions reduction; they were to provide finance and technology to developing nations for adaptation and mitigation; and they were to acknowledge their greater historical contribution to the problem.²³

In practice, CBDR has been progressively diluted through the very negotiating processes it was supposed to govern.²⁴ The shift from the Kyoto Protocol's binding differentiated obligations²⁵ to the Paris Agreement's nationally determined contributions (NDC) architecture²⁶ was a decisive retreat. Under Paris, every state submits its own emission reduction pledges without any binding international

¹⁷ Simon Caney, 'Climate Change, Energy Rights, and Equality' in Denis Arnold (ed), *The Ethics of Global Climate Change* (Cambridge University Press 2011).

¹⁸ Stephen M Gardiner, *A Perfect Moral Storm: The Ethical Tragedy of Climate Change* (Oxford University Press 2011).

¹⁹ United Nations Framework Convention on Climate Change, adopted 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) art 3(1).

²⁰ Lavanya Rajamani, 'The Principle of Common but Differentiated Responsibility and the Balance of Commitments under the Climate Regime' (2000) 9(2) *Review of European Community & International Environmental Law*.

²¹ United Nations Conference on Environment and Development, *Rio Declaration on Environment and Development* (adopted 14 June 1992) UN Doc A/CONF.151/26 (Vol I), Principle 7.

²² United Nations Framework Convention on Climate Change, adopted 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) arts 3(1), 4(1) and 4(2).

²³ Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (Oxford University Press 2017).

²⁴ Lavanya Rajamani, 'The Changing Fortunes of Differential Treatment in the Evolution of International Environmental Law' (2012) 88(3) *International Affairs*.

²⁵ Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted 11 December 1997, 2303 UNTS 162 (entered into force 16 February 2005) arts 3 and 10.

²⁶ Paris Agreement, adopted 12 December 2015, UN Doc FCCC/CP/2015/10/Add.1 (entered into force 4 November 2016) arts 3 and 4.

standard for what those pledges should contain.²⁷ Developed nations argued this was necessary to achieve universal participation. Developing nations accepted it, partly under diplomatic pressure and partly because Paris also promised financial support that has not materialised at the scale required.²⁸

Lavanya Rajamani's landmark study *Differential Treatment in International Environmental Law*²⁹ documents how the legally binding differentiation of Kyoto was progressively softened through successive COPs, culminating in a Paris Agreement that achieves universality at the cost of enforceable equity.³⁰ The principle remains in the treaty texts; its operational content has largely been bargained away.³¹ What survives of CBDR in the Paris architecture is largely aspirational, a rhetorical frame without the procedural and institutional mechanisms necessary to translate it into differentiated legal duties.³² For the countries most vulnerable to climate change, this erosion is not merely a technical legal disappointment; it is a denial of the justice to which their situation plainly entitles them.³³

III. THE GEOGRAPHY OF SUFFERING: CLIMATE IMPACTS IN THE GLOBAL SOUTH

Climate science abstraction becomes concrete with context within specific localities. In 2022, India had its warmest March in history with temperatures rising above 45 degrees centigrade throughout the northwestern regions causing damage to wheat harvests and health crises.³⁴ The massive flooding event in Pakistan in 2022, which flooded one-third of the nation, has been scientifically attributed to human-induced warming.³⁵ The economic toll of these events was above thirty billion dollars in a country already dealing with the restructure of its debt due to the IMF.³⁶ In the Horn of Africa, a succession of failures to receive rain in the area has caused the most serious

²⁷ Paris Agreement (n 25) arts 4(2), 4(3) and 4(9).

²⁸ United Nations Environment Programme, *Adaptation Gap Report 2023* (UNEP 2023) xvii-xxii.

²⁹ Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press 2006).

³⁰ *ibid.*

³¹ Lavanya Rajamani and Emmanuel Guérin, 'Central Concepts in the Paris Agreement and How They Evolved' (2017) 28(12) *Climate Policy*.

³² Benoit Mayer, 'The Place of Equity in the Paris Agreement' (2016) 6(2) *Climate Law*.

³³ Henry Shue, *Climate Justice: Vulnerability and Protection* (Oxford University Press 2014).

³⁴ World Meteorological Organization, *State of the Climate in Asia 2022* (WMO 2023).

³⁵ Friederike Otto and others, *Climate Change Likely Increased Extreme Monsoon Rainfall, Highly Vulnerable Communities Experienced Substantial Impacts in Pakistan* (World Weather Attribution, 2022).

³⁶ World Bank, *Pakistan Floods 2022: Post-Disaster Needs Assessment* (World Bank, Asian Development Bank, European Union and United Nations 2022).

famine conditions in many years, affecting millions of people.³⁷ According to the IPCC Working Group II report, these tendencies will become significantly more acute even in the low warming scenarios.³⁸

Small island developing states face a different but equally existential problem. Kiribati, Tuvalu, and the Marshall Islands are not dealing with adaptation in any meaningful sense; they are dealing with the prospect of national dissolution.³⁹ Entire atolls are expected to become uninhabitable within decades.⁴⁰ The legal and political questions this raises, including the status of populations displaced from territories that may cease to exist, have no adequate resolution within existing international law.⁴¹ The concept of 'statelessness' was not designed for geophysically erased nations.⁴² This lacuna is itself a form of institutional negligence: the international legal community has had sufficient warning of these scenarios to develop adequate frameworks, and has largely declined to do so.⁴³

Bangladesh illustrates the depth of the injustice. One of the most densely populated countries on earth, with per capita emissions a fraction of the global average,⁴⁴ it sits in a river delta that is subsiding while sea levels rise. Cyclone intensity has increased. Saltwater intrusion is destroying agricultural land in coastal zones. Seasonal flooding has grown more severe and unpredictable.⁴⁵ The country has invested heavily in adaptation, building embankments and cyclone shelters but it cannot adapt its way out of a problem created by others.⁴⁶ Domestic adaptation spending in Bangladesh represents a significant proportion of the national budget, constituting a de facto tax on poverty imposed by the emissions of wealthy economies.⁴⁷

³⁷ Food and Agriculture Organization and World Food Programme, *Hunger Hotspots: FAO-WFP Early Warnings on Acute Food Insecurity* (2023).

³⁸ IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (Cambridge University Press 2022) chs 9, 16.

³⁹ Maxine Burkett, 'The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era' (2011) 2(1) *Climate Law*.

⁴⁰ Intergovernmental Panel on Climate Change, *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019).

⁴¹ Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012).

⁴² Convention Relating to the Status of Stateless Persons, adopted 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960).

⁴³ Rosemary Rayfuse and Emily Crawford, *International Law and Disappearing States: Utilising Maritime Entitlements to Overcome the Statehood Dilemma* (UNSW Press 2013).

⁴⁴ World Bank, *World Development Indicators* (2024 edn).

⁴⁵ IPCC (n 37) ch 10.

⁴⁶ Saleemul Huq and Hannah Reid, 'Mainstreaming Adaptation in Development' (2007) 36(8) *IDS Bulletin*.

⁴⁷ Government of Bangladesh, *Bangladesh Climate Fiscal Framework* (Ministry of Finance 2020).

Africa's situation is particularly stark when viewed against the emissions data. The continent emits roughly 3.8% of global greenhouse gases yet contains some of the most climate-vulnerable populations in the world.⁴⁸ The Sahel is experiencing desertification and reduced rainfall that is driving pastoral communities into conflict with farming communities over shrinking resources.⁴⁹ The IPCC has noted that Africa will likely face compounded risks from multiple simultaneous climate hazards, and that the window for effective adaptation is narrowing rapidly.⁵⁰ Sub-Saharan farmers operating on rain-fed agriculture with minimal technological support are confronting shifting seasons and unpredictable precipitation with virtually no financial support from the international climate architecture that supposedly exists to serve them.⁵¹

The Latin American and Caribbean region presents yet another dimension of vulnerability. Andean glaciers that supply freshwater to tens of millions of people are retreating at accelerating rates, threatening both urban water security and highland agricultural systems.⁵² Coral bleaching events, intensified by warming oceans, are devastating Caribbean reef ecosystems on which coastal fisheries and tourism industries depend.⁵³ Amazon deforestation, driven partly by the speculative dynamics of international commodity markets, is disrupting the moisture recycling systems that sustain rainfall patterns across the continent.⁵⁴ These are not speculative future risks; they are present crises unfolding in regions whose historical contribution to the atmospheric stock of greenhouse gases is negligible relative to the damage they are absorbing.⁵⁵

⁴⁸ United Nations Environment Programme, *Africa Adaptation Gap Report 2023* (UNEP 2023).

⁴⁹ Tor A Benjaminsen and others, 'Does Climate Change Drive Land-Use Conflicts in the Sahel?' (2012) 41(1) *Journal of Peace Research*.

⁵⁰ IPCC (n 37) ch 9.

⁵¹ United Nations Environment Programme, *Adaptation Gap Report 2023* (UNEP 2023).

⁵² Mark Carey, *Glaciers, Climate Change and Andean Society* (Oxford University Press 2010).

⁵³ IPCC, *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019).

⁵⁴ Carlos A Nobre and others, 'Land-Use and Climate Change Risks in the Amazon and the Need of a Novel Sustainable Development Paradigm' (2016) 113(39) *Proceedings of the National Academy of Sciences*.

⁵⁵ Henry Shue, *Climate Justice: Vulnerability and Protection* (Oxford University Press 2014).

IV. CARBON COLONIALISM AND THE GREEN ECONOMY'S HIDDEN HIERARCHIES

The language of the green transition is full of optimism. Renewable energy, electric vehicles, circular economies, net-zero pathways. But the political economy of this transition, if examined carefully, reproduces some disturbing structural patterns.⁵⁶

Consider the minerals required for the clean energy economy: lithium, cobalt, nickel, manganese, and rare earth elements. These are concentrated in the Global South.⁵⁷ The Democratic Republic of Congo holds roughly 60% of global cobalt reserves.⁵⁸ Chile, Argentina, and Bolivia constitute the lithium triangle.⁵⁹ The IEA's World Energy Outlook acknowledges that the clean energy transition will dramatically increase demand for these critical minerals, yet the governance frameworks for their extraction remain dominated by the commercial interests of multinational corporations headquartered in wealthy states.⁶⁰ The environmental and social costs, land degradation, water contamination, and displacement of local communities are borne locally. Profits are extracted globally.⁶¹

This is what scholars and activists have begun calling carbon colonialism: the appropriation of Global South resources, land, and ecological space in service of a green transition primarily benefiting wealthy consumers in the Global North.⁶² It takes several forms. One is the straightforward extraction of transition minerals under conditions that leave resource-rich countries with little of the value added.⁶³ Another is the use of carbon offsetting mechanisms to allow wealthy countries and corporations to purchase the right to continue emitting by funding ostensible emission reductions in developing countries, often through forest conservation schemes that dispossess indigenous and local communities of land they have managed sustainably for generations.⁶⁴

⁵⁶ Thea Riofrancos, *Resource Radicals: From Petro-Nationalism to Post-Extractivism in Ecuador* (Duke University Press 2020).

⁵⁷ International Energy Agency, *The Role of Critical Minerals in Clean Energy Transitions* (IEA 2021).

⁵⁸ United Nations Conference on Trade and Development (UNCTAD), *Commodities at a Glance: Special Issue on Strategic Battery Raw Materials* (UNCTAD 2020).

⁵⁹ *ibid.*

⁶⁰ International Energy Agency, *World Energy Outlook 2023* (IEA 2023).

⁶¹ United Nations Environment Programme, *Sustainability of Critical Minerals for Energy Transitions* (UNEP 2024).

⁶² Max Ajl, *A People's Green New Deal* (Pluto Press 2021) 91-113; Françoise Vergès, *A Decolonial Feminism* (Pluto Press 2021).

⁶³ Jason Hickel, *Less is More: How Degrowth Will Save the World* (Penguin 2020).

⁶⁴ Larry Lohmann, 'Carbon Trading, Climate Justice and the Production of Ignorance' (2009) 51(3) *Development*.

The REDD+ program under the UNFCCC aims to reward developing nations for preventing deforestation.⁶⁵ The performance of the program has been heavily criticized.⁶⁶ One such example is when in 2023, a peer-reviewed study in *Science* showed that the voluntary REDD+ projects in the Amazonian region of Brazil were grossly exaggerating their carbon emissions reductions, creating carbon credits for emissions reductions that never took place, all the while infringing on the land rights of the communities depending on the forests.⁶⁷ The carbon market does not always do what it says, and its failures have consequences for the Global South.⁶⁸

A more fundamental structural problem is that green transition, as it is currently envisaged, is at risk of reproducing colonial economy in a new technological form, the Global South supplying the raw materials and hosting production externalities while the Global North monopolizing the higher-value-added phases of manufacturing, technology development, and intellectual property.⁶⁹ To disrupt such a trend, industrial policy, technology transfer that is not licensed to exclude, priority access to the supply chain for sustainable manufacturing, and regulation of mining activities that actually aid the development of the host nation, rather than maximizing shareholder wealth, are needed.⁷⁰ However, none of these is adequately supported by current international laws and economic structures.⁷¹

V. THE FAILURE OF INTERNATIONAL CLIMATE ARCHITECTURE

A. FROM KYOTO TO PARIS: A STORY OF RETREATING AMBITION

It can be said that the Kyoto Protocol of 1997 was the first real effort in giving different legal obligations to developed countries.⁷² According to this Protocol, the Annex I

⁶⁵ UNFCCC, 'The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention' UN Doc FCCC/CP/2010/7/Add.1 (15 March 2011).

⁶⁶ Esteve Corbera and Katrina Brown, 'Offsetting Benefits? Analysing Access to Forest Carbon' (2010) 39(9) *Environment and Planning A*.

⁶⁷ Thales AP West and others, 'Overstated Carbon Emission Reductions from Voluntary REDD+ Projects in the Brazilian Amazon' (2023) 381(6657) *Science*

⁶⁸ Lisa Sachs, Jeffrey D Sachs and Nathan Lobel, 'The Risks and Opportunities of Carbon Markets for Sustainable Development' (2021) 13(5) *Sustainability*.

⁶⁹ Sam Adelman, 'The Sustainable Development Goals, Anthropocentrism and Neocolonialism' (2018) 15(1) *International Environmental Agreements*.

⁷⁰ Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (Anthem Press 2002).

⁷¹ UNCTAD, *Trade and Development Report 2023: Growth, Debt and Climate* (UNCTAD 2023).

⁷² Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted 11 December 1997, 2303 UNTS 162 (entered into force 16 February 2005).

countries had to cut down their emission of greenhouse gases by 5.2 percent of their level in 1990 for the first commitment period (2008–2012).⁷³ Though this was not a perfect approach, nor did the objectives seem sufficient, yet at least this was an effort to make CBDR legally binding.⁷⁴ In the case of the second commitment period which was decided upon in Doha in 2012, such has been the erosion of its provisions that even Canada withdrew itself from the Protocol, while Russia and Japan have refused to participate in it.⁷⁵

The Paris Agreement represented a fundamental architectural shift.⁷⁶ Gone were the binding differentiated emission reduction targets. In their place: a universal system of nationally determined contributions, a long-term temperature goal of limiting warming to 1.5–2 degrees Celsius above pre-industrial levels, and promises of climate finance and technology transfer.⁷⁷ The temperature goal was politically significant. The mechanism for achieving it was structurally weak.⁷⁸

The problem is not just that current NDCs are insufficient. The UN Environment Programme's Emissions Gap Report 2023 found that even full implementation of submitted NDCs would lead to warming well in excess of 2 degrees Celsius by century's end.⁷⁹ The deeper problem is structural: the Paris Agreement has no enforcement mechanism for the ambition of NDCs, only for the procedural obligation to submit them.⁸⁰ A country can submit an NDC that does nothing meaningful and remain in full legal compliance.⁸¹ This is not an accident; it reflects the negotiating reality that the

⁷³ *ibid* art 3(1); Daniel Bodansky, *The Art and Craft of International Environmental Law* (Harvard University Press 2010).

⁷⁴ Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford University Press 2006).

⁷⁵ Doha Amendment to the Kyoto Protocol, adopted 8 December 2012, UN Doc FCCC/KP/CMP/2012/13/Add.1; Harro van Asselt, *The Fragmentation of Global Climate Governance* (Edward Elgar 2014).

⁷⁶ Paris Agreement, adopted 12 December 2015, UN Doc FCCC/CP/2015/10/Add.1 (entered into force 4 November 2016).

⁷⁷ *ibid* arts 2(1)(a), 4 and 10.

⁷⁸ Daniel Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25(2) *Review of European, Comparative & International Environmental Law*.

⁷⁹ United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record, Temperatures Hit New Highs, Yet World Fails to Cut Emissions Again* (UNEP 2023) xviii-xxii.

⁸⁰ Paris Agreement (n 74) arts 4(2), 4(9), 13 and 14.

⁸¹ Benoit Mayer, 'The Place of Equity in the Paris Agreement' (2016) 6(2) *Climate Law*

United States would not accept binding emission reduction targets,⁸² and without US participation, the climate regime lacks both political legitimacy and collective will.⁸³

B. THE SYMBOLISM PROBLEM IN CLIMATE DIPLOMACY

COPs have often turned into mere management of optics rather than achieving tangible results.⁸⁴ The disparity between the declarations made at the COP plenary meetings and the policy measures adopted nationally may be quite significant in many instances.⁸⁵ The studies on the implementation of climate pledges revealed recurring mismatch between the ambition and action.⁸⁶

The dynamics of COP negotiations themselves reflect global power inequalities.⁸⁷ Small island states and least developed countries have consistently advocated for stronger ambition, higher finance commitments, and binding loss and damage mechanisms.⁸⁸ They are routinely outmanoeuvred by the negotiating capacity of large, wealthy states with hundreds of technical experts, diplomatic leverage, and the ability to walk away from deals without facing immediate existential consequences.⁸⁹ The Alliance of Small Island States has been a powerful moral voice within the UNFCCC; it has had considerably less success converting that moral authority into legal outcomes.⁹⁰

The procedural inequities of climate diplomacy are themselves a justice issue. When wealthy states can field delegations of dozens of technical, legal, and political specialists to each COP, while the least developed countries attend with skeleton teams

⁸² Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (Oxford University Press 2017).

⁸³ Lavanya Rajamani and Emmanuel Guérin, 'Central Concepts in the Paris Agreement and How They Evolved' (2017) 28(12) *Climate Policy*.

⁸⁴ Karin Bäckstrand and Eva Lövbrand, 'The Road to Paris: Contending Climate Governance Discourses in the Post-Copenhagen Era' (2019) 28(4) *Journal of Environmental Policy & Planning*.

⁸⁵ Thomas Hale, 'Catalytic Cooperation' (2020) 117(4) *Global Policy*.

⁸⁶ United Nations Environment Programme, *Emissions Gap Report 2023: Broken Record, Temperatures Hit New Highs, Yet World Fails to Cut Emissions Again* (UNEP 2023) 16-31; Climate Action Tracker, *Warming Projections Global Update 2023* (2023).

⁸⁷ Peter Newell, *Globalization and the Environment: Capitalism, Ecology and Power* (Polity Press 2012).

⁸⁸ Saleemul Huq, Erin Roberts and Rachel J Tye, 'Loss and Damage and Vulnerable Countries at the Climate Negotiations' (2015) 14(6) *Climate Policy*.

⁸⁹ Joanna Depledge, *The Organization of Global Negotiations: Constructing the Climate Change Regime* (Earthscan 2005).

⁹⁰ Michele M Betsill, 'Environmental NGOs and the International Negotiation Process' in Michele M Betsill and Elisabeth Corell (eds), *NGO Diplomacy: The Influence of Nongovernmental Organizations in International Environmental Negotiations* (MIT Press 2008) 43-58; Maxine Burkett, 'A Justice Paradox: Climate Change, Small Island Developing States, and the Absence of International Legal Remedy' (2011) 35(2) *University of Hawai'i Law Review*.

that may lack expertise in the arcane procedural rules that govern negotiating outcomes, the formal equality of state participation masks a profound substantive inequality in the capacity to shape treaty text.⁹¹ Genuine reform of the climate negotiating architecture would require capacity-building support for developing country delegations at a scale that has never been seriously contemplated, let alone funded.

VI. CLIMATE FINANCE AND THE POLITICS OF LOSS AND DAMAGE

A. THE HUNDRED BILLION DOLLAR PROMISE

At Copenhagen in 2009, developed countries pledged to mobilise one hundred billion dollars per year in climate finance for developing nations by 2020.⁹² That target was not met.⁹³ The OECD's own tracking data has been contested by developing countries who argue that loan-heavy finance portfolios that increase debt burdens cannot fairly be described as climate support.⁹⁴ The promised one hundred billion dollars was itself widely recognised as inadequate relative to developing country needs; the UNEP Adaptation Gap Report has estimated that annual adaptation costs in developing countries may reach several hundred billion dollars by mid-century, against adaptation finance flows that currently represent a fraction of that figure.⁹⁵

The new collective quantified goal on climate finance, agreed at COP29 in Baku in 2024,⁹⁶ set a target of 300 billion dollars per year by 2035, with an aspiration to mobilise 1.3 trillion from all sources.⁹⁷ Developing country negotiators expressed deep frustration with this outcome, arguing the amounts were wholly inadequate and that the 'from all sources' language allows wealthy states to count private finance that

⁹¹ Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (Cambridge University Press 2004).

⁹² United Nations Framework Convention on Climate Change, Report of the Conference of the Parties on its Fifteenth Session, Held in Copenhagen from 7 to 19 December 2009 UN Doc FCCC/CP/2009/11/Add.1 (30 March 2010) para 8.

⁹³ Organisation for Economic Co-operation and Development (OECD), *Climate Finance Provided and Mobilised by Developed Countries in 2013-2022* (OECD 2024).

⁹⁴ Oxfam International, *Climate Finance Shadow Report 2023: Assessing the Delivery of Climate Finance* (Oxfam 2023).

⁹⁵ United Nations Environment Programme, *Adaptation Gap Report 2023* (UNEP 2023) xviii-xxiii.

⁹⁶ Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA), *New Collective Quantified Goal on Climate Finance* (COP29, Baku, 2024).

⁹⁷ *ibid.*

developing countries cannot access on affordable terms.⁹⁸ The gap between what climate justice requires and what climate diplomacy delivers remains cavernous.⁹⁹

The structure of climate finance in its present configuration is flawed not only by the small amounts but by the format of these payments, which is also a major issue.¹⁰⁰ Many of the funds designated as climate finance from the industrialized nations take the form of loans, even market rate loans.¹⁰¹ Where countries are struggling already with an unsustainable level of debt, compounded by the coronavirus crisis and monetary tightening following from it in developed countries, further debt, even under the guise of climate adaptation, will make the country more fragile rather than resilient.¹⁰² A country borrowing to construct a sea wall will be paying back that debt in such a way that the education budget suffers, which means the people of that country cannot cope with another climate shock.¹⁰³ This is not happenstance, but structural in the current framework of climate finance.

B. LOSS AND DAMAGE: JUSTICE OR NOMENCLATURE?

The formal recognition of loss and damage as a distinct element of the climate finance architecture, including the establishment of a dedicated Loss and Damage Fund at COP27 in Sharm el-Sheikh, was a significant political achievement.¹⁰⁴ It represented the formal acknowledgement that some climate impacts are unavoidable even with adaptation, and that historical emitters bear some responsibility for the consequences.¹⁰⁵ As Huq and colleagues have analysed, the operationalisation of that acknowledgement has been far less impressive.¹⁰⁶ The initial pledges to the new fund

⁹⁸ International Institute for Environment and Development (IIED), *Developing Country Perspectives on the New Climate Finance Goal* (IIED 2025).

⁹⁹ Farhana Yamin and Joanna Depledge, *The International Climate Change Regime: A Guide to Rules, Institutions and Procedures* (Cambridge University Press 2004).

¹⁰⁰ Inge Kaul, *Global Public Goods and Sustainable Development Finance* (Oxford University Press 2021).

¹⁰¹ Oxfam International (n 93) 18-24; OECD (n 92).

¹⁰² United Nations Conference on Trade and Development (UNCTAD), *Trade and Development Report 2023: Growth, Debt and Climate* (UNCTAD 2023).

¹⁰³ Ulrich Volz and others, *Debt Relief for a Green and Inclusive Recovery* (London School of Economics Grantham Research Institute 2021).

¹⁰⁴ Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement (CMA), *Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, Including a Focus on Addressing Loss and Damage* UN Doc FCCC/PA/CMA/2022/L.18 (20 November 2022).

¹⁰⁵ Harjeet Singh and Cassie Flynn, 'Loss and Damage Finance after COP27: The Long Road to Climate Justice' (2023) 32(4) *Climate Policy*.

¹⁰⁶ Saleemul Huq, Erin Roberts and Rachel Tye, 'Loss and Damage and Vulnerable Countries at the Climate Negotiations' (2015) 14(6) *Climate Policy*.

totalled less than 800 million dollars, against loss and damage estimates in developing countries running to hundreds of billions annually.¹⁰⁷ The fund is housed at the World Bank, a decision contested by many developing nations who questioned whether an institution dominated by wealthy country shareholders was an appropriate steward of climate reparations.¹⁰⁸

The loss and damage debate also raises deeper jurisprudential questions that climate diplomacy has conspicuously avoided.¹⁰⁹ If developed states are responsible for the loss and damage occurring in developing countries as a result of their historical emissions, does that responsibility sound in international law?¹¹⁰ The International Court of Justice's advisory opinion on climate change, requested by the UN General Assembly at the initiative of Vanuatu, is expected to address some of these questions, though advisory opinions are not binding.¹¹¹ A more grounded basis for legal responsibility might be found in human rights law, in the emerging doctrine of climate litigation, and in the application of the no-harm principle of customary international environmental law.¹¹² What is notable is how determinedly the major emitting states have resisted any language in climate agreements that might be read as acknowledging legal liability — a resistance that reveals precisely the reparative logic that the loss and damage framework, at its most ambitious, implies.¹¹³

VII. INDIA BETWEEN DEVELOPMENT AND DECARBONISATION

India's position in international climate negotiations is complex enough to resist simple characterisation. It is the world's third-largest emitter in absolute terms, but its per capita emissions remain a fraction of the global average and a small fraction of

¹⁰⁷ United Nations Environment Programme, *Adaptation Gap Report 2023* (UNEP 2023) 39-52; United Nations Development Programme, *Human Development Report 2023/24* (UNDP 2024).

¹⁰⁸ Centre for Science and Environment, *The Loss and Damage Fund: Governance, Finance and Equity Concerns* (CSE 2024).

¹⁰⁹ Benoit Mayer, *The International Law on Climate Change* (Cambridge University Press 2018).

¹¹⁰ Richard Lord and others, *Climate Change Liability: Transnational Law and Practice* (Cambridge University Press 2012).

¹¹¹ United Nations General Assembly Resolution 77/276, 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change' UNGA Res 77/276 (29 March 2023); International Court of Justice, *Advisory Proceedings on Obligations of States in Respect of Climate Change*.

¹¹² Trail Smelter Arbitration (1938) 3 RIAA 1905; Trail Smelter Arbitration (1941) 3 RIAA 1938; Urgenda Foundation v State of the Netherlands ECLI:NL:HR:2019:2007; Verein KlimaSeniorinnen Schweiz v Switzerland App No 53600/20.

¹¹³ Paris Agreement, adopted 12 December 2015, UN Doc FCCC/CP/2015/10/Add.1 (entered into force 4 November 2016) Decision 1/CP.2.

US or European per capita figures.¹¹⁴ It is a democracy with over 300 million people still lacking reliable electricity access. It has enormous developmental aspirations for a young and growing population. And it is simultaneously one of the most climate-vulnerable large economies in the world, already experiencing heatwaves, monsoon disruption, and agricultural stress that the IPCC's Working Group II findings confirm will intensify with warming.¹¹⁵

India has made significant renewable energy commitments, announcing targets for 500 GW of non-fossil fuel electricity capacity by 2030.¹¹⁶ Its solar power expansion has been among the fastest in the world.¹¹⁷ The IEA's World Energy Outlook recognises India as central to the trajectory of global energy demand over the coming decades, and the direction of its energy policy carries significant weight for global emissions pathways.¹¹⁸ These are genuine achievements and should not be dismissed.

In climate negotiations, India has constantly upheld the right to develop, demanded more financial pledges from the industrialized world, and opposed any mention of binding emission reduction commitments without any financing and technology transfer.¹¹⁹ This position has sometimes been caricatured in Western media as obstructionism. It is more accurately understood as a principled insistence that the costs of decarbonisation not be borne disproportionately by a country that did not cause the crisis in the same measure as those demanding rapid change.¹²⁰ When Europe built its coal-fired industrial base, no international body told it to stop on the grounds that the atmosphere was a finite commons requiring equitable management.¹²¹ The selective memory required to treat India's coal dependence as the central obstacle to climate progress, while treating Europe's historical emissions as a

¹¹⁴ Global Carbon Project, *Global Carbon Budget 2024* (Earth System Science Data 2024) 5318-24; International Energy Agency, *CO₂ Emissions in 2024* (IEA 2025).

¹¹⁵ IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) ch 10 (Asia).

¹¹⁶ Government of India, *India's Updated First Nationally Determined Contribution under the Paris Agreement* (Ministry of Environment, Forest and Climate Change 2022).

¹¹⁷ International Renewable Energy Agency (IRENA), *Renewable Capacity Statistics 2024* (IRENA 2024).

¹¹⁸ International Energy Agency, *World Energy Outlook 2023* (IEA 2023).

¹¹⁹ Government of India, *India's Updated First Nationally Determined Contribution under the Paris Agreement* (Ministry of Environment, Forest and Climate Change 2022); Navroz K Dubash and Lavanya Rajamani, 'India and the Paris Agreement: Nationally Determined Contributions and Climate Justice' (2018) 27(4) *Climate Policy*.

¹²⁰ Henry Shue, 'Subsistence Emissions and Luxury Emissions' (1993) 15(1) *Law & Policy*.

¹²¹ Andreas Malm, *Fossil Capital: The Rise of Steam Power and the Roots of Global Warming* (Verso 2016).

settled fact without continuing relevance, is a form of bad faith that India's negotiators are right to call out.¹²²

In addition, there are certain contradictory aspects to India's environmental policy within the country.¹²³ Forest clearance for mining and infrastructure projects still takes place. Air pollution in Indian cities is one of the most serious in the world, resulting in heavy public health consequences for Indian residents regardless of the international climate aspect.¹²⁴ The demands India makes of the international system for equity are not always matched by corresponding equity in domestic environmental governance. This is an acknowledgment that is a part of real engagement with climate justice and not a way of backing out of it. For an argument of climate equity to be convincing on the international plane, it needs to go hand in hand with an engagement with the issue of environmental justice domestically.¹²⁵

VIII. CLIMATE JUSTICE AS HUMAN RIGHTS

Human rights framing of climate change issues has attracted much attention both in academic discourse and through litigation. Logically speaking, the reasoning behind the approach seems very simple, because climate change poses a threat to life, health, livelihoods, and even to future generations' ability to inherit a stable climate regime.¹²⁶ The OHCHR has formally recognised that climate change has direct and immediate implications for the full enjoyment of human rights, a position that has begun to influence domestic courts.¹²⁷

Climate litigation is translating these arguments into judicial outcomes. The Urgenda Foundation v Netherlands case,¹²⁸ decided by the Dutch Supreme Court in December 2019, held that the Netherlands had a positive obligation under the European Convention on Human Rights to take adequate steps to protect its citizens from

¹²² Lavanya Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65(2) *International and Comparative Law Quarterly*.

¹²³ Upendra Baxi, 'The Environmental Justice Imagination in India' (2010) 22(3) *Journal of Human Rights and the Environment*.

¹²⁴ World Health Organization, *Ambient Air Pollution Database 2024*; State of Global Air, *State of Global Air 2024 Report* (Health Effects Institute 2024).

¹²⁵ Philippe Cullet, 'Environmental Justice in India: The Constitutional and Legal Framework' (2017) 29(2) *Journal of Environmental Law*.

¹²⁶ John H Knox, 'Climate Change and Human Rights Law' (2009) 50(1) *Virginia Journal of International Law*.

¹²⁷ Office of the United Nations High Commissioner for Human Rights, *Understanding Human Rights and Climate Change* (OHCHR 2015).

¹²⁸ Urgenda Foundation v State of the Netherlands ECLI:NL:HR:2019:2007

climate change, and ordered more ambitious emission reductions. The case was path-breaking because it compelled a national government to strengthen its climate action through judicial intervention on human rights grounds.¹²⁹ The German Federal Constitutional Court's 2021 ruling built on this logic, finding that the German Climate Action Act inadequately protected the rights of future generations by deferring too much of the emissions reduction burden to the post-2030 period.¹³⁰

In the Global South context, climate litigation faces different structural challenges.¹³¹ Many of the most climate-vulnerable countries lack robust judicial infrastructure and the legal resources to pursue complex climate cases.¹³² That said, there are encouraging developments. The Inter-American Court of Human Rights, in Advisory Opinion OC-23/17, recognised the relationship between environmental protection and human rights in terms that have direct implications for climate obligations.¹³³ Indian constitutional jurisprudence has a long tradition of environmental public interest litigation that is beginning to engage more directly with climate dimensions.¹³⁴

The intergenerational dimension deserves particular emphasis. The most severe impacts of climate change will fall on generations not yet born, or on children who had no role in producing the emissions now locked into the atmospheric system.¹³⁵ The legal systems that protect property rights across generations have not yet found adequate mechanisms to protect ecological rights across them.¹³⁶ Youth climate movements have insisted that this temporal asymmetry is itself a form of injustice, and the courts that have heard them have, in several jurisdictions, agreed. The question of whether international law can develop genuinely effective intergenerational obligations binding present decision-makers to preserve the climatic conditions that future generations depend upon, remains unresolved, but the direction of travel in

¹²⁹ Jacqueline Peel and Hari M Osofsky, 'A Rights Turn in Climate Change Litigation?' (2018) 7(1) *Transnational Environmental Law*.

¹³⁰ *Neubauer and Others v Germany* BVerfG, 1 BvR 2656/18, 24 March 2021.

¹³¹ César Rodríguez-Garavito, *Litigating the Climate Emergency: How Human Rights, Courts and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press 2022).

¹³² United Nations Development Programme, Human Development Report 2023/24 (UNDP 2024).

¹³³ Advisory Opinion OC-23/17 Environment and Human Rights, Advisory Opinion OC-23/17, 15 November 2017.

¹³⁴ Shibani Ghosh, 'Climate Litigation in India: Opportunities and Constraints' (2023) 35(2) *Journal of Environmental Law*; *M K Ranjitsinh v Union of India* (2024) SCC OnLine SC 269.

¹³⁵ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (United Nations University Press 1989).

¹³⁶ Stephen M Gardiner, *A Perfect Moral Storm: The Ethical Tragedy of Climate Change* (Oxford University Press 2011).

domestic constitutional jurisprudence suggests that the moral and legal case is gaining ground.¹³⁷

The human rights framing also offers a potential avenue for closing the gap between state responsibility and state accountability that characterises much of international climate law.¹³⁸ Human rights treaty bodies have begun issuing recommendations to states on their climate obligations, and in some jurisdictions, these recommendations carry domestic legal weight.¹³⁹ The UN Human Rights Committee's finding in *Teitiota v New Zealand*, that climate-related displacement can engage non-refoulement obligations broke important new ground by linking the international refugee and human rights frameworks to climate vulnerability in ways that have direct implications for how wealthy destination states manage the movement of climate-affected populations.¹⁴⁰ It represents precisely the kind of incremental legal innovation that, accumulated over time, may eventually force the architecture of international law into closer alignment with the demands of climate justice.¹⁴¹

IX. CONCLUDING OBSERVATIONS

International environmental law is neither irrelevant nor sufficient. The frameworks that exist have channelled billions in climate finance, created spaces for diplomatic engagement, and occasionally produced meaningful commitments.¹⁴² But they have not corrected the fundamental inequity at the heart of the climate crisis: that the nations most responsible for causing it have retained both the wealth generated by carbon-intensive growth and the political leverage to shape the international rules that govern its consequences.¹⁴³ The IPCC's Working Group III findings make clear that the

¹³⁷ Brown Weiss (n 134).

¹³⁸ Lavanya Rajamani, *Innovation and Experimentation in the International Climate Change Regime* (Oxford University Press 2020).

¹³⁹ United Nations Human Rights Council, *Resolution 48/13: The Human Right to a Clean, Healthy and Sustainable Environment* UN Doc A/HRC/RES/48/13 (8 October 2021).

¹⁴⁰ *Teitiota v New Zealand*, Views adopted 7 January 2020.

¹⁴¹ Jane McAdam, *Climate Change, Forced Migration and International Law* (Oxford University Press 2012).

¹⁴² Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (Oxford University Press 2017).

¹⁴³ Henry Shue, *Climate Justice: Vulnerability and Protection* (Oxford University Press 2014); Stephen M Gardiner, *A Perfect Moral Storm: The Ethical Tragedy of Climate Change* (Oxford University Press 2011).

technical pathways to rapid decarbonisation exist; what is missing is not scientific knowledge but political will.¹⁴⁴

The gap between climate justice as a concept and climate governance as a practice is not merely technical. It reflects a structural feature of international law: that it is made by powerful states through processes that reflect their interests, and that equity-advancing provisions tend to be the first casualty of political bargaining.¹⁴⁵ The CBDR principle has been diluted. The one hundred billion dollar finance promise was late, contested, and inadequate. The loss and damage fund is dramatically undercapitalised. The Paris Agreement's NDC architecture places ambition on a voluntary basis, with predictable results.

What true climate justice would entail, at a bare minimum, would be emission reduction commitments that are proportional to past responsibilities, climate finance that actually meets the real needs of developing countries, a regime on loss and damage that is explicitly reparative in nature and not simply an act of charity, and reforms to the international economic system such that clean energy transitions are made less costly for those who cannot afford it.¹⁴⁶ It would also demand an honest confrontation with the politics of the transition to green energy, which includes acknowledging the threat that decarbonization, in its current state, replicates rather than destroys the extractive structures that have defined the relationship between the Global North and Global South over many years.¹⁴⁷

The path from where we are to where justice requires us to be is long and obstructed by entrenched interests. But the analytical work of identifying the gap between the rhetoric of climate equity and the reality of climate governance is a necessary precondition for closing it.¹⁴⁸ The institutions, principles, and legal precedents examined in this article are not monuments to failure alone; they are also sites of

¹⁴⁴ IPCC, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) Summary for Policymakers.

¹⁴⁵ Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press, rev edn, 2005).

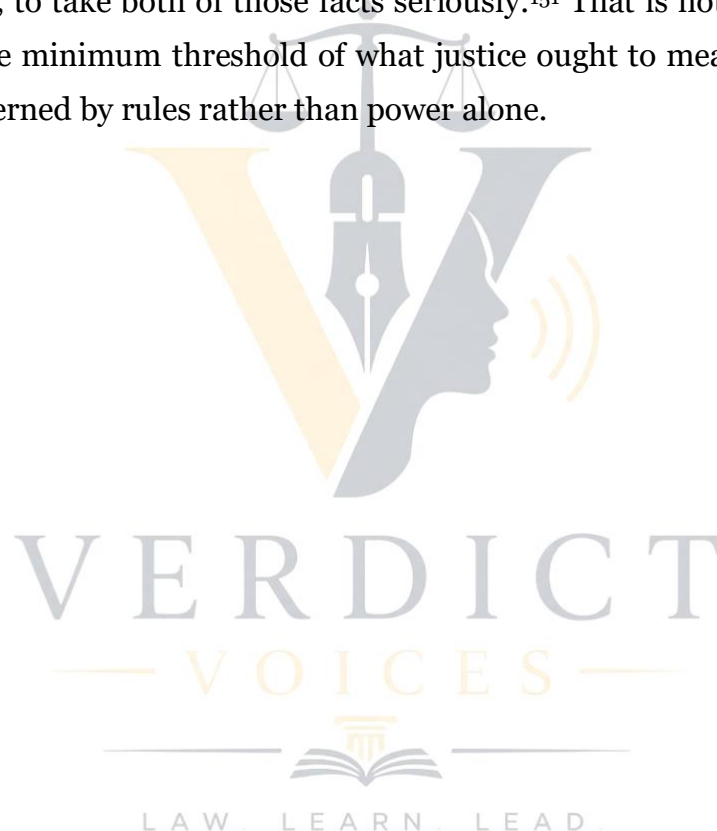
¹⁴⁶ Simon Caney, 'Climate Change and the Duties of the Advantaged' (2010) 13(1) *Critical Review of International Social and Political Philosophy*.

¹⁴⁷ Thea Riofrancos, *Resource Radicals: From Petro-Nationalism to Post-Extractivism in Ecuador* (Duke University Press 2020); Jason Hickel, *Less is More: How Degrowth Will Save the World* (Penguin 2020).

¹⁴⁸ Amartya Sen, *The Idea of Justice* (Penguin 2009).

ongoing contest.¹⁴⁹ The outcome of that contest depends partly on legal argument, partly on political mobilisation, and partly on whether the international community is willing to take seriously the proposition that a rules-based international order must apply its rules equitably or forfeit its legitimacy entirely.¹⁵⁰

The developing world is not asking for charity. It is asking for acknowledgement that a global commons was unequally exploited, that the consequences of that exploitation are being unequally borne, and that international law has the capacity, if not always the political will, to take both of those facts seriously.¹⁵¹ That is not an unreasonable demand. It is the minimum threshold of what justice ought to mean in a world that claims to be governed by rules rather than power alone.



¹⁴⁹ César Rodríguez-Garavito, *Litigating the Climate Emergency: How Human Rights, Courts and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press 2022).

¹⁵⁰ Thomas Pogge, *World Poverty and Human Rights* (2nd edn, Polity Press 2008).

¹⁵¹ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity* (United Nations University Press 1989).