

4. Taking the long view: what environmental chronic emergencies require of states

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1. INTRODUCTION

Law provides crucially important mechanisms in social responses to natural events¹ and to anthropogenically driven adverse environmental impacts. There are, however, significant shortcomings in the dominant approaches that the law adopts to these issues. As discussed below, law tends to anatomize environmental harms, treating ‘one-off’ incidents and underlying conditions as warranting responses that differ significantly in both type and degree. Reality is, of course, much more complex and requires attending to inherent connections and interactions between the underlying state of the environment, pollution, its regulation,² ‘one-off’ incidents and how they interact, causing harm to the environment and humanity. For the purposes of this chapter, climate change will be used as a case in point, the underlying pollution problem of anthropogenic greenhouse gas emissions being problematic in its own right;³ in causing and/or increasing the frequency and intensity of what have hitherto been considered ‘natural’ disasters;⁴ and in irreversibly shifting the planet from the

¹ Daniel Farber, ‘Navigating the Intersection of Environmental Law and Disaster Law’ (2011) *Brigham Young University Law Review* 1783, points out that climate change will intensify longstanding linkages between these areas.

² Many other areas of law and interactions between them are also potentially implicated here, *ibid.*, 1788, though discussion in this chapter will focus on the most direct linkage between law related to environmental pollution and disaster, *ibid.*, 1793.

³ Katherine Richardson, Will Steffen, Wolfgang Luch et al., ‘Earth beyond six of nine planetary boundaries’ (2023) 9 (37) *Science Advances* eadh2458.

⁴ WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes: <<https://library.wmo.int/idurl/4/57564>> accessed 31 January 2025.

Holocene to the Anthropocene.⁵ The chapter adopts an ecofeminist approach to these issues, viewing the entwined consequences of the long-practiced hierarchical dualism and the systemic othering of women and nature that continue to characterize human systems as tools in the hands of a (predominantly male, white and wealthy) privileged minority in the service of instrumentalization and thus exploitation that result in functionally interconnected injustices both between current and future humans and between humans and non-human nature.⁶ In regard to climate change and disaster response, the resulting predicament and necessary responses to it are effectively distilled in the Political Declaration of the sixty-ninth session of the Commission on the Status of Women, which includes in its recognition of ‘new challenges’:

Mainstreaming a gender perspective into environmental, climate change and disaster risk reduction policies, recognizing the disproportionate effect of climate change and natural disasters on women and girls, in particular those in vulnerable situations, strengthening the resilience and adaptive capacities of women and girls to respond to the adverse impacts of climate change and natural disasters, and promoting women’s participation and leadership in decision-making on environmental and climate change issues.⁷

In this context, it is apparent that the conceptual tools that we have used to date are no longer fit for purpose (if indeed they ever were) and that the concept of environmental chronic emergency (ECE), as developed in this project, is necessary to make sense of and respond to both the current situation and to avert a disastrous future. While ECE is not an entirely new idea, having been defined as: ‘A long-term situation of risk and injury to a large proportion of the population that may exist even in the absence of shocks . . . ’⁸ in

⁵ Andreas Malm and Wim Carton, *Overshoot: How the World Surrendered to Climate Breakdown* (Verso 2024).

⁶ Karen Morrow ‘Towards an Ecofeminist Critique of International Law’ in Vincent Chapaux, Frederic Megret and Usha Natarajan (eds), *The Routledge Handbook of International Law and Anthropocentrism* (Routledge 2023) 183.

⁷ ECOSOC, Commission on the Status of Women, ‘Draft resolution on the Political declaration on the occasion of the thirtieth anniversary of the Fourth World Conference on Women’, (6 March 2025) UN Doc E/CN.6/2025/L.1, para. 15(r).

⁸ Inter-agency Network for Education in Emergencies glossary: <<https://inee.org/eie-glossary/chronic-emergency#:~:text=A%20longterm%20situation%20of%20risk%20and%20injury%20to,acute%20malnutrition%2C%20persistent%20epidemics%2C%20or%20protracted%20armed%20conflict>> accessed 11 February 2025. See also Deborah Russo, ‘Moving Beyond an Approach Based on Crisis and Disasters to Address Environmental Chronic Emergencies’ in this Volume.

the Anthropocene, this definition, in focusing narrowly on the human dimension, must be deemed dangerously incomplete. The chapter therefore examines ECEs as key elements of the rapidly shifting planetary context in which the triple environmental crisis is playing out. It focuses on the challenges that this poses for the people and planet and the tests this poses for the law. In section 2, it looks first at the framing of harm in law and its limitations in addressing environmental harm and its impact on most humans. In section 3, it considers the Anthropocene, planetary boundaries and tipping points, and their implications for a new composite framing for environmental law, requiring new approaches to better address systems and survival in what will be termed the human-environment nexus.⁹ Section 4 examines the contribution and inherent limitations of a disaster-based approach and the need to shift to an ECEs approach in response to the Anthropocene. It goes on to examine the promise and limitations of some recent developments in international soft law in this area, namely: the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters; the right to a clean, healthy and sustainable environment; and the Pact for the Future. Section 5 considers how applying a constitutive ecofeminist conception of the ethics of care could help to reframe the treatment of the environment in law, in the imbricated interests of present and future humans and the environment. It posits that adopting this species of relational approach to the environment would enable a fundamental shift in focus to foreground the prevention of harm, better positioning humanity to address ECE in the Anthropocene.

2. LAW, POLLUTION, HARM TO PEOPLE AND THE ENVIRONMENT

When the need for the state to develop environmental law as we understand it today first emerged in domestic law, as for example in England and Wales in the nineteenth century, it was a reactive enterprise, driven by the need to address the pollution problems that emerged pursuant to the industrial revolution. In this, the complexity of the human-environment nexus inherent in industrial development, generating pollution as a by-product of wealth generation, primarily benefiting the privileged, wealthy few at the expense of most other people and the environment, was abundantly apparent early in modernity. In the first instance, civil litigation under the law of nuisance was invoked, not to address changes to the state of the environment as such, but rather, once

⁹ For a discussion of the use of this term in cognate areas, see, Ronald C. Estoque, 'Complexity and diversity of nexuses: A review of the nexus approach in the sustainability context' (2023) 854 *Science of the Total Environment*, 158612.

property rights had been adversely affected, to address what were deemed actionable adverse impacts on a privileged class of humanity.¹⁰ There is a significant disconnect here between underlying harm to the environment and actionable harm to human beings, which is still evident to a degree in modern statutory pollution control law.¹¹ When nuisance litigation was pressed into service to address this new situation, it was generally applied after actionable harm had been identified and had a narrow *inter partes* focus. This temporal framing is also limiting as, while nuisance can offer a forward-looking, harm prevention dimension, in the form of injunctive relief, it tends to foreground response to past damage.

The poor and vulnerable too suffered adverse impacts, not least to their health, from pollution, but would have had no practicable access to legal redress in nuisance.¹² It is salutary to observe that, as ecofeminist analysis would later identify, from the very beginning of modern industry, exploitation of and causing harm to the environment on an industrial scale and inflicting harm on vulnerable humans (now understood intersectionally,¹³ to encompass shifting constellations of the poor, women, people of colour, Indigenous peoples, people with disabilities, the young, the old, future generations etc.) in the interests of the privileged few has, while not unchallenged, been the norm.¹⁴

¹⁰ Sean Coyle and Karen Morrow, *The Philosophical Foundations of Environmental Law: Property, Rights and Nature* (Hart 2004).

¹¹ See, for example, the multi-stranded definition of pollution in s 1(3) of the Pollution Prevention and Control Act 1999.

¹² A.I. Ogus and G.M. Richardson, 'Economics and the Environment: A Study of Private Nuisance' (1977) 36 (2) *Cambridge Law Journal* 248–325, little has changed along the have/have not axis in this regard, with age, race and gender among added aggravating factors, see, Farber n 1, Richard J. Lazarus, 'Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection' (1993) 87 *Northwestern University Law Review* 787 and Sherilyn MacGregor, 'Gender matters in environmental justice' in Brendan Coolsaet (ed.), *Environmental Justice: Key Issues* (Routledge 2020) 234, respectively.

¹³ See, for example, Jennifer A. Thompson 'Intersectionality and water: how social relations intersect with ecological difference' (2016) 23 (9) *Gender, Place & Culture* 1286; Anjal Prakash, Vilina Engheepi and Shivaang Sinha, 'Intersecting pathways: Eco-feminist perspectives on intersectionality, water management, and responsible tourism for gender-inclusive community development' (2024) 7 *Current Research in Environmental Sustainability* 100254; and Gitanjali Nain Gill and Falguni Joshi, 'Environmental public hearings and intersectionality: women's voices from Gujarat' (2024) *India's Journal of Law and Society* 163.

¹⁴ Carolyn Merchant, *The Death of Nature: Women, Ecology and the Scientific Revolution* (Harper and Row 1980).

Despite a degree of fluidity in both the social¹⁵ and environmental dimensions¹⁶ in play, the limiting othering of vulnerable humans and the environment has proven remarkably persistent in regard to pollution impacts.

In any event, it soon became clear that the common law was unable to address the scale and complexity of pollution, and that statute law was needed to rise to these challenges. However, in effect, nuisance law has established a threshold-based approach as the norm for statutory legal intervention in this area. Generally, the adoption of new law was triggered not by environmental harm, but by the immediate need to address pollution that interfered with privileged human interests. Furthermore, statute law too was often deployed reactively, in that it was made in response to threats once they became not just obvious, but impossible to ignore either physically (often in causing harm to human health) or due to their economic ramifications.¹⁷ While modern environmental law tends to at least pay lip service to the need to protect the environment in its own right in addition to human interests, the latter continue to dominate legal intervention. Environmental regulation today is generally focused on ‘harm prevention or minimization’, employing a pairing that remains stubbornly present, yoked and ubiquitous in environmental law despite its inherent compatibility. The approach adopted in domestic law extends to international law in the concept of significant harm.¹⁸ The limited impact of prevention and even meaningful minimization of harm is all too evident in continued and continual environmental degradation,¹⁹ and while it may ameliorate harm to a degree, it falls short of its ostensible ambition.

There is a profound need to think more clearly about areas where prevention in the true sense of the word needs to be the objective of the law²⁰ (for example, regarding already transgressed planetary boundaries, of which more below) and those where minimization of harm may suffice. This is particularly important in the context of ECEs, where a more active approach to this issue

¹⁵ Including decision-making processes, Prakash, Engheepi and Sinha (n 13).

¹⁶ Thompson (n 13) 1296.

¹⁷ Coyle and Morrow (n 10).

¹⁸ Jutta Brunnée, ‘Harm Prevention’, in Lavanya Rajamani and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press 2021).

¹⁹ See, for example, UNEP: Keeping the Promise – Annual Report 2023: <https://wedocs.unep.org/bitstream/handle/20.500.11822/44777/UNEP_Annual_Report_2023.pdf?sequence=19&isAllowed=y> accessed 29 January 2025. See also William Dinan, Victoria Esteves, Steven Harkins et al., ‘Climate dissociations: Trade associations, energy policy and climate communications in Europe’ (2025) 4 (1) *PLOS Clim.* e0000467.

²⁰ Farber (n 1) 1787.

is essential to forestall/minimize incidences of acute harm. The current focus of cutting-edge environmental law, responding in part to increasingly sophisticated scientific understanding of less obvious and more intractable forms of pollution, such as poly- and perfluoroalkyl substances (PFAS) (or ‘forever chemicals’) and microplastics and, of course, the complex and interconnected triple environmental crisis,²¹ ostensibly places the need for preventative action to the fore. However, as considered below, the reality is that prevention remains an area where, increasingly urgently, much more needs to be done to match practice to principle.²² The imperviousness of the triple environmental crisis, which is characterized by ECE, to dominant legal approaches and rapidly emerging science requires us to think about framing responses to environmental harms more efficaciously, ceasing a spurious bifurcation between how law addresses (or fails to address) chronic harmful underlying states of affairs and acute actionable interference with human interests. Failure to address this crucial issue has always limited the efficacy of legal interventions in this area, but now, as the Anthropocene takes hold and we are increasingly forced to recognize the complex nature of environmental problems, it is something that we must urgently address. As discussed below, ecofeminist approaches, in attending to the inherent links between human flourishing and a sustaining and sustainable environment, offer one way of thinking about these issues in a more holistic fashion.

3. ANTHROPOCENE AND ITS IMPLICATIONS

Its recent (highly controversial) rejection by geologists,²³ notwithstanding, the concept of the ‘age of humans’ is a useful framing to discuss significant anthropogenic impacts on the environment manifesting at a planetary scale.²⁴ These impacts raise both environmental and human concerns, and it is crucial to note that both responsibility for them and experience of their impacts

²¹ Encapsulating climate change, pollution, and biodiversity loss, UNFCCC, ‘What is the Triple Planetary Crisis?’ (13 April 2022): <<https://unfccc.int/news/what-is-the-triple-planetary-crisis>> accessed 10 February 2025.

²² Ngozi Ole, Opeyemi Omotuyi, Eti Herbert et al., ‘Environmental laws and enforcement: Prospects and challenges’ in Ronnie Frazer-Williams, Mary B. Ogundiran and Emmanuel I. Unuabonah (eds), *Environmental Pollution and Public Health: Case Studies on Air, Water and Soil from an Interdisciplinary Perspective* (Elsevier 2024) 305.

²³ Alexandra Witze, ‘Geologists reject the Anthropocene as Earth’s new epoch — after 15 years of debate’ (2024) 627 *Nature* 249–50.

²⁴ Mark J. Hudson, ‘Dark Artifacts: Hyperobjects and the Archaeology of the Anthropocene’ (2014) 1 (1) *Journal of Contemporary Archaeology* 82.

are highly unequal²⁵ and determined by a toxic juxtaposition of privilege and vulnerability.

The Anthropocene is characterized by anthropogenic initiation/acceleration/amplification of changes to the Earth on a global scale, involving a range of ramifications recognized by Earth system science.²⁶ The latter adopts a complex systems²⁷ approach, encapsulating the planet's environmental and human components and the interplay between them. This holistic stance to the human-environment nexus chimes strongly with key strands of established ecofeminist thinking, facilitating potential creative and useful cross-pollination of ideas. This is underlined in associated developments, including planetary boundaries²⁸ thinking, which speaks to the need to secure a continued 'safe operating space for humanity' in line with that enjoyed during the Holocene²⁹ and raises the possibility of invoking tipping points³⁰ and associated cascades³¹ if the boundaries are transgressed. This framing arguably allows us to characterize the Anthropocene as a pervasive, grounding global chronic emergency, with planetary boundaries representing guardrails for human flourishing and exceeding them, invoking tipping points and cascades as consequent and consequential acute disasters.

The integrated approach invoked in Earth systems thinking promises to improve understanding of the super-wicked problems³² of environmental

²⁵ Karen Morrow, 'Tackling climate change and gender justice – integral; not optional' (2020) 11 (1) *Oñati Socio-legal Series* 207.

²⁶ Will Steffen, Katherine Richardson, Johan Rockström et al. 'The emergence and evolution of Earth System Science' (2020) 1 *Nature Reviews Earth & Environment* 54.

²⁷ *Ibid.*

²⁸ Richardson, Steffen, Luch et al. (n 3).

²⁹ Will Steffen, Katherine Richardson, Johan Rockström et al., 'Planetary Boundaries: Guiding human development on a changing planet' (2015) 347 *Science*, 736; and Johan Rockström, Will Steffen, Kevin Noone et al. 'A safe operating space for humanity' (2009) 461 *Nature*, 472.

³⁰ David I. Armstrong McKay, Arie Staal, Jesse F. Abrams et al., 'Exceeding 1.5°C global warming could trigger multiple climate tipping points' (2022) 377 *Science*, eabn7950; Timothy M. Lenton, Hermann Held, Elmar Krieger et al., 'Tipping elements in the Earth's climate system' (2008) 105 *Proceedings of the National Academy of Sciences of the United States of America* 1786.

³¹ Nico Wunderling, Anna S. von der Heydt, Yevgeny Aksenov et al., 'Climate tipping point interactions and cascades: a review' (2024) 15 *Earth System Dynamics* 41.

³² See, for example, Kelly Levin, Benjamin Cashore, Steven Bernstein et al., 'Overcoming the tragedy of super wicked problems: constraining our future selves to ameliorate global climate change' (2012) 45 (2) *Policy Sciences* 123.

harm more effectively in several ways that better fit the research endeavour to real-world needs. First, it is strongly and broadly interdisciplinary in nature, operating across a broad range of hard and social sciences and law,³³ which places it well to interrogate the complexity of environmental systems, interactions between them and the relationship of both to human systems. Second, the scope involved is sufficiently ambitious in extending its spatial reach to the global, and its temporal reach far into the future. Thirdly, it necessitates engagement with the inseparability of planet and people, reflecting on the relationship between human activities and Earth's life support systems in a focused way, using the safe operating space approach to frame analysis around safeguarding crucial functionality, rather than relying on arbitrary thresholds. Tipping points and cascades raise emerging issues tied to the difficult-to-predict, non-linear and potentially irreversible nature of some anthropogenic shifts in Earth systems.

All these developments and our poor progress to date require us to fundamentally rethink our approaches to environmental harm,³⁴ understanding it as conjoined to human concerns and foregrounding its prevention as the founding response. Reframing our understanding of environmental disasters is a hugely important part of the required paradigm shift.

4. THE NEED TO SHIFT FROM A DISASTER TO A CHRONIC EMERGENCY FRAMING – PROGRESS OR NOT?

Considering the anthropocentric and reactive roots of early environmental law, the appeal and emergence of environmental disaster as a construct is no surprise, though its limited reach and efficacy in the context of the chronic planetary-scale problems of the Anthropocene outlined above increasingly make its longevity difficult to either explain or justify. This is not to say, however, that the established concept of disaster is entirely lacking in useful insights, and it is important to retain them. There is, for example, value in recognizing the intimate connections between the environmental and human systems components of disasters.³⁵ This in some ways prefigures both ecofeminist approaches

³³ Louis J. Kotzé, Rakhyun E. Kim, Catherine Blanchard et al., 'Earth system law: Exploring new frontiers in legal science' (2022) 11 *Earth System Governance* 100126.

³⁴ Simon Sharpe, *Five Times Faster: Rethinking the Science, Economics, and Diplomacy of Climate Change* (Cambridge University Press 2023).

³⁵ See Henrik Svendsen, *The End is Nigh: A History of Natural Disasters* (Reaktion Books Ltd 2009), and Farber (n 1).

and the changing understanding of anthropogenic environmental impacts in the Anthropocene.

Human actions can no longer be characterized as merely aggravating the impacts of natural events on vulnerable populations through poor responses to them, as they were in the concept of erroneously named ‘natural’ disasters. This is still undoubtedly relevant, but, as alluded to above, in the Anthropocene, human acts and omissions are now also increasingly understood as driving the conditions that underpin adverse events, cause³⁶ them, and contribute to their frequency and magnitude.³⁷ Climate change in particular illustrates the complex, enmeshed human and environmental factors in play, not least in regard to the emerging (but as yet ill-understood) conception of compound events. The attempt to account for the complexity of the interplay between specific disasters and their milieu is not new and finds antecedents in Rob Nixon’s scholarly work on ‘slow violence’³⁸ and related operational conceptions such as the UN Office for the Coordination of Humanitarian Affairs (OCHA) idea of ‘slow-onset emergency’, defined as manifesting: ‘. . . gradually over time, often based on a confluence of different events.’³⁹ Compound events are attributable to simultaneous or consecutive occurrences at single or multiple locations, consequent on multiple drivers, which: ‘. . . exacerbate the societal and ecosystem impacts of individual hazards and hinder the ability of communities, particularly frontline communities, to respond and cope.’⁴⁰ The impacts of compound events are, as with other disasters, embedded in and amplify long-term structural inequalities, again a phenomenon recognized in ecofeminism. The impacts of compound events are worse for the most vulnerable, who are simultaneously most exposed and least able to respond to them. Compound emergencies thought is of particular interest for present purposes in explicitly

³⁶ See, for example, World Weather Attribution: When Risks Become Reality: Extreme Weather In 2024: <<https://www.worldweatherattribution.org/when-risks-become-reality-extreme-weather-in-2024/>> accessed 7 February 2025.

³⁷ World Meteorological Organization (2023), Status of Mortality and Economic Losses due to Weather, Climate and Water Extremes (1970–2021), online at <<https://storymaps.arcgis.com/stories/8df884dbd4e849c89d4b1128fa5dc1d6>> accessed 9 January 2025.

³⁸ Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press 2011).

³⁹ OCHA Occasional Policy Briefing Series Brief No. 6: OCHA and slow-onset emergencies, (2011) para. 2.

⁴⁰ Deepti Singh, Allison R. Crimmins, Justin M. Pflug et al., ‘Focus on compound events’, in Allison R. Crimmins, Alexa K. Jay, Christopher W. Avery et al. (eds), *Fifth National Climate Assessment* (U.S. Global Change Research Program 2023) F1.3.

invoking consequent resource allocation responsibilities on governments to act to better address the needs of their most vulnerable citizens.⁴¹ However, while the aforementioned concepts bring welcome and necessary nuance to our understanding of aspects of the complexity of the interplay between harms to the environment and vulnerable humans, they remain limited in their focus, like broader legal thinking on harm and disasters, concentrating on a particular crisis and inadequately addressing the states of affairs that prompt them and perpetuate future peril. A disaster-focused approach, allied to the dominant after the event⁴² response of law to environmental problems, is increasingly inadequate both in principle and in practical terms for present, never mind future purposes. Replacing the concept of natural disaster with that of ECE, understood as mandating addressing underlying environmental damage in order (ideally) to forestall acute harms/disasters entirely or at least to ameliorate their consequences for vulnerable populations, would have much to offer in securing more efficacious responses to the perils of what can usefully be termed environmental breakdown. This has been defined as:

Negative human impacts on the environment . . . [that] encompass most . . . natural systems, driving a complex, dynamic process of environmental destabilisation that has reached critical levels.⁴³

Crucially, in this context, the concept of ECE is capable of explicitly addressing the crucial role of human agency, not just in responding to natural events but, in the Anthropocene, in acting and/or failing to act in ways that actively fuel environmental breakdown. The prospects for bringing about such a shift are, however, not hopeful as emerging developments in international soft law remain lacking in a meaningful response to what current science understands about the human-environment nexus and beyond (at best) paying lip service to this, continuing, as they have always done, to focus myopically on trying to ameliorate the impacts of the Anthropocene on humans. We shall examine three examples illustrative of this approach: the International Law Commission's (ILC) Draft Articles on the Protection of Persons in the Event of Disasters

⁴¹ *Ibid.*, at F1, 4–5.

⁴² Pacific Islands Students Fighting Climate Change and World's Youth for Climate Justice: Youth Climate Justice Handbook Summary for Policymakers (2023): <https://static1.squarespace.com/static/5f063a0c8f53b604aed84729/t/645102469f98ac0c5863a6cf/1683030601262/Handbook_Summary_for_Policymakers_EN.pdf>.

⁴³ Laurie Laybourn-Langton, Lesley Rankin, Darren Baxter, *This is a crisis: Facing up to the age of environmental breakdown* (IPPR 2019): <<http://www.ippr.org/research/publications/age-of-environmental-breakdown>> accessed 4 April 2025, 4.

(2016)⁴⁴; developments in human rights law, including the General Assembly Resolution on the Right to a Clean, Healthy and Sustainable Environment in 2022;⁴⁵ and the United Nations Pact for the Future⁴⁶ and associated Declaration for Future Generations.⁴⁷ The section will conclude by looking at the contrasting approach that characterizes the 2024 report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change.⁴⁸

4.1 The ILC Draft Articles

Almost a decade in the making,⁴⁹ the traditionally grounded and bounded ILC Draft Articles on the Protection of Persons in the Event of Disasters were disappointing in numerous ways, not least in failing to look at the structural causes of human vulnerability in this context.⁵⁰ Such a framing, drawing interdisciplinary work and extending to social science scholarship, notably political ecology,⁵¹ and ecofeminist analysis, would have facilitated a more contextualized approach to disasters, viewing them as shaped by the human-environment nexus and inter-human interactions, and be more attuned to real-world conditions. However, the ILC's approach may perhaps be viewed instead as being politically realistic, given that, after being 'noted' in General Assembly resolution in 2016⁵² there began a lengthy, ultimately inconclusive,⁵³ period of

⁴⁴ International Law Commission, 'Protection of persons in the event of disasters' (27 May 2016), UN Doc A/CN.4/L.871.

⁴⁵ Human Rights Council, 'Resolution on the human right to a safe, clean, healthy and sustainable environment' (18 October 2021) UN Doc A/HRC/RES/48/RES/13.

⁴⁶ UN General Assembly, 'Resolution on the Pact for the Future' (22 September 2024) UN Doc A/RES/79/1.

⁴⁷ *Ibid.*, Annex II.

⁴⁸ Special Rapporteur on the promotion and protection of human rights in the context of climate change, Scene-setting report, (21 June 2024) A/HRC/56/46.

⁴⁹ Report of the International Law Commission on the work of its Fifty-Eighth Session Official Records of the General Assembly, Sixty-First Session, Supp No 10, UN Doc A/61/10 (2006).

⁵⁰ Thérèse O'Donnell, 'Vulnerability and the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters' (2019) 68 *International & Comparative Law Quarterly* 573.

⁵¹ *Ibid.*

⁵² UN General Assembly, 'Resolution on the Protection of persons in the event of disasters' (13 December 2016) UN Doc A/RES/71/141.

⁵³ Culminating in UN General Assembly, 'Resolution on the Protection of persons in the event of disasters' (4 December 2024) UN Doc A/RES/79/128.

temporizing by that body on the subject. States appear to want to be seen to be acting to address these issues without actually doing so, and the ILC's work has not therefore improved preparedness to respond to disasters, never mind engaged with ECEs.

4.2 Human Rights and the Right to a Clean, Healthy and Sustainable Environment (RCHSE)

On paper, at least, being based on the principles of universality, inalienability and indivisibility, and on being interdependent and interrelated,⁵⁴ human rights offer a viable means to redress the imbalance between privileged and non-privileged humanity that could be very relevant to addressing the highly differentiated impacts of environmental degradation. In practice, things are less clear-cut and the notional enjoyment of rights is constrained by numerous social, political and legal factors.⁵⁵ Nevertheless, human rights offer something necessary, but not sufficient, in terms of addressing ECEs, in that they essentially conceive the latter as acts of self-harm to current and future humans, areas where states already operate under established and developing legal obligations that apply domestically, vis-à-vis their own citizens and extra-territorially in regard to their relations with other states. By extension, these obligations necessarily apply to ensuring that states operate within planetary boundaries.⁵⁶ There has of late been a flurry of development at the global level in human rights law focused on planetary environmental concerns, and we shall now consider what the most prominent of these, the RCHSE, offers to address ECEs – and what it lacks.

Informed by cutting-edge science and work within and across their remits, the UN's human rights bodies are very aware of the intimate links between multiple aspects of environmental breakdown and the ability of vulnerable people to enjoy their human rights, as evidenced by a joint statement in

⁵⁴ Succinctly states in the United Nations Population Fund, *Human Rights Principles* (2005): <<https://www.unfpa.org/resources/human-rights-principles>> accessed 31 January 2025.

⁵⁵ See, for example, Julie Fraser, *Social Institutions and International Human Rights Law Implementation: Every Organ of Society* (Cambridge University Press 2020) 1, 1–20.

⁵⁶ Karen Morrow, 'The fragility of climate, human responsibility and finding the impetus to act decisively – investigating the potential of the ethics of care' in Jordi Jaria-Manzano and Susana Barràs (eds), *Research Handbook on Global Climate Constitutionalism* (Edward Elgar Publishing 2019) 114.

2020 by five of them on climate change.⁵⁷ The concerns expressed centred on the particularly pronounced risk of harm to those already:

. . . already marginalized or in vulnerable situations or that, owing to discrimination and pre-existing inequalities, have limited access to decision-making or resources, such as women, children, persons with disabilities, Indigenous peoples and persons living in rural areas.⁵⁸

The statement went on to point out that failure by states to act on climate change could constitute a breach of existing human rights obligations⁵⁹ and explicitly positioned emission reduction (mitigation) as the highest priority for states. While a start, this is blatantly inadequate to meet the challenges we currently face.⁶⁰ However, the statement also pushed for a broader approach, making explicit reference to:

hydrometeorological disasters, evacuations of areas at high risk of disasters, environmental degradation and slow-moving disasters . . .⁶¹

among factors driving migration. This multifaceted and temporally flexible framing of disaster is unusual in its depth and nuance. While this is encouraging, the UN human rights institutions do not wield the power to bring about significant change. The seventy-fifth anniversary of the United Nations, also in 2020, provided an opportunity for states, the empowered actors of international law, to reflect on the organization's past experience, present challenges and future priorities. The General Assembly adopted a brief declaration threaded through with references to human rights,⁶² which were reaffirmed as one of the UN's central pillars. Tellingly, though, coverage of the dire state of the environment was confined to a single paragraph, which did not mention human

⁵⁷ Joint Statement by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, 'Statement on human rights and climate change' (14 May 2020) UN Doc HRI/2019/1.

⁵⁸ *Ibid.*, para. 3.

⁵⁹ *Ibid.*, para. 10.

⁶⁰ Malm and Carton (n 5).

⁶¹ Joint UN Human Rights Bodies Statement (n 57) para. 14.

⁶² UN Assembly General, 'Declaration on the commemoration of the seventy-fifth anniversary of the United Nations' (28 September 2020) UN Doc A/RES/75/1, para. 6.

rights.⁶³ In many ways, this document represents the current state of affairs as well as any other: we continue to be myopically focused on human concerns and while on one level we grasp that the ability to address those concerns is being dangerously compromised by anthropogenic impacts on the environment; on another this does not provoke a consonant response, recognizing significant constraints on human priorities. So much then for the general position.

Despite an ultimately fruitless attempt by the UN's human rights machinery to launch an environmental human right in the UN in the early 1990s, academic interest in the environmental dimensions of human rights and the 'greening human rights agenda' was sparked and sustained, and, alongside civil society interest, helped to keep the issue alive. In 2012, the Human Rights Council returned to the fray, introducing a new special rapporteur mandate on human rights in the environment. The mandate generated a voluminous and well-informed evidence base, garnering considerable support from states and generating significant outputs, notably the Framework Principles on Human Rights and the Environment, with a strong focus on 'greening' existing human rights.⁶⁴ The HRC's sustained activity ultimately culminated in a seemingly more radical approach, the adoption of a strongly supported resolution on the human right to a safe, clean, healthy and sustainable environment in 2021.⁶⁵ This was swiftly followed⁶⁶ by a similar (though not identical⁶⁷) and almost unanimous UNGA resolution. It is this iteration of the RCHSE that will be the focus here. The resolution is brief, its preamble significantly exceeding its body text,⁶⁸ and the considerable fanfare around its adoption notwithstanding,⁶⁹ its

⁶³ *Ibid.*, para. 8, which further indicates the disconnect referred to *infra*.

⁶⁴ Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 'Report on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment', (24 January 2018) UN Doc A/HRC/37/59.

⁶⁵ Human Rights Council (n 45).

⁶⁶ See Marc Limon, 'United Nations recognition of the universal right to a clean, healthy and sustainable environment: An eyewitness account' (2022) 31 (1) *Review of European, Comparative & International Environmental Law*, 153.

⁶⁷ The GA's version of the RCHSE was, on closer analysis, significantly less ambitious than that of the HRC; see Karen Morrow: 'Will a Human Right to a Clean, Healthy and Sustainable Environment Address the Wrongs of Environmental Degradation?' in Abigail Bakan and Yasmeen Abu-Laban (eds), *Human Rights and the United Nations: Paradox and Promise* (Routledge 2025), 170.

⁶⁸ *Ibid.*

⁶⁹ See, for example, UN News, 'UN General Assembly declares access to clean and healthy environment a universal human right', (28 July 2022): <<https://news.un.org/en/story/2022/07/1123482>> accessed 7 April 2025 and UNEP: <<https://>

content, far from being ground-breaking, largely reiterates previous UN commitments.⁷⁰ While the RCHSE certainly has symbolic and educational significance, which may well assist in better leveraging of human rights law in contexts where people are harmed by environmental degradation,⁷¹ facilitating the current special rapporteur on human rights and the environment's emphasis on implementation, for example,⁷² it remains by its very nature anthropocentric. While the RCHSE perpetuates an established human harm-centred approach to addressing the human-environment nexus, it is potentially useful in providing a more coherently packaged approach to addressing the needs of non-privileged humans in this regard. That said, it also reinforces the centring of human needs and fails to address the implications of the knowledge that human flourishing and ultimately existence is at base dependent on the state of the environment.⁷³

4.3 The UN Pact for the Future and Declaration for Future Generations

If the promise of human rights approaches, freighted by their conceptualization and history, has, despite high-profile developments, offered less in practice than they promise, what of UN consideration of future generations? In theory, the expanded view of humanity adopted here, by importing a much longer time scale than is usually the case in law and policy, could provide an incentive to rethink the implications of the human-environment nexus as it entails securing the continued ability of the environment to support human existence and flourishing, extending into the future.⁷⁴ A concern of international environmental law since the first Earth Summit in Stockholm in 1972, and entering the mainstream in the 1992 Rio Earth Summit, taking action to safeguard the interests of future generations is appealing in theory, albeit

www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right> accessed 7 April 2025.

⁷⁰ Morrow (n 67).

⁷¹ Claudia Ituarte-Lima, 'Biosphere Defenders Leveraging the Human Right to Healthy Environment for

Transformative Change' (2023) 53 *Environmental Policy and Law*, 139.

⁷² Special Rapporteur on the human right to a healthy environment, see 'Special Rapporteur on the human right to a healthy environment': <<https://www.ohchr.org/en/special-procedures/sr-environment>> accessed 10 April 2025.

⁷³ Morrow (n 67).

⁷⁴ William MacAskill, *What We Owe the Future: A Million-Year View* (Oneworld 2022).

challenging – though not impossibly so,⁷⁵ in practice.⁷⁶ While much discussed over the years, the UN Summit of the Future in 2024 brought new focus to this area and its outcome documents, the Pact for the Future⁷⁷ and the Declaration for Future Generations⁷⁸ are revealing of how far coverage of this issue has come – and how far it has yet to go. While in-depth discussion is not possible within the confines of this chapter, a brief consideration of these documents provides a fascinating snapshot of what may well prove to be a critical juncture in our treatment of the human-environment nexus.

The Pact, for example, badly states that:

We are confronted by rising catastrophic and existential risks, *many caused by the choices we make*. Fellow human beings are enduring terrible suffering. If we do not change course, we risk tipping into a future of persistent crisis and breakdown.⁷⁹ (emphasis added)

Commitments adopted include prioritizing:

... urgent action to address critical environmental challenges and implement measures to reduce disaster risk and build resilience, reverse the degradation of ecosystems and ensure a clean, healthy and sustainable environment . . .⁸⁰

Actions committed to include:

Leveraging science, data, statistics and strategic foresight to ensure long-term thinking and planning, and to develop and implement sustainable practices and the institutional reforms necessary to ensure evidence-based decision-making, while making governance more anticipatory, adaptive and responsive to future opportunities, risks and challenges.⁸¹

However, for all of its promise, the Pact for the Future process is taken as a whole, is ultimately crushingly disappointing, in particular in its overtly technocratic bent. This is far from inadvertent. The Anthropocene here is ultimately presented not so much as a threat to the biosphere and, in consequence, an existential threat to much of humanity, but as a further opportunity for

⁷⁵ Edith Brown Weiss, 'Our Rights and Obligations to Future Generations for the Environment', (1990) 84 (1) *American Journal of International Law*, 198.

⁷⁶ Richard P Hiskes, *The Human Right to a Green Future: Environmental Rights and Intergenerational Justice* (Cambridge 2009).

⁷⁷ Human Rights Council (n 45).

⁷⁸ UN General Assembly (n 46).

⁷⁹ Human Rights Council (n 45), para. 2.

⁸⁰ *Ibid.*, para. 18.

⁸¹ *Ibid.*, para. 24.

commodification, profit and the consolidation of control by the already powerful. Law in this register is all too easily pressed into the service of those who benefit from a commodified response to how we understand crisis, assisting in perpetuating (and indeed augmenting) a ‘business as usual’ approach. While achieving any agreement in a fragmented and fractious international polis is an achievement of sorts, it is difficult not to regard the process as a squandered opportunity and one where our generation’s responses will be found horribly wanting – not least in addressing environmental breakdown and the many faces of inequality, gender among them.⁸²

4.4 The 2024 Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change⁸³

If the Pact for the Future process was underwhelming, new special rapporteur Elisa Morgera’s report offers a much more humane approach to chronic emergency in its thematic inclusion of intersectionality, threading through her analysis of the unequal experience of adverse climate impacts and climate justice and applying it to adaptation and mitigation. Originating in Kimberle Crenshaw’s groundbreaking work on feminist legal scholarship on intersectionality,⁸⁴ centred on the core recognition that:

... forms of subordination and privilege intersect in people’s lives in complex and mutually reinforcing ways ...⁸⁵

has become a hugely influential idea across multiple areas of social inquiry on equality – including broader human rights law. Morgera makes an important contribution in bringing intersectionality analysis so firmly front and centre in the work of the HRC. However, intersectionality is usually predominantly focused on the social sphere, which, while undoubtedly hugely important, as

⁸² See, for example, Marides Santos: ‘Civil Society Organizations React to the “Pact for the Future”: A Call for Accountability and Ambition’: <<https://www.vivatinternational.org/blog/2024/09/30/civil-society-organizations-react-to-the-pact-for-the-future-a-call-for-accountability-and-ambition/>> accessed 7 April 2025.

⁸³ UN General Assembly (n 47).

⁸⁴ Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 1989 (1) *University of Chicago Legal Forum*, 139.

⁸⁵ Johanna Bond, *Global Intersectionality & Contemporary Human Rights* (Oxford 2021) 6.

Thompson observes, is inadequate to account for the role of environmental factors and the interplay between them.⁸⁶ These latter dimensions are increasingly to the fore in respect of the triple environmental crisis, not least climate change and in other ECEs. Thus, an ecofeminist reading of intersectionality is beneficial in that it understands it as having not only social and environmental dimensions but also manifesting at nexus areas between them.

5. USING ECOFEMINIST THINKING TO ENGAGE MORE EFFECTIVELY WITH CHRONIC EMERGENCIES

There is significant common ground between scientific understandings of the Anthropocene, as considered above, encapsulating environmental breakdown and consequent threats to human flourishing (and if unaddressed, extending to an existential threat to our species). In response, it is imperative to shift our thinking and action beyond a narrow concept of disaster and its limited, reactive conception of harm, to embrace the broader idea of ECE and a proactive/preventative approach to harm driven by our understanding of the nuanced nature of human responsibility, vulnerability, and agency (the latter not being viewed as by any means mutually exclusive).⁸⁷ To this end, this section discusses what an ecofeminist approach could bring to the table to facilitate the type and scale of change required. As discussed above, ecofeminism⁸⁸ is best known for providing a species-critical framing to identify and interrogate the impacts of hierarchical dualism as a categorical approach that enables and fuels the systemic exploitation of the other by the otherer. In this regard, male/female and human/environment dualisms can be understood as sharing salient features that facilitate the application of a common conceptual framing to address them. This section, however, builds on ecofeminist critique, arguing that used in conjunction with feminist ethics of care thinking, it can perform a constitutive function in building a different ethical response to dualism, based on constructive relationality, rather than destructive hierarchy. Taking the view

⁸⁶ Thompson (n 13).

⁸⁷ National Academies of Sciences, Engineering, and Medicine, *Strengthening Indigenous America: Building Resilience Through Disaster Preparedness, Response, and Recovery: Proceedings of a Workshop in Brief* (The National Academies Press 2024).

⁸⁸ For a flavour of the vibrant and diverse ecology of ecofeminism, see Karen Morrow; *Ecofeminism and International Law*, Oxford Bibliographies (2022): <www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0237.xml?rsk=P558KO&result=1&q=ecofeminism#first-Match> accessed 12 April 2025.

that, while humans are both in and of nature and thus part of the environment rather than separate from it, the Anthropocene, as considered above, requires us to make a reckoning with our unique status as a planet-shaping creature.⁸⁹ There is a dualism here – no other creature is in a position analogous to that of human beings, but the self-generated Anthropocene threat to the environmental conditions that promoted human flourishing in the Holocene negates the illusion of hierarchy and instead requires a relational framing of the ecological reality of human dependence on the biosphere. Our response to Earth systems science and its implications must therefore be an interdisciplinary endeavour that melds hard science with social sciences, humanities and law,⁹⁰ and also, as a real-world undertaking, draws on ecofeminism's grasp of the imperative need to combine academic knowledge with lived experience to better grasp the fullness of the human-environment nexus.⁹¹

Crafting the required relational approach to the human-environment nexus can be achieved by adopting an ecofeminist-infused conception of the ethics of care.⁹² Ethics of care approaches, rooted in Carole Gilligan's groundbreaking work in psychology,⁹³ start from the premise that: 'as humans we are inherently relational, responsive beings and the human condition is one of connectedness or interdependence.'⁹⁴ Subsequent work by Joan Tronto expanded the analysis of the relational core of the ethics of care in the form of 'caring virtues', namely: attentiveness, responsibility, competence, responsiveness and solidarity and justice.⁹⁵ Ethics of care approaches were conceived by Gilligan as an adaptable frame for promoting moral action that did not rely on the enjoyment of rights or entitlements by the subject of care, but rather were founded on the responsibility of the caregiver. Having originated in regard to interpersonal (often familial) relationships, the ethics of care as an approach

⁸⁹ Karen Morrow, 'Ecofeminist approaches to the construction of knowledge and coalition building – offering a way forward for international environmental law and policy' in Andreas Philippopoulos-Mihalopoulos and Victoria Brooks (eds), *Research Methods in Environmental Law* (Edward Elgar Publishing 2017) 289.

⁹⁰ Matt Edgeworth: 'Archaeology of the Anthropocene – Introduction', (2014) 1 (1) *Journal of Contemporary Archaeology* 73, 74.

⁹¹ Morrow (n 89).

⁹² Morrow (n 56).

⁹³ Carole Gilligan, *In A Different Voice* (Harvard University Press 1982).

⁹⁴ 'Gilligan Interview', (21 June 2011): <<https://ethicsofcare.org/carol-gilligan/>> accessed 7 April 2015.

⁹⁵ For a succinct synthesis of the development of Tronto's approach see, Tessa Bergman, Nora Lize, Sandra Beijer, et al., 'A care ethics approach to a reduced ability to eat' (2024) 31 (4) *Nursing Ethics* 420, 424.

has subsequently been applied to the caring professions and offers sufficient flexibility to extend to care for the environment.⁹⁶ The ethics of care is also open to spatially and temporally expansive framings⁹⁷ that make them a good fit for application in and to the Anthropocene.

If we view the planet as a complex system, as discussed above, in addition to offering advantages over an atomized approach, allowing a more realistic analysis of environmental issues, which facilitates:

identifying mutual links between the individual subsystems and hence . . . improving the physical understanding of how these components interact with each other on various temporal as well as spatial scales and how the corresponding interactions determine the dynamics of the full system.⁹⁸

this also offers a good fit for an ecofeminist infused ethics of care approach, both in terms of how we understand the Earth system and humanity's relationship to it. In accessible terms, as explicitly alluded to in planetary boundaries thinking, systems approaches exhibit some similarities to the intricate functions of self-regulation of living systems, and importantly bring the interplay between social/human and environmental systems firmly to the fore.⁹⁹ This is crucial for this chapter as this analysis echoes the true nature of 'natural' disasters, which, far from being 'acts of God/nature, rather occur as:

. . . consequences of encounters between nature and society, the extent of which depends on how well people have managed to adapt to dangers.¹⁰⁰

Furthermore, a living systems lens provides a helpful way to think about systemic environmental issues and their manifestation using the terminology drawn from a well-developed field of care: medicine. The categorization of chronic and acute medical conditions and their relation to one another in

⁹⁶ Morrow (n 89), expanding on Helena Olofsdotter Stensota, 'Public Ethics of Care – A General Public Ethics', (2015) 9 (2) *Ethics and Social Welfare* 183.

⁹⁷ See, for example, Morrow (n 89); Marian Barnes *Care in Everyday Life: An Ethic of Care in Practice* (The Policy Press 2012), in particular, Chapter 6; and Elena Pulcini: *Care of the World: Fear, Responsibility and Justice in the Global Age* (Springer 2009).

⁹⁸ Relk V. Donner, Susana Barbosa, Juergen Kurths, and Norbert Marwan, 'Understanding the Earth as a Complex System – recent advances in data analysis and modelling in Earth sciences' (2009) 174 (1) *The European Physical Journal Special Topics* 1.

⁹⁹ Rockström, Steffen, Noone et al. (n 29) 475.

¹⁰⁰ Svensen (n 35) 14.

comorbidities is helpful here. In this context, the dictionary definitions are instructive:

chronic illness is defined as: ‘. . . lasting a long time, long-continued, lingering, inveterate; opposed to acute’;

acute illness is defined as: ‘. . . coming quickly to a crisis or conclusion; of rapid onset and short duration; of recent or sudden onset; contrasted with chronic’ and additionally as ‘severe; critical’; and

comorbidity is defined as: ‘The coexistence of two or more diseases, disorders, or pathological processes in one individual, esp. as a complicating factor affecting the prognosis or treatment of a patient’.¹⁰¹

A responsible medical practitioner would not regard or treat such conditions in isolation from one another but would instead care for the whole patient in order to optimize outcomes. These terms are useful for the current discussion of ECEs in that chronic disease parallels the underlying damaged state of the environment consequent on anthropogenic impacts; acute disease offers parallels with specific disasters; and comorbidities invite us to eschew an overly simplistic view of the relationship between the two, instead seeing their profound and complex imbrication. This approach offers a much more realistic and potentially efficacious approach to understanding the multi-layered nature of harm than that presently used in law, and one that fits much better with the complex systems involved.

6. CONCLUDING THOUGHTS – NOW OR NEVER?

As is apparent from the discussion above that while international law is paying lip service to environmental breakdown and what it means for people and planet, the current trajectory, despite ostensibly attractive repackaging by the United Nations, remains largely one of consolidation – more of the same – rather than instituting the necessary paradigm shift required to engage meaningfully with the impacts of the Anthropocene, not least ECEs. We can no longer afford to accept this for current and future generations.

ECEs are still ill-covered in law, and to even begin to adequately address their impacts on the biosphere, which is also necessary to deal fully with their human impacts, requires fundamentally reconfiguring how the law comprehends anthropogenic harm and damage to the environment. The advent of the Anthropocene means that the game has already changed; how humanity is playing it, however has not, and it must urgently do so. An ecofeminist-infused ethics of care offers a way forward, inviting an expansive, relational view of interactions between humanity and the environment, which would be capable

¹⁰¹ Definitions from the Oxford English Dictionary, <<https://www.oed.com>>.

of encapsulating both its necessary human-environment and inter-human dimensions.¹⁰² What ECEs reveal is the urgent need for a deep re-education of how we understand what it is to be human in the Anthropocene. If we are to tackle environmental breakdown and ensure human flourishing and ultimately the survival of our species, we must grasp and act on the new three 'Rs': a relational and ecologically realistic understanding of the human-environment nexus, adopting a care-based approach to human responsibility grounding ethics, law and praxis.

¹⁰² Morrow (n 56).