

Extraterritorial Human Rights and Climate Change: From Banjul with Love

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Prominence

- Recognition of linkages in IEL
- Scholars
- UNHRC (R 7/23 & 10/4)
- Cancun: “parties should in all climate change related actions, fully respect human rights”
- However clarification of obligations required
- “it must impose duties on states with respect to those living outside their territory” (Knox)

Study

- Analytical Study on the Relationship between Human Rights and the Environment of the UNHCHR: “extraterritorial dimensions of human rights and the environment”
- “fertile ground for further inquiry” in relation to global environmental issues, such as climate change.

ETOs

- International law discourse on ETOs
- Obstacles to development (political and legal)
- Knox: “series of individual transboundary harms”: State-centric!
- Bilateralism vs. the international community and community interest (Simma)
- Knox: duty of cooperation?
- But: Article 2(1) of the ICESCR and Articles 55 and 56 of the UN Charter: states and (UN)!

Statehood

- States ill equipped
- International community (single polity) not state centric
- CCHM as a facet of CI
- Preamble (UNFCCC) acknowledges “that change in the Earth's climate and its adverse effects are a common concern of humankind”
- Content? Responses and measures

Consequences

- Humankind: not state centric
- Development of legal subjects
- Legitimate interest: exceeds territorial sovereignty
- Functional powers
- Burden sharing (Hague Recommendations)
- Solidarity

AU

- Absence of a jurisdiction clause Banjul Charter
- Bosnia ICJ case
- Art 27: “The rights and freedoms of each individual shall be exercised with due regard to ... common interest”.
- Art 23: Solidarity
- Resolution 153 ACHPR

Out of Africa

- Progressive contribution of regional law
- ACHPR and ACtHPR: Transjudicial communication
- Next progressive phase in the development of international law, since “we have outlived the phase in the development of international law when the law could properly be envisaged as the rules governing the mutual relations of sovereign States” and if we are to “lay a firm foundation for future development” international law must be “regarded as the common law of mankind in an early phase of its development” CW Jenks *The Common Law of Mankind* (1958)