

NARCISSUS' REFLECTION IN THE LAKE: UNTOLD NARRATIVES IN
ENVIRONMENTAL LAW BEYOND THE ANTHROPOCENTRIC FRAME

Marie-Catherine Petersmann*

Abstract

The 'environment' is a substantively indeterminate concept that has borne different meanings throughout time and translated different visions of the (legal) relationship between Man and Nature. Over the past centuries, the normative concern for environmental protection emanated from distinct legal, cultural and socio-economic narratives. In providing a genealogy of these multiple and overlapping frames, this article not only sharpens our historical understanding of the legal nexus between two proliferating regimes in international law (environmental law and human rights law), but also critically engages with how environmental protection was progressively translated as an anthropocentric conceptual and operational legal framework. Like Narcissus, humans have been obnubilated by their own interests when thinking about environmental protection. The anthropocentric focus has led environmental law to gradually align and intertwine with human rights, resulting in a synergistic conceptualization of their interactions. Through this prism, environmental protection automatically reinforces human rights. This synergistic mantra has allowed environmental protection to gain momentum by associating it with a grander moral scheme. The focus on synergies, however, overshadowed the existence of conflicts inherent to the relationship between environmental protection and human rights.

Keywords: Environmental protection; human rights; frames; synergies; conflicts.

*Ph.D Candidate at the European University Institute (EUI), Florence, Italy (marie-catherine.petersmann@eui.eu).

International environmental law (IEL) and human rights law (HRL) emerged as autonomous and disconnected bodies of law with different normative underpinnings and ontological orientations. Progressively, these legal regimes evolved towards increasing normative interconnection and substantive legal integration. This article inquires into the origins of this evolution and seeks to understand how and why the overarching narrative of environmental protection changed over time. It conceptualizes environmental protection as a narrative that translates a deeper social consciousness, and facilitates a wide range of policies and regulatory concerns. These concerns mutate over time according to specific sets of priorities and agendas of empowered actors. In this process, environmental protection is used as a normative vehicle that prioritizes specific concerns, thereby shaping the understanding of the environment in general, and its relationship to human rights in particular. Under the guise of objective legal regulation, specific policy interests are highlighted while others are obscured.

The article starts by retracing the normative underpinnings of the first environmental laws adopted in the late nineteenth century and demonstrates how they were defined by a clear schism and antagonism between Man and Nature, where the latter was protected *from* the former. With the increasing industrialization and the growth of capitalist and liberal markets, a utilitarian approach to natural resources exploitation emerged. Man emphasized the need to protect Nature, not for its intrinsic value, but to secure economic interests and ensure the survival of his kind. This anthropocentric approach turned environmental protection into a human interest driven objective. This

shift in the conceptualization of the relationship between Man and Nature was progressively translated into global legal instruments, with the 1972 Stockholm Conference on the Human Environment being the cornerstone in this evolution. In this process, the IEL regime embraced an anthropocentric orientation and an objectification of the environment that should serve, *in fine*, the benefits of human beings. Simultaneously, the HRL regime increasingly integrated environmental protection concerns, either by recognizing individual and procedural or collective and substantive environmental rights; or by recognizing environmental values as inherent parts of existing human rights. The linkage of IEL to HRL, the article shows, served specific interests and led to positive outcomes, but prioritized a particular agenda, thereby neglecting other concerns of environmental protection.

In the second part, the article delves into the consequences of the progressive legal integration of human rights concerns within the IEL regime. It analyses how IEL accommodated the concept of (human) environment and thereby shaped its understanding and its content through a specific anthropocentric legal frame. Most importantly, the article highlights how the overall anthropocentric approach to environmental protection in general, and its linkage to human rights in particular, nurtured a synergistic definition of their interrelationship. In other words, the legal representation of the environment was constructed so as to accommodate an image where environment and human rights interact harmoniously. This synergistic account, the article concludes, blurred the existence of tensions inherent to this relationship. The article, therefore, ends with an analysis of conflicts between environmental protection laws and human rights.

1. Changing narratives in environmentalism: from pristine wilderness to human environment

1.1 Nature versus Man: rupture and antagonism in early environmentalism

Environmental protection and human rights emerged as self-enclosed and disconnected bodies of law. Although modern IEL only emerged at the dawn of the 1960s when the environment was brought to the fore in global policy debates,¹ environmental protection is not a ‘modern’ concern.² The first nature conservation movement can be traced back to the second half of the nineteenth century.³ This early environmental consciousness was marked by an antagonist view between Man and Nature, embedded in the idea that humankind constituted a threat to nature.⁴ Already in 1864, Marsh’s *Man and Nature* denounced the negative transformations of nature caused by human action.⁵ Men were depicted as disturbing agents to the harmony of Nature, and action needed to be taken to protect Nature from Man. This antagonism

¹ Stockholm Declaration of the United Nations Conference on the Human Environment (16 June 1972) UN Doc.A/Conf.48/14/Rev. 1 (1973) 11 ILM 1416 (1972).

² Most environmental law textbooks agree that ‘[t]he development of modern [IEL] start[s] essentially in the 1960s’. Patricia Birnie, Alan Boyle and Catherine Redgewell, *International Law and The Environment* (3rd edn, OUP 2009).

³ The wake of an environmental consciousness can be traced to the publication in 1854 of Henry Thoreau’s classic *Walden: Or Life in the Woods*, which denounces the human destruction of nature in the name of economic growth. Ruth Gordon, ‘Unsustainable Development’ in Shawkat Alam and others (eds) *International Environmental Law and the Global South* (CUP 2015), 68.

⁴ Peter Sand, ‘The Evolution of International Environmental Law’ in Jutta Brunnée, Daniel Bodansky and Ellen Hey (eds) *The Oxford Handbook of International Environmental Law* (OUP 2007).

⁵ George Marsh, *Man and Nature or, Physical Geography as Modified by Human Action* (Scribner 1864).

was legally translated through a separation between Man and Nature, which finds resonance in the first domestic and regional laws on nature conservation and the protection of natural resources.

At the domestic level, this rupture becomes visible with the creation of the first conservation parks in the world. In 1872 and 1890, the national parks of Yellowstone and Yosemite were created in the US to preserve nature from human-induced deterioration. The Rules and Regulations of Yellowstone established that '[n]o person will be permitted to reside permanently within the Park' and that any 'offender' violating the rules by refusing to leave would be evicted by force.⁶ The vocabulary clearly denoted a negative correlation between the protection of the national park and the presence of human beings. The goal of nature conservation equated with a denial of human presence to the benefit of the intrinsic value of the natural area, thereby suggesting an ecocentric rationale.⁷ This antagonistic view between Man and Nature was nurtured by specific beliefs according to which natural sites had to be preserved as, or restored to, their 'pristine wilderness'.⁸ To this end, protected areas had to be

⁶ Rules and Regulations of the Yellowstone National Park, paras. 5 and 7, www.loc.gov/resource/rbpe.2380030a/ accessed 20 December 2017.

⁷ Ecocentrism is founded upon the notion that 'environment possesses rights derived from its own intrinsic value, separate and distinct from human use of the environment'. Luis Rodriguez-Rivera, 'Is the Human Right to Environment Recognized Under International Law? It Depends on the Source' (2001) *Colorado J Int'l Envtl L & Pol'y* 1, 13.

⁸ This idea is today qualified as a myth. See the classic essay by William Denevan, 'The Pristine Myth: Landscape of the Americas in 1492' (1992) *82 Ann. Assoc. Am. Geogr.* 3, 369-438. Denevan contests the view that European settlers were the first to modify the environment and shows how landscapes had already and largely been altered and distorted by native peoples before the arrival of Europeans in the US. He argues that the 'pristine view is to a large extent an invention of the nineteenth-century' (369).

freed from human presence, regardless of the existence of human settlements present on these lands for centuries.⁹ As a result, many indigenous peoples were forcefully evicted through the creation of so-called human free zones. National parks were created to reproduce an artificial ideal of nature as untouched by men, thereby ignoring the historical presence of native populations on these lands.¹⁰ To justify such practices, a religious imaginary of Eden was employed as a driving force to mould landscapes as unspoilt paradises.¹¹ Religious Scriptures were also interpreted as justifying Man's dominion on earth and other creatures.¹² The myth of unspoilt

Although Denevan did not link the creation of this myth to that of human free zones in national parks, I want to argue that there is an inextricable relation between the latter and the resulting forced eviction of indigenous peoples.

⁹ Dennis Martinez, 'Indigenous Peoples and The Western Idea of Nature' (2003) 21 *Ecological Restoration* 4.

¹⁰ Schama refers to Yosemite as an 'artificial landscape-garden' and holds that '[l]ike all gardens, Yosemite presupposed barriers against the beastly. But its protectors reversed conventions by keeping the animals in and the humans out'. Simon Schama, *Landscape and Memory* (Knopf 1995), 9.

¹¹ The mere idea of a 'lost paradise' symbolizes the destruction of idyllic life in perfect harmony with Nature through the sins of Man. On the quest for 'Eden', see John McCormick, *Reclaiming Paradise: The Global Environmental Movement* (Indiana UP 1991).

¹² Genesis 1:28: '[a]nd God said to them, "Be fruitful and multiply and fill the earth and subdue it, and have dominion over the fish of the sea and over the birds of the heavens and over every living thing that moves on the earth"'. For White: 'Christianity (...) not only established a dualism of man and nature but also insisted that it is God's will that man exploit nature for his proper end'. Lynn White, 'The Historical Roots of Our Ecological Crisis' (1967) 155 *Science*, 1205. This interpretation of the Bible has been condemned by Pope Francis: 'the Genesis account which grants man "dominion" over the earth ... is not a correct interpretation of the Bible as understood by the Church. ... Clearly, the Bible has no place for a tyrannical anthropocentrism unconcerned for other creatures' [67-69]. Encyclical Letter *Laudato Si* of the Holy Father Francis on 'Care For Our Common Home' (2015)

wilderness and the resulting practice of forced eviction of local populations in the name of nature conservation took place in several regions of the world.¹³ Today, much ink has been spilled on the displacement of indigenous peoples through the creation of these national parks.¹⁴

At the regional level, this early conservation model (later coined ‘fortress conservation’¹⁵) found resonance in the first multilateral environmental agreements (MEAs) adopted in the first half of the twentieth century to protect biodiversity and ecosystems. These early MEAs implemented the idea of preserving nature by either forbidding or limiting its use or access to humans. The 1933 International Convention for the Protection of Fauna and Flora established so-called ‘strict natural reserves’ deprived of any human interference.¹⁶ Other similar MEAs include the 1940 Convention on Nature Protection and Wild Life Preservation in the Western

http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html accessed 20 December 2017.

¹³ In 1904, the creation by the British colonial power of several Game Reserves in Kenya on the land of the Maasai led to the forced eviction of the pastoralists from their ancestral land. See Lotte Hughes, *Moving the Maasai: A Colonial Misadventure* (Palgrave Macmillan 2006).

¹⁴ See *inter alia* Mark Dowie, *Conservation Refugees: The Hundred-Year Conflict between Global Conservation and Native Peoples* (MIT Press 2009); Peter Larsen, ‘Reconciling Indigenous Peoples and Protected Areas: Rights, Governance and Equitable Cost and Benefit Sharing’ (2006) IUCN Discussion Paper; James Anaya, ‘Environmentalism, Human Rights and Indigenous Peoples: A Tale of Converging and Diverging Interests’ (2000) 7 *Buffalo Env L J* 1.

¹⁵ Amity Doolittle, ‘Fortress Conservation’ in Paul Robbins (ed) *Encyclopaedia of Environment and Society* (Sage 2007).

¹⁶ Convention Relative to the Preservation of Fauna and Flora in their Natural State (adopted 8 November 1933, entered into force 14 January 1936), art 2.

Hemisphere, which establishes ‘strict wildness reserves’;¹⁷ the 1964 Agreed Measures for the Conservation of Antarctic Fauna and Flora under the 1959 Antarctic Treaty, which establishes ‘specially protected areas’;¹⁸ the 1968 African Convention on the Conservation of Nature and Natural Resources, which establishes ‘strict nature reserves’.¹⁹ These instruments all entail a rationale of strict separation between Man and Nature based on the belief that humans cause disturbance to the ecosystems that these instruments aim to protect. If the motivation behind these MEAs was to secure long-term enjoyment of specific fauna and flora for the ultimate benefits of mankind, the abovementioned provisions that stringently prohibit human interference in delimited natural areas translate an idea of strict incompatibility between nature protection and human presence.

In parallel to these conservation laws that established a clear protection of Nature *from* Man, a number of early MEAs aimed at protecting Nature *for* Man. As the titles of these instruments epitomize, commercial (and hence anthropocentric) concerns emerged as a parallel driving force for environmental protection.²⁰ If these

¹⁷ Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (adopted 12 October 1940, entered into force 30 April 1942), art 4.

¹⁸ Agreed Measures for the Conservation of Antarctic Fauna and Flora (adopted 2 June 1964, entered into force 1 November 1982), art 8.

¹⁹ African Convention on the Conservation of Nature and Natural Resources (adopted 15 September 1968, entered into force 16 June 1969), art 3.

²⁰ See *inter alia* the Treaty concerning the Regulation of Salmon Fishery in the Rhine River Basin (adopted 30 June 1885, entered into force 7 June 1886); the London Convention Designed to Ensure the Conservation of Various Species of Wild Animals in Africa That Are Useful to Man or Inoffensive ((1900) 56 British Parliamentary Papers 825-837); the Convention for the Protection of Birds Useful to Agriculture (adopted 19 March 1902, entered into force 6 December 1905); the 1931, 1937 and 1946

instruments were *de facto* protecting natural resources, the rationale was aimed at securing their commercial exploitation, essential in human societies driven towards progress. Thus, from the onset, there has never been one holistic, overarching and ontologically pure substantive approach to nature protection. Rather, the ‘early glimmers’²¹ of IEL were protecting nature for different and co-existing purposes.

What all these early MEAs have in common, however, is a sense of antagonism between Man and Nature. Law does not aim at harmonious co-habitation. Rather, the regulation is primarily intended either to protect nature *per se* (or to preserve the aesthetics of a ‘beautiful’ wildlife) and therefore to prevent its deterioration by prohibiting any human interference; or to allow such interference only to the extent of fostering specific economic interests through commercial exploitation of ‘useful’ resources.²² There is, thus, a salient sense of disconnection between Man and Nature.²³ In this narrative, there is no overarching normative linkage between nature

International Conventions for the Regulation of Whaling, which primarily aimed at resource management for commercial uses; or the 1929 and 1951 International Plant Protection Conventions (like their ancestor, the 1878 Phylloxera Convention) which were solely concerned with cultivated crops. On these instruments, see Peter Sand (ed) *The History and Origin of International Environmental Law* (Edward Elgar 2015), xiv.

²¹ The expression comes from Edith B. Weiss, ‘The Evolution of International Environmental Law’ (2011) 54 Japanese YB Intl L 1.

²² Pierre-Marie Dupuy and Jorge Viñuales, ‘Emergence and Development’ in Pierre-Marie Dupuy and Jorge Viñuales, *International Environmental Law* (CUP 2015), 6.

²³ On the unnatural divide between Man and Nature and the repercussions of this legally-constructed artificial disconnection on how individuals understand nature and their relationship to it, see Katrina Kuh, ‘An Unnatural Divide: How Law Obscures Individual Environmental Harms’ in Keith Hirokawa (ed) *Environmental Law and Contrasting Ideas of Nature: A Constructivist Approach* (CUP 2014).

protection and early human rights articulations.²⁴ Concerns about the health of humans, their access to food and water, and their right to live in an environment of quality were not yet present in the vocabulary and legal thinking that characterizes this *Zeitgeist*.

Crucially, the same legal independence between environmental protection and human rights is observable in the first international instruments that translate a contemporary conception of human rights. In the aftermath of World War II (WWII), a plethora of international human rights treaties were adopted. None of these, however, associate the protection of human rights with that of the environment. The absence of reference to environmental protection is observable in the 1948 Universal Declaration on Human Rights;²⁵ in the 1950 European Convention on Human Rights²⁶ and in the 1966 International Covenant on Civil and Political Rights²⁷ and International Covenant on Economic, Social and Cultural Rights.²⁸ In the aftermath of WWII , however, not only did countries have to cope with important destruction of land and forests; but individuals also realized the impact caused by chemical weapons and

²⁴ Hunt grounds the creation of human rights in the Enlightenment during the eighteenth century. See Lynn Hunt, *Inventing Human Rights: A History* (Norton and Company Press 2007). The origins of human rights, however, are debated. See Samuel Moyn, *Human Rights and the Uses of History* (Verso 2014).

²⁵ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III)).

²⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended).

²⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

²⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

other heavy artillery on their health, their land and their cattle.²⁹ The impact of WWII on the limited stocks of natural resources became a source of growing concern.³⁰ The rising general awareness of the extent of man-caused environmental harm and the risks it posed to human life led to a gradual collective change of perception. In the collective consciousness, the environment started being conceived of as a sensitive and defenceless system that is depending upon humans' good will, behaviour and care. The idea of Man as steward of Nature and the conception of nature as an object that men shall care about for the sake of their own survival materialized, thus, in the second half of the twentieth century.

This conception culminated in 1962 with the publication of *Silent Spring* by the American biologist Rachel Carson,³¹ qualified by some as a 'revolution' and by others as 'substantially alter[ing] the course of history'.³² The book decried the widespread environmental damages caused by the pesticide DDT and the vicious circle its use creates by penetrating the entire food chain. The appropriateness of the metaphor of a 'silent spring' to denounce the forthcoming extinction of birds and other species proved powerful in bringing the issue to the attention of the general public. This apocalyptic 'silent spring' was presented as a direct consequence of human behaviour.

²⁹ Edmund Russell, *War and Nature: Fighting Humans and Insects with Chemicals from World War I to Silent Spring* (CUP 2001).

³⁰ See the article by the then US Secretary of the Interior Harold Ickes, 'War and Our Vanishing Resources' (1945) 140 *American Magazine* 6.

³¹ Rachel Carson, *Silent Spring* (Houghton Mifflin 1962).

³² Eliza Griswold, 'How "Silent Spring" Ignited the Environmental Movement' *The New York Times Magazine* (21 September 2012) www.nytimes.com/2012/09/23/magazine/how-silent-spring-ignited-the-environmental-movement.html accessed 20 December 2017.

In Carson's words, '[n]o witchcraft, no enemy action had silenced the rebirth of new life in this stricken world. The people had done it themselves'.³³ For the first time, the need to protect the environment was advocated from a different perspective: it was for the sake of human's health and survival that action to protect the environment had to be taken. This strictly human interest driven narrative went far beyond the one that guided early IEL instruments in the late nineteenth and early twentieth centuries and aimed essentially at economic incentives. Here, an alarmist human survival discourse embedded in a narrative of existential *Angst* replaced concerns for economic expansion and progress.

1.2 Creating synergies: the mobilizing power of human rights

Besides the growing realization of man-caused environmental pollution and its impact on human health, the post-WWII epoch is also characterized by an acceleration of industrialization, which led to a growing awareness and widespread criticism of the unsustainable use of natural resources. The baby boom that occurred in the US and in some European countries in the immediate aftermath of WWII led to preoccupations with population growth and the consumption of finite natural resources. All three factors (environmental pollution, population growth and unsustainable use and consumption of limited natural resources) revived a Malthusian spirit.³⁴

³³ Carson (n 31), 3.

³⁴ In his ground-breaking *Essay on the Principle of Population*, published in 1798, Malthus argued that human populations grow exponentially faster than the growth of food production, which would lead to a lack of resources for human survival in future. To avoid this catastrophe, Malthus preached a control of population growth.

Even earlier than Carson's *Silent Spring*, a movement of apocalyptic environmental literature was launched in 1948, with the publication of Osborn's *Our Plundered Planet* and Vogt's *Road to Survival*. These books stressed humankind's destruction of the environment and the risks posed for human subsistence.³⁵ In 1954, Brown published *The Challenge of Man's Future* in which he advocated a reduction of population growth through birth control to align world's population with the limited natural resources available to feed it.³⁶ The most prominent critiques of the vicious cycle between environmental pollution, resources depletion and population growth, however, emerged in the 1960s, nurtured by Carson's *Silent Spring*. In 1968, Paul and Anne Ehrlich's *The Population Bomb* stressed in the risks posed by overpopulation to Earth's restricted capacities, due to unsustainable consumption and depletion of natural resources.³⁷ The same year, the biologist and ecologist Garrett Hardin published his landmark article 'The Tragedy of the Commons', in which he denounced the lack of individual consciousness with regard to human-caused environmental destruction by over-exploitation of natural resources.³⁸ In 1970, Edward Nicholson, one of the founders of the World Wide Fund for Nature (WWF) in 1961, published *Environmental Revolution*, in which he criticized the effects of modern technologies on the environment and offered recommendations for worldwide action to be taken.³⁹ Finally, in 1972, the Club of Rome published *The Limits of*

³⁵ Fairfield Osborn, *Our Plundered Planet* (Little Brown 1948); William Vogt, *Road to Survival* (Sloane Associates 1948).

³⁶ Harrison Brown, *The Challenge of Man's Future* (Viking Press 1954).

³⁷ Paul Ehrlich and Anne Ehrlich, *The Population Bomb* (Ballantine Books 1968).

³⁸ Garrett Hardin, 'The Tragedy of the Commons' (1968) 162 *Science* 1243.

³⁹ Edward M. Nicholson, *The Environmental Revolution: A Guide for the New Masters of the World* (Hodder and Stoughton 1970).

Growth, according to which the exponential growth of the five variables of world population, industrialization, pollution, food production and resources exhaustion would lead to a collapse of the global system by the mid-twenty-first century.⁴⁰ What all these environmental *manifestos* have in common is the accent put, in an alarmist tone and adopting the apocalyptic vocabulary of emergency, on the responsibility of mankind to protect non-renewable and limited natural resources for the sake of human survival. The rationale is, thus, to turn human beings from passive to active actors in tackling environmental degradation through pragmatic behaviours and environmental consciousness. Despite the growing linkage with human living and health concerns, none of these books, however, explicitly correlated the impact of environmental pollution to a human rights discourse.

The first discursive linkages between environmental pollution and human rights happened in response to a series of human induced environmental disasters that occurred in the 1960s, and which heavily impacted the health of human beings.⁴¹ In reaction to these environmental calamities, the human rights language proved useful

⁴⁰ Donella H. Meadows and others, *The Limits to Growth* (Universe Books 1972).

⁴¹ From 1959 on, important protests against mercury pollution took place in Japan against what was later coined the ‘Minamata disease’, a neurological syndrome caused by severe mercury poisoning through polluted food and water. Timothy George, *Minamata: Pollution and the Struggle for Democracy in Postwar Japan* (Harvard UP 2001). Another mobilizing disaster took place in 1967 with the Torrey Canyon oil spill in the North Sea, one of the world’s most serious oil pollution accidents. Michael M’Gonigle and Mark Zacher, *Pollution, Politics, and International Law: Tankers at Sea* (University of California Press 1979). These incidents heavily impacted collective consciousness. In the 1971 classic ‘Mercy Mercy Me’, Marvin Gaye laments that ‘things ain’t what they used to be, oil wasted on the oceans and upon our seas, fish full of mercury’.

to trigger greater mobilization.⁴² The reliance on the moral vernacular of human rights in environmental discourse, however, gave birth to an instrumental approach to environmental protection. Through this new prism, the protection of the environment, rather than an end-goal *per se*, was presented as an intermediate necessity to achieve, *in fine*, a greater fulfilment of human rights. In this new environmental narrative, human beings were portrayed as the main beneficiaries of environmental protection.

By turning environmental protection into a human rights issue, the substantive scope of IEL expanded ‘from species protection to environment and development’.⁴³ This substantive turn in IEL translated a paradigm shift from relative ecocentrism (or ‘species protection’) to strict anthropocentrism (or ‘environment and development’).⁴⁴ Semantically, this paradigm shift was evidenced by the replacement of the term ‘nature’ with the term ‘environment’.⁴⁵ If ‘environment’ is etymologically

⁴² Conor Gearty, ‘Do Human Rights Help or Hinder Environmental Protection?’ (2010) 1 JHRE 7, 9.

⁴³ Henrik Selin and Björn-Ola Linnér, ‘From Species Protection to Environment and Development’ in *The Quest for Global Sustainability: International Efforts on Linking Environment and Development* (Cambridge: Science, Environment and Development Group, Center for International Development, Harvard University, 2005).

⁴⁴ The notion of ‘development’ can be understood as a proxy for human (rights) concerns. The development issues the authors refer to include the levels of consumption, resource use, air and water pollution and its health effects, population issues and the improvement of social conditions (for example, housing and access to clean water) as well as economic conditions (for example, financial wealth). *ibid*, 5.

⁴⁵ For an analysis of how in the 1970s discussions on ‘protection of the environment’ replaced those on ‘preservation of nature’, see Pierre-Marie Dupuy, ‘International Environmental Law: Looking at the Past to Shape the Future’ in Pierre-Marie Dupuy and Jorge Viñuales (eds) *Harnessing Foreign Investment to Promote Environmental Protection: Incentives and Safeguards* (CUP 2013), 9.

derived from the spatial notion of ‘surrounding’,⁴⁶ it is clear that the human species is the ontological unit at the very centre. The semantic shift from nature to environment translated a dialectical evolution where the ‘human’ is ‘in touch’ with the natural world.⁴⁷ This evolution entailed a politically transformative power.⁴⁸ Key documents of international environmental law started integrating the idea that humans must care for the natural world both for its intrinsic value and for the broader good it renders humanity.⁴⁹

Already in 1968, the UN General Assembly (UNGA) underscored the positive correlation between environmental protection and ‘the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights’ in a Resolution entitled ‘Problems of the Human Environment’.⁵⁰ During the Plenary Meeting of the UNGA at which this Resolution was adopted, it was decided to convene the UN’s first major global conference on environmental protection. The

⁴⁶ ‘Environment’ comes from the Greek prefix ‘en’ (in or into) and from the Latin ‘virare’ (turn), which comes from the Greek ‘gyros’ (circle).

⁴⁷ On this dialectical move, see Stephen Humphreys and Yoriko Otomo, ‘Theorising International Environmental Law’ in Florian Hoffmann and Anne Orford (eds), *The Oxford Handbook of International Legal Theory* (OUP 2014), 811.

⁴⁸ The term ‘environment’ was institutionalized in the 1970s with the creation of the US Environmental Protection Agency; of Environmental Ministries in OECD countries; and of the UN Environment Programme in 1972. On the institutionalization of this semantic shift, see Christophe Bonneuil and Jean-Batiste Fressoz, *L’Événement Anthropocène: La Terre, l’histoire et nous* (Broché 2016), 198.

⁴⁹ Fundamentally, the shift to the word ‘environment’ entails legal consequences, since ‘[l]egal reality is a language-reality, made from words’. Philip Allott, ‘Globalization from Above: Actualising the Ideal Through Law’ (2000) 26 *Rev Int Stud* 61, 71.

⁵⁰ UNGA Res 2398 (XXIII) (3 December 1968).

Stockholm Conference on the Human Environment was held in 1972, and put environmental protection at the centre of human concerns.⁵¹ In reality, and as the title of the conference on the Human Environment epitomizes, it was human interest that was put at the centre of environmental concerns. The environment at stake, indeed, was that of human beings, and any non-human interest relating to nature preservation fell outside the scope of the conference.

The Stockholm Declaration is the first document that establishes an explicit link between human rights and environmental protection by recognizing a human *right* to live in an environment of quality.⁵² With the quality of our environment seen as a precondition for the fulfilment of the human rights to life and to health, the first seed of a human rights approach to environmental protection was planted. From Stockholm on, this new normative framework of legal intertwinement between environmental and human rights protection guided the IEL and HRL agendas. Despite the ‘soft’ and legally non-binding nature of the Stockholm Declaration, its importance and consequences on the environmental movement were capital. Subsequent ‘hard’ and legally binding environmental treaties reaffirmed the linkage between environmental protection and human rights, and emphasized in particular the impact of environmental pollution on humans’ health. The standard definition of pollution itself, as found in the 1979 UN Economic Commission for Europe (UNECE) Convention on Long-range Transboundary Air Pollution, defines pollution as ‘the introduction by man, directly or indirectly, of substance or energy into the [environment] resulting in

⁵¹ The Stockholm Conference aimed at ‘inspiring and guiding the peoples of the world in the preservation and enhancement of the human environment’. Stockholm Declaration (n 1), Preamble.

⁵² *ibid.*, Principle 1 (emphasis added).

deleterious effects of such a nature as to *endanger human health*'.⁵³ The Stockholm spirit, thus, undeniably spread its influence in global environmental fora.⁵⁴

This was not without resistance at first. In analysing environmental instruments adopted after 1972, it can be seen that advocates of a more ecocentric approach to environmental protection tried to resist its association with the human rights framework. In 1982, the UNGA adopted the World Charter for Nature, the drafting process having started in 1975.⁵⁵ This Charter defends an ecological approach to environmental protection that puts all species on an equal footing. In this spirit, the preamble proclaims that '[m]ankind is a part of Nature' and explicitly provides that '[e]very form of life is unique, warranting respect *regardless of its worth to man*, and to accord other organisms such recognition, man must be guided by a moral code of action'.⁵⁶ Some argue that the ecocentric tone of the World Charter for Nature is due

⁵³ 1998 UNECE Convention on Long-range Transboundary Air Pollution (LRTAP) (adopted 13 November 1979, entered into force 16 March 1983), art 1(a) (emphases added).

⁵⁴ Other MEAs establishing an explicit link with human health include the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which objective is 'to protect human health and the environment from potential harm and to contribute to their environmentally sound use' (art 1); or the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes, which defines 'transboundary impact' on the environment as entailing 'effects on human health and safety' (art 1(2)).

⁵⁵ UNGA World Charter for Nature A/RES/37/7 (28 October 1982).

⁵⁶ *ibid.*, (emphases added). Other modern IEL instruments that depart from a purely anthropocentric approach and translate intrinsic concerns for nature include the 1992 Convention on Biological Diversity (CBD), which cares for the 'intrinsic value of biological diversity', Convention on Biological Diversity (5 June 1992), 31 ILM 818, Preamble, [1]; or the 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitat, which recognizes that 'wild flora and fauna constitute a

to the role played by developing countries in its launch, drafting procedure and adoption.⁵⁷ Wood shows how developing countries, and the former Zaire in particular, played a key role in the development of the instrument and shared the view that ‘the global environment needs substantive and procedural protection *from* the adverse impacts of social and economic development’.⁵⁸ This position recalls a pre-Stockholm spirit where Nature had to be protected from Man, and is thus diametrically opposed to the Stockholm one that sees in environmental protection a way to secure social and economic development.

Natural resources management for social and economic development were indeed the general preoccupations of the time, as demonstrated by the adoption of a report entitled World Conservation Strategy in 1980.⁵⁹ This report has been drafted by the International Union for Conservation of Nature (IUCN), the United Nations Environment Programme (UNEP) and the WWF, and advocated a ‘sustainable

natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value that needs to be preserved and handed on to future generations’, Convention on the Conservation of European Wildlife and Natural Habitats (19 September 1979), ETS 104, Preamble, [3].

⁵⁷ Harold Wood Jr., ‘The United Nations World Charter for Nature: The Developing Nations’ Initiative to Establish Protections for the Environment’ (1985) 12 Ecology LQ 4.

⁵⁸ *ibid.*, 977 (emphasis added). This contrasts with the position of developing countries in Stockholm where they pushed for greater social and economic concerns in environmental protection regulations. In the debates, developing countries linked their environmental problems to development issues such as limited access to food and water, soil erosion and inadequate housing standards, and claimed that industrialized countries were mostly responsible for environmental pollution and had, therefore, to take more stringent action to reverse it. Henrik Selin and Björn-Ola Linnér (n 43), 19.

⁵⁹ IUCN, UNEP and WWF, ‘World Conservation Strategy: Living Resource Conservation for Sustainable Development’ (IUCN 1980).

utilization of species and ecosystems’ and defended the view according to which ‘[c]onservation is entirely compatible with the growing demand for “people-centred” development’.⁶⁰ Conservation of living resources was thus depicted as a prerequisite for sustainable development.⁶¹

In the same spirit, in 1983, the UNGA approved the establishment of an independent commission to report on environmental issues. The World Commission on Environment and Development was created, and issued its first report entitled ‘Our Common Future’, also known as the ‘Brundtland Report’, in 1987.⁶² This report is most famous for having popularized the concept of ‘sustainable development’.⁶³ Importantly, the Brundtland Report also recognized that ‘[a]ll human beings have the fundamental *right* to an environment adequate for their health and well being’.⁶⁴ The mass media attention granted to the Report gave the anthropocentric and synergistic human-environment nexus further impetus. Interestingly, Gro Harlem Brundtland recalled in her Foreword as Chairman how in 1982, when the terms of the Commission were originally discussed, ‘there were those who wanted its

⁶⁰ *ibid.*, ‘Chapter 20: Towards Sustainable Development’, [8].

⁶¹ *ibid.*, ‘Introduction: Living Resource Conservation for Sustainable Development’, [2].

⁶² Brundtland Report, *World Commission on Environment and Development: Our Common Future* (OUP 1987).

⁶³ *ibid.*, ‘Towards Sustainable Development’, [1]. Noteworthy, the definition of sustainable development retained by the Brundtland Commission has nothing to do with the one first developed in the World Conservation Strategy, as seen above.

⁶⁴ *ibid.*, Annex I, [1] (emphasis added).

considerations to be limited to “environmental issues” only’.⁶⁵ She qualified this view as a ‘grave mistake’ and explained that

[t]he environment does not exist as a sphere separate from human actions, ambitions, and needs, and attempts to defend it in isolation from human concerns have given the very word “environment” a connotation of naivety in some political circles.⁶⁶

For her, the two words ‘environment’ and ‘development’ were inseparable. This view was also reiterated in the Report, which holds that

[e]nvironment and development are not separate challenges; they are inexorably linked ... [and] cannot be treated separately by fragmented institutions and policies. They are linked in a complex system of cause and effect.⁶⁷

The distinction between the two schools of thought (the defenders of an ‘environmental issues only’ and those of an ‘environment and development’ approach) corroborate the existence of a paradigm shift from a more ecocentric to a strict anthropocentric approach to environmental protection, inexorably intertwined with human rights.

This legally integrated approach to environmental and human rights protection also spread within sub-fields of IEL that were initially marked by a strong antagonism between Man and Nature. In conservation policies, the *Zeitgeist* of the 1970s led to an abandonment of the fortress model.⁶⁸ Overlapping usages of land started replacing the

⁶⁵ *ibid.*, Chairman’s Foreword, [7].

⁶⁶ *ibid.*

⁶⁷ *ibid.*, 36.

⁶⁸ Fortress conservation is ‘a conservation model based on the belief that biodiversity protection is best achieved by creating protected areas where ecosystems can function in isolation from human disturbance’. Doolittle (n 15).

idea of human free zones.⁶⁹ This had major impacts on the protection of indigenous peoples and local communities' rights. Not only did their right to live on their ancestral lands start to be explicitly recognized in global and regional legal instruments that protect and regulate natural resources;⁷⁰ but their positive role as stewards (instead of offenders) in protecting nature also started to be advocated in global policy instruments.⁷¹ In February 1992, the IV IUCN World Parks Congress (WPC) was held in Caracas, Venezuela. This Congress is the landmark global forum on protected areas, held only once each decade. The IV IUCN WPC recognized that the long-standing relationships that local and indigenous communities have with protected areas 'embrace cultural identity, spirituality and subsistence practices, which frequently *contribute* to the maintenance of biological diversity'.⁷²

⁶⁹ The idea of overlapping usages of land relates to the positive side effects of human presence in protected natural areas and advocates a protection of species and habitats compatible with human activities. This can range from modern agriculture to indigenous stewardship. On the former, see the 1992 EU Habitats Directive, which specifically provides that 'the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities', Council Directive 92/43/EEC, Preamble; and more recently the ecosystem approach endorsed in 2000 at COP 5 of the CBD (n 56), Decision V/6.

⁷⁰ See the International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples No. 169 (adopted 27 June 1989, entered into force 4 September 1991); the Guidelines for Establishing and Strengthening Local Communities' and Indigenous Peoples' Participation in the Management of Wetlands, adopted during the 7th COP of the 1971 Ramsar Convention on Wetlands in May 1999; or art 8(j) of the CBD (n 56).

⁷¹ Jérémie Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* (Brill, Nijhoff, 2nd ed, 2016).

⁷² Caracas Action Plan of the IV IUCN WPC (February 1992), Recommendation 6: People and Protected Areas (emphasis added).

Furthermore, it observed that ‘[t]hese relationships have too often been ignored and even destroyed by resource conservation and management’.⁷³ Against this backdrop, the Caracas Action Plan recommended that management plans honour the needs and aspirations of peoples living in and around protected areas and explicitly urged for ‘the continuation and development of human activities in protected areas (...) in so far as THEY ARE compatible with conservation objectives’.⁷⁴ The Caracas Action Plan promoted the involvement and participation of communities and the respect for their customary tenure systems, traditional knowledge and practices.⁷⁵ The work of the IUCN was positively reaffirmed in Rio at the UN Conference on Environment and Development held only four months later, which recognized the ‘vital role’ indigenous peoples play in environmental management.⁷⁶

Thus, in post-Stockholm conservation instruments, the concern for indigenous peoples’ presence and its compatibility with nature conservation is expressed through a different narrative. Instead of accentuating a negative correlation where any human presence is perceived as a disturbing factor for nature preservation, the relationship is reversed and visualized through positive lenses where indigenous peoples are portrayed as custodians of their environment. In the overarching normative narrative, the human being changes from being a threat to being both a steward and an intrinsic part of its environment, with which he/she maintains not only economic, but also spiritual and cultural relationships.

⁷³ *ibid.*

⁷⁴ *ibid.* (emphases from the original).

⁷⁵ *ibid.*

⁷⁶ Rio Declaration on Environment and Development (3-14 June 1992), UN Doc.A/CONF.151/26 (Vol.I); 31 ILM 874 (1992), Principle 22. See also Chapter 26 on ‘Indigenous Peoples’ of Agenda 21.

More generally, the anthropocentric approach to environmental protection is also traceable in the emergence in the Rio Declaration on Environment and Development of a linkage between procedural human rights to environmental matters.⁷⁷ Principle 10 of the Rio Declaration recognizes the procedural rights to participation in decision-making processes, access to information in environmental matters and effective access to justice.⁷⁸ At the European level, the 1998 UNECE Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters incorporated these legal developments.⁷⁹ Hence, in Europe today, individuals are explicitly entitled to have access to justice in environmental

⁷⁷ For a critique of Rio's human rights approach to environmental protection, seen as a step back in comparison to Stockholm since it only recognizes that humans are 'entitled' to a healthy environment, see Dinah Shelton, 'What Happened in Rio to Human Rights?' (1993) 3 Yb Int'l Env L 75. Yet, the anthropocentric tone and conception remain.

⁷⁸ Rio Declaration (n 76), Principle 10. See also Jonas Ebbesson, 'Principle 10: Public Participation' in Jorge Viñuales (ed) *The Rio Declaration on Environment and Development: A Commentary* (OUP 2015).

⁷⁹ UNECE Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 38 ILM 517 (1999). The Aarhus 'model' is currently being implemented in other regions of the world. See the Preliminary Document adopted on the 20th of July 2017 by the Economic Commission for Latin America and the Caribbean (ECLAC) on a Future Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean www.cepal.org/en/publications/41981-future-regional-agreement-access-information-participation-and-access-justice accessed 20 December 2017.

matters, when their right to live in an environment adequate to their health and well-being is infringed.⁸⁰

In retrospect, all these legislative developments can be summarized in the words of Fatma Zohra Ksentini, former UN Special Rapporteur on Human Rights and the Environment, who recognized the existence of a ‘shift from environmental law to a right to a healthy and decent environment’.⁸¹ Ksentini’s observation confirms the substantive evolution of IEL from a regime concerned with the protection of the environment to one concerned with the protection of human rights related to an environment of quality. The analysis above locates the origins of this paradigm shift in the 1972 Stockholm Declaration, to which Ksentini refers as a ‘qualitative leap’, thereby emphasizing the shift from a pre- to a post-Stockholm era in IEL.⁸² The current UN Special Rapporteur on Human Rights and the Environment, John Knox, confirmed the ever-closer legal interconnection between IEL and HRL by referring to

⁸⁰ See Ellen Hey, ‘The Interaction between Human Rights and the Environment in the European “Aarhus Space”’ in Anna Grear and Louis Kotzé (eds), *Research Handbook on Human Rights and the Environment* (Edward Elgar 2015).

⁸¹ Final Report prepared by Fatma Zohra Ksentini on Human Rights and the Environment, E/CN.4/Sub.2/1994/9 (6 July 1994), [22]. The Ksentini Report is the first UN report exclusively dedicated to the study of the link between human rights and the environment.

⁸² *ibid.*, [23]. Some scholars commenting on the relationship between environmental protection and human rights distinguish between ‘classic environmentalism’ and ‘environmental human rights law’, thereby stressing the schism between a pre- and post-Stockholm understanding of IEL. S Ravi Rajan, ‘Classical Environmentalism and Environmental Human Rights: An Exploration of their Ontological Origins and Differences’ (2011) 2 JHRE 106. See also Zygmunt Plater, ‘From the Beginning, a Fundamental Shift of Paradigms: A Theory and Short History of Environmental Law’ (1994) Loyola LA L Rev. 27.

existing ‘environmental human rights law’, thereby hinting at a state of quasi-subsumption between these two bodies of law.⁸³

Indeed, the post-Stockholm legislative revolution did not only take place within the IEL regime. Simultaneously, regional human rights instruments adopted after 1972 incorporated explicit references to the need to protect the environment to ensure the fulfilment of specific human rights. By way of illustration, an explicit collective right to environmental protection was recognized in Article 24 of the 1981 African Charter on Human and Peoples’ Rights (ACHPR).⁸⁴ The 1988 Protocol of San Salvador to the American Convention on Human Rights entails an explicit and independent right to environmental protection in its Article 11(1).⁸⁵ The same holds for the 2004 Arab Charter on Human Rights (Article 38);⁸⁶ the 2009 European Union Charter of Fundamental Rights (Article 37);⁸⁷ and the 2012 ASEAN Human Rights Declaration (Article 28(f)).⁸⁸ Noteworthy, the European Convention on Human Rights (ECHR) is

⁸³ John Knox, ‘The Human Right to a Healthy Environment: Has Its Time Finally Come?’ (Lecture at the Graduate Institute of International and Development Studies in Geneva 2015) <https://vimeo.com/125551938> accessed 20 December 2017.

⁸⁴ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

⁸⁵ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (entered into force 16 November 1999) OAS Treaty Series No 69 (1988).

⁸⁶ League of Arab States, Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008).

⁸⁷ European Union Charter of Fundamental Rights of the European Union [2012].

⁸⁸ ASEAN Human Rights Declaration (adopted 18 November 2012).

the only regional human rights instrument that does *not* refer to environmental protection. This corroborates the idea of a Stockholm influence in HRL, since the ECHR is also the only regional human rights instrument adopted before 1972. Thus, today, in every geographical region of the world, the mutually beneficial and interrelated legal nature of environmental and human rights protection has explicitly been recognized.⁸⁹ Other important international human rights instruments that see in environmental protection a precondition for the fulfilment of related human rights include the 1989 Convention on the Rights of the Child;⁹⁰ the 1989 ILO Convention No. 169 concerning Indigenous and Tribal Peoples;⁹¹ and the 2007 Declaration on the Rights of Indigenous Peoples,⁹² all adopted after the Stockholm Conference.

To conclude, this analysis evidenced how IEL and HRL emerged as autonomous and disconnected bodies of law that gradually evolved towards greater mutual legal integration. Since 1972, not only has the IEL regime been ‘humanized’ by inserting explicit references to the human rights to health or to life as objectives to accomplish through the implementation of MEAs; but the HRL regime has also been ‘greened’ by recognizing the existence of a human right to a protected environment or by integrating environmental protection concerns into existing human rights provisions,

⁸⁹ In all these instruments, however, the protection granted to environmental protection in connection to human right is more of a declaratory importance and does not provide for justiciable protection at the individual level.

⁹⁰ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), UNTS 1577, art 24(2)(c).

⁹¹ ILO Convention 169 (n 70), art 7(4).

⁹² UN Declaration on the Rights of Indigenous Peoples (adopted 2 October 2007 A/RES/61/295) art 29(1).

especially the rights to an adequate standard of living, to health, to food or to water.⁹³

The association of human rights with environmental protection spread the environmental cause beyond the niche of IEL by mobilizing the attention of stakeholders from the HRL regime. In return, however, an anthropocentric and instrumental approach to environmental protection replaced the more ecocentric orientation that drove the early environmental movement until the dawn of the 1960s. This anthropocentric shift led to a particular understanding of environmental protection.

2. The hegemonic frame and beyond: conflicting concerns and untold narratives

2.1 Framing the nexus between environmentalism and human rights

In line with Allott, law defines what the common interest of society is and paves the way for future actions and behaviours in the name of this common interest.⁹⁴ This conception sheds light on the role played by environmental laws in shaping the perception of environmentalism in our common imaginary. The legal scaffolding around the concept of environment determined its understanding, which evolved over time from a perception where Man was portrayed as a threat to Nature in its pristine and wild state, to an anthropocentric dogma where the environment is put at the service of human beings in order to fulfil their needs and intrinsic rights as well as those of future generations. The idea of Nature evolved over time, and continues to do

⁹³ Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Mapping Report, John Knox, A/HRC/25/53 (30 December 2013), [21-25].

⁹⁴ Allott (n 49), 71.

so, because the object of study (the ‘environment’) was an abstract and substantively indeterminate concept.⁹⁵

Birnie, Boyle and Redgwell pointed to the core of the issue when observing that the environment is ‘a term that everyone understands and no one is able to define’,⁹⁶ and concluded that ‘any definition of the environment will have the Alice-in-Wonderland-quality of meaning what we want it to mean’.⁹⁷ The meaning we attribute to the environment cannot rely on an objective reference that precedes its social and semantic use. Rather, the environment gains meaning through its adoption and translation in a range of cultural, social and scientific practices⁹⁸ Religions, spirituality, economic theories, artistic movements, political theories as well as scientific findings are all different epistemic sources that shape our understanding of what the environment means to us.⁹⁹

⁹⁵ For an account of twelve of the most influential Western thinkers’ ideas of nature, from Plato to Wittgenstein, see Roger Trigg, *Ideas of Human Nature: An Historical Introduction* (Basil Blackwell 1988).

⁹⁶ Birnie, Boyle, and Redgwell (n 2), 4; in reference to Caldwell’s statement about ‘development’ in Lynton Caldwell, *International Environmental Policy and Law* (1st edn., Durham, NC, 1980), 170.

⁹⁷ *ibid.*, 5.

⁹⁸ Drawing on Latour, the ‘environment’ can be conceptualized as an assemblage of meanings attributed by different actors, in different contexts and at different times. Latour offers an analysis of the various understandings of Nature and suggests the new concept of ‘Gaia’. Bruno Latour, *Facing Gaia: Eight Lectures on the New Climatic Regime* (Polity Press, 2017, trans. by Catherine Porter).

⁹⁹ For some, ‘it is through romantic philosophy and poetry that contemporary ideas about “nature” became firmly established’. See Humphreys and Otomo (n 47). For others, the construction of ‘nature’ is rooted in colonialism. See Richard H. Grove, *Green Imperialism. Colonial Expansion, Tropical*

Thus, today's mainstream conceptualization of the environment as an anthropocentric object normatively intertwined with human rights is the result of a long process of framing and shaping that started more than five decades ago. Fundamentally, frames are narratives or discursive strategies (instrumental communicative tools) that are employed to emphasize selected aspects of a problem according to political preferences and specific interests. As Morgera aptly explained, following Nollkaemper's reflection on frames:

Frames play an essential, though not always recognized, role in the development of international law. Frames select and accentuate certain aspects of reality over others to promote a particular problem definition or approach to its solution, they are chosen and strategically used by actors with particular agendas and powers, and they have distinct normative and regulatory implications.¹⁰⁰

The anthropocentric argumentative frame, thus, has a performative power: by describing, promoting or defending an anthropocentric definition of environmental law, it creates, develops and entrenches the latter in our common understanding. Accordingly, the anthropocentric shift in environmental law is not a perversion of the latter, but rather a performative mode of creating a common social understanding of what the 'environment' entails.

Island Edens and the Origins of Environmentalism, 1600-1860 (CUP 1996). And yet for others, our relationship to 'nature' has its roots in medieval Christianity. See White (n 12).

¹⁰⁰ Elisa Morgera, 'The Need for an International Legal Concept of Fair and Equitable Benefit Sharing' (2016) 27 EJIL 356, in reference to André Nollkaemper, 'Framing Elephant Extinction' (2014) 3 ESIL 6, blog post www.esil-sedi.eu/node/643 accessed 20 December 2017.

The current dominant anthropocentric approach to environmental protection is, therefore, a product of our society, deeply embedded in one specific epistemic understanding that became over time the mainstream worldview. This anthropocentric and synergistic frame does not reflect an ontological essence, but is only the latest in a series of social, legal and cultural understandings of the relationship between Man and Nature. Through specific processes of authority and power, this understanding became hegemonic.¹⁰¹ In these processes, law played an active role as a producer of worldviews.¹⁰² Law universalized the hegemonic anthropocentric understanding of the environment by integrating human rights concerns within the IEL regime at the legislative, judicial and doctrinal levels. At each level, however, synergies between these two fields of legal regulation have received the lion's share of attention.

At the legislative level, the above analysis has shown how legislative instruments adopted in the IEL regime after 1972 incorporated an explicit reference to specific

¹⁰¹ More precisely, through processes of *articulation* (the connection and alignment of events and experiences so that they hang together in a relatively unified and compelling fashion); *amplification* (stressing the importance of certain issues, events or beliefs in order to increase salience) and *salience* or *resonance* (what causes these issues to be taken up by other actors). Louisa Parks and Elisa Morgera, 'The Need for an Interdisciplinary Approach to Norm Diffusion: The Case of Fair and Equitable Benefit Sharing' (2015) 24 RECIEL 353, 363.

¹⁰² 'Law produces a specific vision of a community, and not just an echo of it'. Clifford Geertz, 'Local Knowledge: Fact and Law in Comparative Perspective' in *Local Knowledge: Further Essays in Interpretive Anthropology* (Basic Books 1983) 167. For an examination of how the environment is constructed through law, both in the 'hard' sense of directly regulating human activities that impact the environment, and in the 'soft' manner in which law's ideas of nature influence and are influenced by behaviours, values, and priorities, see Hirokawa (n 23).

human rights, and most commonly to the human right to health.¹⁰³ Likewise, the three last UN surveys that comprehensively studied the relationship between human rights and the environment illustrate once more the strict focus on synergies and anthropocentric concerns. The 2011 Analytical Study on the Relationship between Human Rights and the Environment, prepared by the Office of the High Commissioner on Human Rights (OHCHR);¹⁰⁴ the 2012 Rio+20 Joint Report prepared by the OHCHR and UNEP for the Rio Conference on Sustainable Development;¹⁰⁵ and the 2012 first Report of the Independent Expert, now Special Rapporteur, on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment,¹⁰⁶ all define the relationship between environmental and human rights protection as mutually beneficial. The mandate of the UN Special Rapporteur on Human Rights and the Environment itself aims specifically at developing a map of human rights obligations that are mutually supportive with international standards of environmental quality.¹⁰⁷ By concentrating

¹⁰³ See e.g. the definition of environmental pollution as endangering human health in the LRTAP Convention (n 53), and other MEAs that establish an explicit link with human rights (n 54).

¹⁰⁴ OHCHR Analytical Study on the Relationship between Human Rights and the Environment, 16 December 2011, UN Doc.A/HRC/19/34.

¹⁰⁵ Background Document on ‘Human Rights and the Environment’ for OHCHR and UNEP Joint Side Event on ‘Human Rights at the Center of Sustainable Development – Honoring Rio Principle 1’, UN Rio Conference on Sustainable Development (19 June 2012).

¹⁰⁶ Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, John Knox, A/HRC/22/43 (24 December 2012).

¹⁰⁷ See the five Annual Reports published since 2012, www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx accessed 20 December 2017.

only on synergies, the current UN agenda on environmental and human rights protection reinforces the anthropocentric paradigm where emphasis is put on the human benefits of enhanced environmental protection.

Simultaneously, international courts and tribunals have played a key role in consolidating the synergistic interrelation between environmental protection and human rights. The IEL regime does not have at its disposal a global or regional judicial mechanism competent to decide cases with an environmental component. Non-compliance procedures (NCPs) are sometimes created when MEAs are adopted to regulate specific sub-regimes of IEL.¹⁰⁸ Most commonly, however, NCPs are only open for inter-States and *interpartes* disputes, and do not offer access to justice for individual victims. Therefore, when environmental damages impede upon human rights, victims in search for judicial redress turn to judicial mechanisms established under the HRL regime.¹⁰⁹ In this context, a rich human rights jurisprudence with

¹⁰⁸ See Alan Boyle and James Harrison, 'Judicial Settlement of International Environmental Disputes: Current Problems' (2013) 4 JIDS 245; Antonio Cardesa-Salzmann, 'Constitutionalising Secondary Rules in Global Environmental Regimes: Non-Compliance Procedures and the Enforcement of Multilateral Environmental Agreements' (2012) 24 JEL 103; and Tullio Treves and others (eds) *Non-Compliance Procedures and Mechanisms and the Effectiveness of International Environmental Agreements* (T.M.C. Asser Press, 2009).

¹⁰⁹ Shelton qualifies this as a benefit of the human rights approach to environmental protection. Obviously, the downside is that all non-human rights concerns are left out of the process of adjudication. Dinah Shelton, 'Benefits and Limitations of a Human Rights Approach to Environmental Protection' (2014) Hungarian Y.B. Int'l L. & Eur. L., 146.

environmental components emerged.¹¹⁰ Catalytic jurisprudential moments exist in all international and regional human rights systems where adjudicators (often ahead of legislators) acknowledged the mutually beneficial relationship between environmental protection and human rights.¹¹¹ The human-centred nature of human rights judicial institutions, however, and the procedural settings that condition their competence to cases where a strict victim-based (or individual link) requirement must be established, limit their material scope to individual rights' concerned with environmental matters.¹¹² In the *Kyrtatos* case, the European Court of Human Rights (ECtHR) explicitly recognized that damages to a wetland and its associated wildlife in the vicinity of the applicant's property had no direct impact on the right to private and family life protected under Article 8 of the ECHR, since the individual link requirement was not fulfilled. For the ECtHR, '[n]either Article 8 nor any of the other Articles of the Convention are specifically designed to provide *general protection of the environment as such*'.¹¹³ In other words, all environmental matters in a larger

¹¹⁰ For an exhaustive study until 2002, see Dinah Shelton, 'Human Rights and the Environment: Jurisprudence of Human Rights Bodies', Background Paper presented during the Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, Geneva (14-16 January 2002).

¹¹¹ 'Catalytic jurisprudential moment' comes from Philippe Sands, 'Reflections on International Judicialization' (2016) 27 EJIL 890. Applied to the relationship between environmental protection and human rights, these judicial momentums include the *Ogoni* and *Endorois* cases in the African human rights system; the *López-Ostra* and *Fredin* cases in the European system; and the *Yanomami* and more recent *Saramaka* cases in the Inter-American system. On the synergistic construction of the human-environment nexus in these cases, see Marie-Catherine Petersmann, 'The Integration of Environmental Protection Considerations within the Human Rights Law Regime: Which Solutions Have Been Provided by Regional Human Rights Courts?' (2014) 24 Ital Y B Intl L 191.

¹¹² On the 'link' requirement, see Dupuy and Viñuales (n 22), 320-324.

¹¹³ *Kyrtatos v Greece* App no 41666/98 (ECHR, 22 May 2003), [52] (emphases added).

sense, if not directly related to the provisional human rights of the applicant, cannot be adjudicated.¹¹⁴ Human rights courts, thus, are ‘structurally biased’ towards the individualization of normative concerns, which is inherent to the legal coding and procedural enforcement of human rights.¹¹⁵ By interpreting environmental protection through the lenses of human rights, adjudicators have further reinforced the anthropocentric conceptualization of environmental protection in today’s society, where attention to environmental matters is only granted when relevant to human beings. Through the adjudication of human rights courts, the necessity to protect the environment was framed as serving the purpose of guaranteeing the human rights to life, to health, to private and family life of all individuals, and the rights to land or culture of indigenous peoples in particular.

Besides legislators and judicial actors, legal and non-legal scholars also played a crucial role in entrenching the synergistic frame. In the literature, most scholars have focused on the mutually supportive side of environment and human rights

¹¹⁴ On the two limits of individualistic approach and disconnected treatment of human rights adjudication in relation to environmental protection, see Evadne Grant, ‘International Human Rights Courts and Environmental Human Rights: Re-Imagining Adjudicative Paradigms’ (2015) 6 JHRE 2.

¹¹⁵ On the concept of ‘structural bias’, see Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (CUP 2005) 600–615. For Koskenniemi, judicial institutions are ‘mechanised producers of outcomes that are internally validated by their embedded hierarchies of preference – their structural biases’. Martti Koskenniemi, ‘Hegemonic Regimes’ in Margaret A. Young (ed), *Regime Interaction in International Law: Facing Fragmentation* (CUP 2012) 305-324, 317. In a similar vein but under a different conceptual framework, Nollkaemper holds that ‘[o]nce an institution has been set up, the law freezes the frame and limits their relevance to other frames’. Nollkaemper (n 100). Applied to this analysis, human rights institutions are only relevant for environmental concerns serving human rights purposes.

protection,¹¹⁶ and have paid only scattered attention to conflicts.¹¹⁷ Scholars have thus generalized the idea according to which the environment should be protected so as to protect human rights and secure human interests. Through this prism, the environment is defined as contingent on the benefits it brings to humans or, in other words, as a material and commodified object that must be protected and optimized to fulfil the social and economic interests of the human species.

The impact of this doctrinal framing on the understanding of environmental protection is illustrated by the words of Cançado Trindade, who already in 1993 reckoned that the rights to life and to health lie ‘at the basis of the ultimate *ratio legis* of the domains of international human rights law and of environmental law – focusing on the protection and survival of the human person and mankind’.¹¹⁸ Here, human rights and environmental protection are perceived as pursuing the same anthropocentric objective, thereby reaching the ultimate stage of normative subsumption where both legal regimes share the same *ratio legis*, namely that of ensuring the survival of mankind. This idea of normative (but not substantive) subsumption finds resonance in

¹¹⁶ Among the noteworthy contributions, see *inter alia* Anna Grear and Louis Kotzé (n 80); Linda Leib, *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives* (Martinus Nijhoff 2011); Donald Anton and Dinah Shelton, *Environmental Protection and Human Rights* (CUP 2011); Svitlana Kravchenko and John Bonine, *Human Rights and the Environment: Cases, Law and Policy* (Carolina Academic Press 2008); Alan Boyle and Michael Anderson, *Human Rights Approaches to Environmental Protection* (OUP 1998).

¹¹⁷ ‘[T]he conflicting dimension between human rights law and environmental law has been largely neglected by legal commentators and in international debates’. Dupuy and Viñuales (n 22), 331.

¹¹⁸ Antônio Cançado Trindade, ‘Environmental Protection and the Absence of Restrictions on Human Rights’ in Kathleen Mahoney and Paul Mahoney (eds) *Human Rights in the Twenty-First Century: A Global Challenge* (Nijhoff 1993), 578.

the words of Shelton, for whom ‘environmental protection may reinforce or even be a prerequisite to the enjoyment of other rights’.¹¹⁹ From this perspective, there can be no human rights without environmental protection. The frontier between environmental and human rights protection is blurred, as if both regimes cover different material or substantive scopes (the environment and human rights) but aim at the exact same normative goal: ensuring the best living conditions for the human species.

Thus, the anthropocentric approach to environmental protection and its synergistic frame in relation to human rights have dominated the legislative, judicial and doctrinal debates from the early 1960s onwards. Critical environmental law scholars, however, vehemently oppose it today and advocate the need for a new paradigm or a radical worldview shift.¹²⁰ Without entering into the details of these suggested alternative approaches to environmental law, what matters for our purposes is that all these doctrinal debates oppose the current overall anthropocentric nature of the IEL

¹¹⁹ Referring to the rights to life, to the highest attainable standard of health, to food, safe drinking water, housing and sanitation. Shelton further concludes that ‘the goals of environmental protection and human rights are both aimed at ensuring human well-being’. Shelton (n 110), 207.

¹²⁰ See Andreas Philippopoulos-Mihalopoulos, ‘Critical Environmental Law in the Anthropocene’ in Louis Kotzé (ed) *Environmental Law and Governance for the Anthropocene* (Hart Publishing 2017); Louis Kotzé, ‘Human Rights and the Environment in the Anthropocene’ (2014) 1 *The Anthropocene Rev.* 3; Anna Grear, ‘Deconstructing *Anthropos*: A Critical Legal Reflection on “Anthropocentric” Law and Anthropocene Humanity’ (2015) 26 *Law Critique* 225. In a similar vein, numerous scholars advocate an ecological (rather than anthropocentric) approach to environmental protection based on ecocentrism, holism, and intra-/intergenerational and interspecies justice. See *inter alia* Klaus Bosselmann, *When Two Worlds Collide: Society and Ecology* (RSVP Publishing Company Limited 1995).

regime and resist its too close normative intertwinement with human rights.¹²¹ This critique aims at bringing to light the fundamental aspects of the human-environment interface that were left off the radar of scholarly attention as a result of the hegemonic and predatory anthropocentric approach to environmental protection. The rhetoric of human rights, the critique laments, marginalizes values and interests such as ecocentric environmental concerns that ‘resist translation into rights-language’.¹²²

The critique, however, is not oblivious nor in denial of the essential positive role that human rights have played in achieving greater environmental protection.¹²³ As seen above, the dominant synergistic frame furthered the cause of environmental protection

¹²¹ ‘A “humans-first” rights approach would ultimately be self-defeating from an ecological perspective. Ecological approaches explore “the interconnectedness and reciprocal behaviours of organisms in a given environmental setting”, recognizing human social systems, including human rights, as being inextricably interlinked and embedded within complex, autopoietic and co-evolving non-human systems. Rather than being separate from their material surroundings, humans are “co-producers” of their environments, along with other living and non-living beings and processes’. Aled Dilwyn Fisher and Maria Lundberg, ‘Human Rights’ Legitimacy in the face of the Global Ecological Crisis – Indigenous Peoples, Ecological Rights Claims and the Inter-American human rights’ (2015) 6 JHRE 2, 181.

¹²² On this general nature of human rights, see Martti Koskenniemi, ‘The Effect of Rights on Political Culture’ in Martti Koskenniemi, *The Politics of International Law* (Hart Publishing 2011), 133-153, 133.

¹²³ ‘While our discussions acknowledged the very real limitations of the human rights framework, its strengths were also readily accepted: it is already well-developed (arguably representing the dominant paradigm in human affairs at an international level); it enjoys enormous resonance with people and by its very nature it recognises the unique position of the human’. Evadne Grant, Louis Kotzé and Karen Morrow, ‘Human Rights and the Environment: In Search of a New Relationship. Synergies and Common Themes’ (2013) 3 Oñati Socio-Legal Series 5, 959.

by linking it to a greater moral scheme on the one hand,¹²⁴ and by raising awareness outside the environmental niche on the other hand.¹²⁵ It also obfuscated, however, fundamental yet disregarded aspects of the general relationship between environmental and human rights protection. Indeed, the hegemonic synergistic frame does not capture the entire picture, but concentrates only on the positive interactions between environmental protection and human rights. Consequently, it misrepresents or ‘misframes’ a more complex reality, since the synergistic bias sheds light on a specific reality while obscuring others. One important aspect of the relationship between environmental protection and human rights crowded out by the anthropocentric and synergistic filter is the widespread manifestation of conflicts between environmental protection laws and human rights. Arguably, the synergistic mantra led to a form of agnotology by obscuring the negative impacts that environmental protection laws can have on human rights.¹²⁶

¹²⁴ ‘Human rights are ethical demands instead of legal commands or putative legal claims, providing a juridical expression of the underlying ethics of a society [and therefore] human rights, when they lay claim to a value or good, that claim or value is automatically raised to an elevated juridical level ... thus affording greater protection, but simultaneously also greater justificatory basis to claim entitlements’. Kotzé (n 120) 253.

¹²⁵ On how attaching the human rights label to environmental protection has allowed the latter to trigger effective action, see Gearty (n 42).

¹²⁶ See ‘Agnotocène: Externaliser la nature, économiser le monde’ in Christophe Bonneuil and Jean-Batiste Fressoz (n 48), 223-347. Agnotology refers to the study of ignorance, or more precisely the study of what we don’t know and why we don’t know it. As a new theoretical field, it questions how ignorance is produced or maintained, what keeps it alive or allows it to be used as a political instrument, through either deliberate or inadvertent neglect. See Robert Proctor and Londa Schiebinger (ed) *Agnotology: The Making and Unmaking of Ignorance* (Stanford UP 2008).

2.2 Re-adjusting the frame: integrating conflicts of norms

Jurisprudence of regional human rights courts empirically evidences widespread conflicts of norms between environmental protection laws and human rights. A case law analysis reveals that environmental protection laws most commonly collide with indigenous peoples rights;¹²⁷ private property rights;¹²⁸ rights of private and family life¹²⁹ and fundamental freedoms and rights of private companies protected under a human rights framework.¹³⁰ In light of the recurrent occurrence of conflicts, a scrupulous assessment is needed to offer a realistic picture of the relationship between environmental and human rights protection, since the orthodox frame romanticizes this relationship by accentuating harmony and disregarding normative tensions.

¹²⁷ A case law analysis of the IACtHR, the ACtHPR, the ECtHR and the CJEU reveals fifteen cases where an environmental law led to a limitation or a violation of indigenous peoples' rights. As an illustrative example, see the recent *Ogiek case, African Commission of Human and Peoples' Rights v Kenya* App 006/2012 (ACtHPR, 26 May 2017).

¹²⁸ Such cases, however, only emerged in a European context. A case law analysis of the ECtHR and the CJEU reveals nine cases in the former, and four cases in the latter, where an environmental law led to a limitation or a violation of private property rights. As an illustrative example, see *Fredin v Sweden* App no 12033/86 (ECHR, 18 February 1991).

¹²⁹ Such cases, however, have only been decided by the ECtHR. A case law analysis reveals seven cases where an environmental law led to a limitation or a violation of private family rights. As an illustrative example, see *Chapman v The United Kingdom* App no 27238/95 (ECHR, 18 January 2001).

¹³⁰ Such cases, however, have only been decided by the CJEU. A case law analysis reveals six cases where an environmental law led to a limitation or a violation of private companies' rights or freedoms. As an illustrative example, see Case T-614/13 *Romonta GmbH v European Commission* EU:T:2014:835.

Since the 1960s, the growing interest in the environment-human rights dyad gave rise to an important scholarship on the topic.¹³¹ As seen above, however, scholars have extensively commented the positive correlation that exists between them, and only scarce attention was granted to conflicts.¹³² The negative impacts that environmental pollution cause on human rights were extensively documented.¹³³ As a corollary to the existing synergies between environmental and human rights protection, the positive correlation between environmental and human rights harm corroborates the orthodox frame. The conflicts that exist between environmental *protection* laws and human rights (which do not fall under the hegemonic frame) are left under-explored. Among the alternative approaches that can relate the story of environmental law and human rights, the conflicting frame has become a lost narrative crowded out by the hegemonic synergistic vision.

To be fair, some scholars have touched upon existing conflicts, albeit the latter were not their main focus of attention.¹³⁴ Dupuy and Viñuales recognize the neglected

¹³¹ (n 116).

¹³² As of now, only one article in legal scholarship was entirely devoted to the conflicting dimension between environmental protection and human rights. See Dinah Shelton, 'Resolving Conflicts between Human Rights and Environmental Protection: is there a Hierarchy?' in Erika de Wet and Jure Vidmar (eds), *Hierarchy in International Law: The Place of Human Rights* (OUP 2012).

¹³³ (n 116).

¹³⁴ Dupuy and Viñuales provide the most recent account by devoting a sub-part of their chapter on 'Human Rights and the Environment' to 'Conflicts'. See Dupuy and Viñuales (n 22), 331-335. See also the sub-part on 'Potential Implications of Environmental Regulation on Human Rights' in Engobo Emeseh, 'Human Rights Dimensions of Contemporary Environmental Protection' in Marco Odello and Sofia Cavandoli (eds), *Emerging Areas of Human Rights in the 21st Century: The Role of the Universal Declaration of Human Rights* (Routledge 2011) 66-86, 75; the references to conflicts in John

attention paid to conflicts between environmental law and human rights law and contrast this limited attention with the ways in which the relationship between environmental law and other branches of international law were assessed, such as trade or investment law.¹³⁵ Their study successfully reviews how the literature on the relationship between environmental protection and trade and investment law has covered both the synergies as well as the tensions. In contrast, the authors show, the relationship between environmental protection and human rights is for now deprived of a study on their tensions. The authors conclude by calling for a sustained analysis of this conflicting relationship, ‘not only to assess its overall importance but also to understand how such tensions can be addressed’.¹³⁶

Merrills, ‘Environmental Rights’ in Brunnee, Bodansky and Hey (n 4); and in Antônio Cançado Trindade, ‘The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions on the Exercise of Recognized Human Rights’ (1993) 13 *Revista IIDH* 35-76.

¹³⁵ See *inter alia* Pierre-Marie Dupuy and Jorge Viñuales (n 45); Lorenzo Cotula, *Human Rights, Natural Resource and Investment Law in a Globalised World: Shades of Grey in the Shadow of the Law* (Routledge 2012); Joost Pauwelyn, *Conflicts of Norms in Public International Law: How WTO Rules Relate to Other Rules of International Law* (CUP 2003); Francesco Francioni (ed) *Environment, Human Rights and International Trade* (Hart 2001). Tellingly, the three first cases of international arbitration all concerned conflicts between economic interests and ecological interests. For a discussion of the *Pacific Fur Seal*; the *Trail Smelter* and the *Lac Lanoux* arbitrations, see Philippe Sands, ‘Litigating Environmental Disputes: Courts, Tribunals and the Progressive Development of International Environmental Law’ in Tafsir Malick Ndiaye and Rüdiger Wolfrum (eds) *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum of Judge Thomas A. Mensah* (Leiden: Martinus Nijhoff, 2007), 310-314.

¹³⁶ Dupuy and Viñuales (n 22) 335.

Thus, a more realistic frame that embraces the positive and mutually beneficial links but also acknowledges the potential trade-offs would clarify the overall picture. The attempt to pragmatically assess the environment-human rights nexus answers the call for greater conceptual clarity to move beyond rhetorical discourses and ensure a better implementation of environmental law.¹³⁷ Besides avoiding romantic stereotypes, greater conceptual clarity on the hard choices that sometimes need to be made between environmental *or* human rights protection would prove useful in times where sustainable development has become an ‘über-principle’ that lies at the core of some of the most important instruments of environmental governance and regulation, since conflicts between environmental protection and human rights are proxies for tensions between two of the three pillars of sustainable development, namely its environmental and social pillars.¹³⁸

¹³⁷ For Viñuales, ‘[w]e need a new model, whether explicit or implicit, which is more suitable for the implementation stage of global environmental governance – a model that confronts (instead of obscures) the sometimes hard choices that must be made to tackle the often competing demands of development and environmental protection and that derives clear strategic priorities from such choices’. Jorge Viñuales, ‘The Rise and Fall of Sustainable Development’ (2013) 22 *RECIEL* 3, 7. Such a pragmatic approach to environmental law goes along the line of reasoning of Montini, who denounces increasing ‘internal environmental conflicts’, or the the limits that climate change policies can have on other environmental protection considerations like land degradation. Massimiliano Montini, ‘The Rise of “International Environmental Conflicts” within the Green Economy’ (2014) 24 *Ital. YB Intl L* 95.

¹³⁸ The term ‘über-principle of sustainable development’ comes from Humphreys and Otomo (n 47) 799. See the recent Paris Agreement on Climate Change in which the promotion of sustainable development plays a central role. Paris Agreement FCCC/CP/2015/L.9/Rev.1 (adopted on 12 December 2015). For a legal analysis of the tensions inherent to the concept of sustainable development, see Viñuales (n 137). For a political analysis, see Tim Hayward, ‘International Political

If not properly addressed and anticipated, conflicts between environmental protection and human rights might continue to increase. In times where normative and substantive linkages between environmental and human rights protection will continue to flourish, being fully aware of the possible conflicts that may arise and thereby limit the full potential and positive outcomes of environmental protection laws is capital to ensure greater protection. In the Paris Agreement, attention was pointed to the core of the issue when urging states to ‘respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity’ when taking action to address climate change.¹³⁹

Overall, further research on the conflicting dimension of the relationship between environmental protection and human rights will overturn a biased narrative that has offered an incomplete understanding of the reality at stake, and add new insights into

Theory and the Global Environment: Some Critical Questions for Liberal Cosmopolitans’ (2009) 40 *Journal of Social Philosophy* 2.

¹³⁹ Paris Agreement (n 138) Preamble. See also John Knox, ‘Letter from the Special Rapporteur to Paris Convention’s Subsidiary Body for Scientific and Technological Advice (SBSTA): Human Rights and Safeguards in the New Climate Mechanism established in Article 6, paragraph 4 of the Paris Agreement’ (3 May 2016)

www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Activities.aspx accessed 20 December 2017.

the dynamics of conflict management in an international legal system defined by growing fragmentation, regulatory overlap and potentially growing inter-regimes conflicts of norms.¹⁴⁰

Conclusion

Over time, environmental protection laws evolved from a state of legislative autonomy, where environmental protection laws were adopted to protect Nature *from* Man (thereby arousing an antagonistic sentiment between Man and Nature), to a state of legislative interdependence with human rights, where environmental protection laws were adopted to protect Nature *for* Man (thereby translating a harmonious relationship between environmental protection and human rights). As a result, the normative aspirations of IEL and HRL were gradually shaped into the vocabulary, normative architecture and interpretative praxis of the other. In this process, a reversal of the overarching narrative in environmentalism took place, with humans being depicted not only as active agents that bear the responsibility to protect their environment, but, most importantly, as the first beneficiaries of environmental protection. This re-definition of environmental protection and its gradual normative and substantive intertwinement with human rights gave birth to a hegemonic

¹⁴⁰ For further analyses on such conflicts, see Petersmann (n 111); and Marie-Catherine Petersmann, 'Conflicts' in James May and Erin Daly (eds) *Encyclopaedia on Human Rights and the Environment: Indivisibility, Dignity and Legality* (Edward Elgar, forthcoming 2018); Marie-Catherine Petersmann, 'Environmental Protection and Human Rights: When Friends become Foes – Conflict Management of the CJEU' in Christina Voigt and Louis Kotzé (eds) *The Environment in International Courts and Tribunals: Questions of Legitimacy* (CUP forthcoming 2018).

anthropocentric worldview where environmental protection is perceived as a purpose aimed at protecting the rights and interests of the human species, more than the intrinsic value of nature. This re-conceptualization was rendered possible through the simultaneous and complementary work of legislators, adjudicators and legal scholars, all playing a catalyst role in mainstreaming the anthropocentric and synergistic mantra. This narrow frame, however, has led to a partial representation of the impact of environmental protection on human rights. The article denounces law's focus on human interests as mirrored in environmental protection, which echoes the myth of Narcissus losing the sight of the nature surrounding him when staring at his reflection in the lake.

Against this backdrop, the article has shown how the overall synergistic account of the relationship between environmental protection and human rights has led to an oversight of conflicts. Conflicts have passed almost entirely unnoticed in legal literature. Moreover, instruments of IEL seem to have built upon an initial stance: that environmental and human rights protections are always mutually beneficial. Yet, human rights jurisprudence reveals that laws aimed at protecting the environment frequently collide with human rights. Therefore, the article provides a more critical and untold narrative of the relationship between environmental protection and human rights, which highlights the trade-offs that legislators and adjudicators sometimes face between environmental *or* human rights protection. Thereby, the article counters the doctrinal agnotology that has blurred alternative narratives of environmental consciousness and partially 'misframed' the relationship between environmental protection and human rights.

Acknowledgements

The arguments in this article have been sharpened in conversations with Professor Joanne Scott and Professor Jérémie Gilbert, whom I thank for their time and commitment. I also want to thank Dimitri Van den Meerssche, Argyrios Altiparmakis and Sroyon Mukherjee for their insightful feedback on an earlier draft. Finally, I want to thank the anonymous reviewers for their helpful comments as well as the editorial team of JEL, and especially Professor Liz Fisher.