

A Critical Legal Appraisal of the International Environmental Legal Response Mechanisms to the Challenges of Climate Change in the World

Dr. Aderonke Abimbola Ojo¹ Tosin Ezekiel Ayo²

1.Lecturer, Department of Private and Property Law, Faculty of Law, Ekiti State University, Ado-Ekiti, P.M.B 5363, Nigeria

2.Lecturer, Department of Jurisprudence and International Law, Faculty of Law, Ekiti State University, Ado-Ekiti, P.M.B 5363, Nigeria

Abstract

Climate change is an environmental issue of global concern. It is an issue of concern to nations across the globe that can only be adequately addressed at the level of international environmental law. This paper sought to make a critical legal appraisal of a number and strength of the international environmental legal responses to the challenges posed by climate change across the earth. It took a legal cursory look and an appraising excursion into the relationship among climate change and international investment law, international trade law, international human rights law and global health. It concludes that a robust, comprehensive and more formidable international legal response coupled with an appropriate enforcement mechanism is desired to stem the tide of the challenges posed by climate change across the globe.

1.0 Introduction

Climate change presumably hurts innocent people. It puts ordinary people especially in developing disadvantaged nations, who for the most part have not contributed in any way to global warming, at extraordinary risk and allegedly causes damage to their health¹. The IPCC's Climate Change 2014 Synthesis report makes for sobering reading when they write about the consequences of climate change: "injury and death due to more intense heat waves and fires"; floods and droughts, and a rise in "food-borne and waterborne diseases". This risk is not just a matter of extreme weather events, such as the heat wave in Russia that took an estimated 55,000 lives in 2010 or the typhoon Haiyan, recording the fastest wind speeds on record. It is also the intensifying effect climate change has on other intractable global problems such as war, famine and economic migration. Repeated hot summers contributed to a spike in droughts across Syria, for example, triggering hardship and riots that culminated in the vicious civil war now underway.

The impacts of climate change challenge traditional notions in international law, most notably those relating to the principle of territorial sovereignty, with its presumption of defined territory and fixed maritime boundaries, and State responsibility with its presumption of liability and an obligation to make reparation. Furthermore, efforts to curb climate change have given rise sometimes in conjunction with developments in other environmental regimes to the evolution of some new principles and concepts of international law, including the principle of common but differentiated responsibilities, the notion of common concern of human kind, protection of vulnerable countries and so-called flexibility mechanisms for industrial countries to implement their commitments under the Climate Change Convention.

2.0 Scope of the Study.

This paper seeks to identify the number and the strength of international legal responses to the challenges posed by climate change. First, it asserts that much has not been done in the distant past and no much attention has been given to climate change by the international community and reviews the principal international legal instruments consequently adopted in response to climate change. This work will not extend to fully examining the challenges of climate change to territorial sovereignty, Statehood, maritime boundaries of coastal and island States, but it will briefly address the relationship among climate change and international investment law, international trade law, international human rights law and global health.

3.0 History of Climate Change Recognition in the World.

The first time climate change was recognized as a serious problem by an international gathering was in 1979. The First World Climate Conference, held in February, 1979 was a major scientific meeting. It issued a declaration calling on the world's governments to foresee and prevent potential man-made changes in climate that might be adverse to the well-being of humanity².

¹ Stephen Humphreys, 'International Law Stays Silent on the Responsibility for Climate Change'. Rethinking Prosperity in the Guardian. 11th December, 2014.

² United Nations' Convention on Climate Change Fact Sheet, 213.

A large number of international conferences on climate change have been convened since then. Attended by policy-makers, government leaders, environmental law scholars and scientists, they have addressed both scientific and policy issues. Important meetings have been held in Toronto¹, the Hague², Noordwijk³, Bergen⁴, and elsewhere. The Second World Climate Conference, held in 1990 in Geneva, was a particularly crucial step towards a binding global convention on climate change⁵. Some of these meetings have taken place under the auspices of the United Nations and its specialized agencies. Others have been held within regions for a while, such as the European Community, the Commonwealth and the South Pacific Forum. Individual governments have also taken the initiative to convene international or regional gatherings to discuss climate change. A number of meetings have been dedicated to the particular concerns of small island States⁶ and of developing countries⁷.

4.0 International Environmental Legal Response

Perhaps, the most prominent international legal response to the challenges posed by climate change occurred in the year 1992 when nations of the world entered into a binding legal Agreement to stop dangerous anthropogenic interference with the earth's atmosphere. In the two decades since entering upon the Agreement, that obligation has failed to reduce greenhouse gas emissions; quite the contrary, as levels have since skyrocketed to rates unthinkable in 1992 when the Treaty was signed. The United Nations Framework on Climate Change (UNFCCC) which is the 1992 Agreement has therefore sent a yearly retinue of political pundits, Environmental Law Scholars, activists and lawyers to some of the world's finest resorts to thrash out a binding Legal Agreement – but so far with little effect⁸.

5.0 International Environmental Legal Instruments.

The 1992 UN Framework Convention on Climate Change is thus the first binding international legal instrument to address the issue of climate change globally⁹. Adopted after two years of intensive negotiations within the Intergovernmental Negotiating Committee on Climate Change (INC),¹⁰ it was opened for signature in Rio de Janeiro at the June 1992 UN Conference on Environment and Development.¹¹ The INC negotiators relied heavily on the First Assessment Report of the Intergovernmental Panel on Climate Change¹², a body established jointly by the United Nations Environment Programme and the World Meteorological Organization (UNEP and WMO)¹³. They were also considerably influenced by the Ministerial Declaration issued by the Second World Climate Conference and by policy statements adopted by numerous other climate conferences. The Convention incorporated a number of newly emerging legal principles that had been developed or affirmed by various climate conferences¹⁴.

The Climate Convention will was therefore hoped to help fill the legal vacuum that has existed until now. The Convention was later initially signed by 155 States during UNCED. It was also poised to enter into force after it has been ratified by 50 states, which took a few years. As at now, more than 170 nations including the United States of America, the members of the European Union, Canada and Japan have signed the Treaty¹⁵. In the meantime, States are expected to start working towards the aims set by the Convention on a voluntary basis, but much work remains to be done. At the December 1-11, 1997 in Kyoto, Japan where parties to the United Nations' Framework Convention on Climate Change agreed to a historic Protocol to reduce greenhouse gas emissions, it was agreed that emission targets be set and time-tables for industrialized nations and market-based measures for meeting those targets be set. This allegedly reflects proposals advanced by the United States. It is equally worthy of note that the Protocol makes a down payment on the meaningful participation of developing countries, but more still needs to be done in this area, even though securing meaningful developing country participation remains a core U.S objective.

States must strive to ensure that the Convention enters into force as soon as possible. At the same time,

¹ United Nations' Convention on Climate Change Fact Sheet, 215.

² United Nations' Convention on Climate Change Fact Sheet, 217.

³ United Nations' Convention on Climate Change Fact Sheet, 218.

⁴ United Nations' Convention on Climate Change Fact Sheet, 220.

⁵ United Nations' Convention on Climate Change Fact Sheet, 221.

United Nations' Convention on Climate Change Fact Sheet, 203.

⁶ United Nations' Convention on Climate Change Fact Sheet, 213.

⁷ United Nations' Convention on Climate Change Fact Sheet, 204.

⁸ Wood P. What implications does Obama's victory have for climate change?

⁹ United Nations' Convention on Climate Change Fact Sheet, 234.

¹⁰ United Nations' Convention on Climate Change Fact Sheet, 209.

¹¹ UNCED Fact Sheet 207.

¹² IPCC Fact Sheet 208.

¹³ IPCC Fact Sheet 206.

¹⁴ IPCC Fact Sheet 204.

¹⁵ Takacs D. Carbon into gold: forest carbon offsets, climate change adaptation, and international law. *W-NW J Environ Law Policy/Hastings Int Comp Law Rev.*2009;15:39-87.

government experts must start discussing strong, concrete measures to include in future annexes and Protocols to the Convention. These Protocols can be expected to set out more specific commitments, such as timetables for reducing greenhouse gas emissions.

Even before the Convention was adopted, some countries had already taken unilateral legal action at the national level. Most OECD member states have set national targets for stabilizing or reducing their emissions of greenhouse gases. In 1990, the Council of the European Communities (EC) adopted a policy that provides for stabilizing the emissions of carbon dioxide the most significant greenhouse gas at 1990 levels by the year 2000. A strategy to limit carbon dioxide emissions and to improve energy efficiency was equally being elaborated by the EC Commission¹.

In addition, two other important international environmental treaties address climate change indirectly. The amended 1987 Montreal Protocol on Substances That Deplete the Ozone Layer legally obliges its parties to phase out chlorofluorocarbons (CFCs) by the year 2000 (fact sheet 224). There is also an afterclap to the Montreal Protocol on Substances that Deplete the Ozone Layer in the year 1992. Although inspired by concern over the destruction of the ozone layer, this protocol is significant also for climate change since CFCs are greenhouse gases. Similarly, the 1979 Geneva Convention on Long-Range Transboundary Air Pollution and its protocols regulate the emission of noxious gases, some of which are precursors of greenhouse gases². These treaties, however, do not address the complex set of inter-related climate issues.

Other International Legal Instruments and conferences that seek to address Climate Change are: Vienna Convention for the Protection of the Ozone Layer, 1985, the Kyoto Protocol, the 2002 World Summit on Sustainable Development, held in Johannesburg, South Africa and the United Nations' Climate Change Conference in Copenhagen, Denmark which failed to amount to anything of note. Even though the major reason for the conference was to provide a framework for climate change mitigation beyond year 2012 and there were series of negotiations by the European Union, United States, Japan, Canada, India, Australia and South Africa to cut down on greenhouse gas emissions, not much has been achieved sequel to the conference.

The Kyoto Protocol for instance notably addresses the greenhouse effect and it is basically an Agreement among the industrialized nations of the world to reduce emissions of six greenhouse gases over a certain period of time by harnessing the forces of the global market place to protect the environment. Emissions targets are by the Treaty to be reached over a five-year period as proposed by the United States rather than by a single year. The first budget period is the United States proposal of 2008-2012. The parties to the Protocol rejected Proposals favoured by others, including budget periods beginning as early as 2003 that were neither realistic nor achievable. Having a full decade before the start of the binding period, we allow more time for the United States companies to make the transition to greater energy efficiency and/or lower carbon technologies. There are a number of activities that absorb carbon such as planting trees will offer against emission targets. The treatment of these so-called sinks also constituted a controversial issue at Kyoto as many countries wanted sinks to be excluded. The United States insisted that they be included in the interest of encouraging activities like afforestation and reforestation.

Furthermore, there are issues centred on internal emissions trading. The United States prevailed in securing acceptance of emissions trading among nations with emissions targets. This free market approach pioneered in the United States will allow countries to seek out the cheapest emissions reductions, substantially lowering cost for the United States and others. Under an emissions trading regime, countries or companies can purchase less expensive emissions permit from countries that have more permits than they need (because they have met their target with room to spare). The inclusion of emissions trade in the Kyoto Protocol reflects important decision to address climate change through the flexibility market mechanisms.

6.0 The United States' Withdrawal of Commitment from Kyoto Protocol

One major setback to the fight against the problem of climate change is the United States' withdrawal from the Kyoto Protocol³. This occurred on the 28th day of March, 2001 when former U. S President, George Bush announced that the United States would withdraw from the Kyoto Protocol. Notably, since there is no legally binding effect for a Treaty in the absence of ratification, the refusal to ratify the Protocol makes it not binding on them. Bush further suggested that rather than committing to the Kyoto Protocol standards, the United States would combat global warming through other means, listing the development of energy efficient technology, market-based incentives to encourage industries to reduce greenhouse gas emissions on their own and conservation programmes that help sequester carbon in the soil.

It is noteworthy that the rejection of the Kyoto Protocol by the U.S is allegedly for selfish interests and sentiments as accepting the Protocol simply means cutting down on industrialization which would consequently

¹ IPCC Fact Sheet 211.

² IPCC Fact Sheet 225.

³ Atsegbua L, *Environmental Law in Nigeria: Theory and Practice*. 2nd Ed. Ambik Press. Benin City.

adversely affect the employment sector. This is particularly because the United States was reportedly responsible for about twenty five percent of the 1990 carbon dioxide emissions and without their participation, it can be safely submitted that the Kyoto Protocol might never be fully implemented.

By July 2001, the European Union, Japan, Canada, Russia, Australia and about 170 other nations reached an Agreement to proceed with the Treaty nonetheless. In order to secure the support and assistance of other highly industrialized nations, the European Union was therefore forced to make substantial concessions. The targets for emissions reduction were reduced by two-thirds from the original goals and countries were given opportunity to plant carbon-absorbent forests in order to earn pollution credits as a veritable alternative option to attaining the targets of emissions reduction. Kyoto Protocol-supporters and adherents thus believe that the Treaty remains nevertheless an essential and worthwhile international legal response geared towards combatting climate change, which ratification should not come later than expected.

The objection of the United States of America to the Protocol could therefore be adjudged to be in its concentration on emissions from industrialized countries and its continued obstinacy to seek to limit pollution from developing nations. Pro-Kyoto Protocol people contend that it is rather unfair to allow the rich and profligate people of the world who are inevitably the cause of the challenges at hand go without any punishment for their deleterious and irresponsible use of coal, oil and gas only for those who allegedly cause the problem to be the first to pull out of an Agreement to stem the tide of the evil. However, the United States and some other countries point out that the emissions of rapidly developing countries like China and India would soon be at par with theirs. And as such, their stand was predicated on the desire to see an equally shared carbon emission target reduction for all nations. Until an amendment is thus made to the Agreement, the U.S' stand remains unchanged. However, the European Union and other nations continue to pressure other nations to adopt the Protocol or develop a new international Agreement geared towards reducing greenhouse gases and promoting climate stability.

The Kyoto Protocol has not gone without being largely criticized for levying restrictions only on the developed nations of the world like the United States whilst turning a blind eye to similar activities by developing countries like India, Brazil and China, absence of a statutory enforcement mechanism for enforcing the Protocol and penalizing non-compliant countries¹. There are equally valid concerns raised by the German council on Global Change, (GCGC) on the form of the land-use charge and the inadequacy of the forestry activities under the Protocol requiring improvement.

7.0 Climate Change versus Global Health Concerns.

Perhaps the most important global response to climate change which is the Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC) has been widely seen as a failure². This is largely because of the danger it has allegedly posed to human health. Its green-house gas (GHG) emission target (a collective GHG reduction of 5.2% among industrialized countries compared with 1990 levels) was too low to make a significant difference; the treaty exempted highly populous transitional countries such as China and India; and the United States failed to ratify. Former U.S President, Barack Obama promised a dramatically different path based on steeper GHG reductions and leadership in global governance³. Thus, there are specific limits of binding emission targets which varies from country to country, although, those for the key industrial powers of the European Union, Japan and the U.S are similar, they were set at: 8% below 1990 emission levels for the European Union, 7% for the United States of America and 6% for Japan⁴.

The international community is focused principally on mitigation actions taken to reduce emissions and increase sinks of GHGs to avoid harmful climate change. The Kyoto Protocol expires in 2012, and the UNFCCC member states have begun the arduous process of negotiating a new emissions reduction regime, with a basic negotiating text now circulating⁵ and a conference of parties scheduled to convene in Copenhagen in December 2009. Even the more ambitious mitigation targets currently under negotiation, however, will not be sufficient to avoid a profound effect on the public's health in coming decades, with the world's poorest, most vulnerable populations bearing the disproportionate burden.

The influence of historic and current emissions will be so substantial that it is imperative to reduce global emissions while at the same time preparing for the effects. Recently, the UNFCCC has begun to turn its attention to adaptation changes to human systems to ameliorate the consequences of climate change. As transitional

¹ Atsegbua L, *Environmental Law in Nigeria: Theory and Practice*. 2nd Ed. Ambik Press. Benin City.

² Wood P. What implications does Obama's victory have for climate change? Climate Dilemma Web site. November 11, 2008. <http://climatedilemma.com/2008/11/11/obama-climate-change/>. Accessed April 22, 2018.

³ Max A. Obama's climate change team debuts at UN talks. Huffington Post Web site. March 29, 2009. http://www.huffingtonpost.com/2009/03/29/obamas-climate-change-tea_n_180441.html. Accessed April 22, 2018.

⁴ Atsegbua L, *Environmental Law in Nigeria: Theory and Practice*. 2nd Ed. Ambik Press. Benin City.

⁵ United Nations Framework on Climate Change Conference. (available at <http://unfccc.int/resource/docs/2009/awglca6/eng/08.pdf>) Accessed 21st April, 2018.

countries have begun to play a critical role in UNFCCC negotiations, attention is turning to an innovative new fund to provide assistance for adaptation in the world's poorest countries¹.

This Commentary proposes a new agenda for mitigation as well as adaptation approaches that emphasize the considerable health effects. Scientific consensus exists that climate change is anthropogenically forced, with effects on ecological systems and human health already in evidence². Systemic effects include increasingly intense and more frequent natural disasters such as tropical storms, floods, heat waves, droughts and wildfires resulting in injury, disease, and mass displacements to unsanitary shelters³. Although the causal relationship between climate change and particular disasters is difficult to establish, the heat wave in Europe (2003), the flooding in Mumbai (2005), and Hurricane Katrina in the United States (2005) are indicative of events likely to occur more often in the future.

Climate change creates fertile conditions for and alters the geographic range of, disease vectors and carriers such as mosquitoes, ticks, and rodents, bringing them into greater contact with human populations naive to the diseases they carry. Malaria, for example, is expected to move to higher altitudes⁴ and dengue to move farther north. Scientists also anticipate increases in food- and water-borne illnesses, which thrive in warmer conditions. Climate change also affects air quality, particularly in urban environments, as increased temperatures exacerbate air pollution, especially ground-level ozone and particulate matter. Increasing temperatures and higher concentrations of CO₂ will also increase the concentration of allergenic aero-pollens. The effect of climate change on air quality will add to the burden of respiratory and cardiovascular diseases, particularly among chronically ill individuals, such as those with asthma.

Climate change is particularly devastating for human health because of its effects on scarcity of clean water for drinking, sanitation, and crop irrigation⁵. Scarcity of clean water will dramatically increase diarrheal illnesses, already among the leading causes of death among children in the developing world. Ecosystem changes and water scarcity will also impair crop, livestock, and fisheries yields, leading to food shortages with increased hunger and famines⁶. Climate change is expected to play a major role in putting much of Africa under severe water stress as soon as 2020⁷. These cataclysmic events may result in economic instability, mass migrations, civil unrest, and armed conflict in a time of competition for increasingly scarce resources⁸.

The effects of climate change will be experienced in every region, but will disproportionately burden the global poor, exacerbating global health disparities. The poor, particularly in southern regions, are more vulnerable to climate change. These disadvantaged populations already live on the edge, with extreme scarcity of clean water and nutritious food, as well as high rates of endemic and epidemic infectious disease. The world's poorest and least healthy population also have the least capacity to ameliorate the potentially devastating effects of climate change. They have weak health systems, poor infrastructures, and less technological and manufacturing capabilities to adapt to rapidly changing weather conditions. Climate change, therefore, not only challenges the international community to find solutions to reduce the health effects but also to address the inevitable questions of global social justice.

8.0 Fully Funded Adaptation Projects as an International Legal Response.

The Adaptation Fund recently established by the UNFCCC could be ground-breaking in the level of assistance it offers to developing countries for climate change adaptation. The fund's financing mechanism relies on a 2% levy on Clean Development Mechanism projects undertaken in developing countries by industrialized countries seeking to offset their own emissions, rather than on voluntary contributions by donor countries⁹. Financing the fund could be expanded as part of future negotiations. Wealthy countries, however, are fighting expansion, arguing that any adaptation funding should be part of Official Development Assistance commitments, which historically have been woefully insufficient to meet health needs in poor countries¹⁰. Fully funding climate change adaptation would

¹ Climate talks need massive political support [press release]. Germanwatch Website. April 8, 2009. <<http://www.germanwatch.org/presse/2009-04-08e.htm>>. Accessed April 22, 2018.

² Confalonieri U, Menne B, Akhtar R, et al. Human health. In: Parry ML, Canziani OF, Palutikof JP, van der Linden PH, Hanson CE, eds. Climate Change 2007: Impacts, Adaptation and Vulnerability: Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge, UK: Cambridge University Press; 2007:291-431.

³ *Ibid.*

⁴ *Ibid.*

⁵ Bates BC, Kundzewicz ZW, Wu S, Palutikof JP, eds. 2008: Climate Change and Water. Geneva, Switzerland: Intergovernmental Panel on Climate Change Secretariat; 2008.

⁶ *Ibid.*

⁷ Bates BC, Kundzewicz ZW, Wu S, Palutikof JP, eds. 2008: Climate Change and Water. Geneva, Switzerland: Intergovernmental Panel on Climate Change Secretariat; 2008

⁸ Gostin LO. 'Why rich countries should care about the world's least healthy people'. JAMA. 2007;298 (1):89-92.

⁹ Harmeling S, Bals C, Seltz K, Hirsch T. Making the Adaptation Fund work for the most vulnerable people. Germanwatch Website. December 2008. <<http://www.germanwatch.org/klima/adfund08.pdf>> Accessed April 22, 2018.

¹⁰ United Nations Food and Agriculture Organization. Enabling agriculture to contribute to climate change mitigation. United Nations Framework Convention on Climate Change Website. <<http://unfccc.int/resource/docs/2008/smsn/igo/036.pdf>> Accessed April 22, 2018.

allow for exactly the kind of projects global health advocates have been urging for decades—capacity for disease surveillance and response, sanitation, food and water security, and capabilities for natural disaster preparedness and response¹.

It is instructive to note that irrespective of the fact that the global economy is underpinned by law, but not much has been done at the international plane about climate change especially prior to 1992. Climate-related cases have been absent from international courts – even from disputes involving human rights, investment or the environment. While there have been cases heard in some national courts, particularly in the US, they do not progress far².

The weak legal response to climate change at the global level therefore also means that big polluters have been getting off lightly. It was stated that at least 60% of proven oil reserves must be left in the ground if we are to have even a remote chance of limiting global warming to two degrees³. Yet oil companies and exporters continue to drill and explore, to enjoy their assets and hedge against future losses, as though climate change were a mere financial risk rather than an existential threat to peoples' lives and livelihoods⁴. The world of international law is behaving as though the problem of climate change does not exist.

9.0 Climate Change versus International Investment Law

There have been some international decisions bordering on International Investment Law stemming from the consequences of the deleterious activities of man and companies' contribution to climate change. A significant case was decided by a panel of international arbitrators in The Hague in the famous case of Yukos V Russia. This involved the compensation of five named shareholders in Mikhail Khodorkhovsky's former oil company, Yukos, which was driven to bankruptcy – allegedly by Russian tax policy. The case is noteworthy as it involves probably the largest arbitration award in history, at \$50bn an equivalent of (£31.8bn). The case is a sad reminder of just how much power a three-person international panel can wield over national tax policy, allowing them to take vast quantities of money from Russian taxpayers and put it into the hands of private shareholders. It is also notable for the methods by which the panel arrived at this extraordinary sum⁵. The number represents a portion of the money the shareholders were held to have lost through sales of oil that would have been extracted between 2004 and 2011, had Yukos not been bankrupted first. In other words, the panel ruled that between 2004 and 2011, with greenhouse gas emissions rising at record rates worldwide, those who had played a part in environmental destruction (and profited from it) should nevertheless be compensated to the tune for not having been free to produce more greenhouse gasses.

Even though the ruling seems bizarre, but the ruling was simply based on the issues as presented. Both Yukos and Russia recommended the panel follow the indexed market price for oil and gas in Russia over the period, which generally rose⁶. The overwhelming public interest in stemming climate change was absent from the proceedings and from the court's calculations. The human, social, environmental costs were irrelevant or, as economists like to say, 'externalized'. Thus lending credence to the fact that climate change issues did not catch the attention of the international court in spite of its importance to global health, sustainable development and the continued well-being of the earth.

10.0 Climate Change versus International Trade Law

Another dimension to the general lax at the international plane to the environmental legal response to climate change falling within the realms of international trade law is the fact that States refused to make policies that seek to hold foreign investors to certain environmental and climate change standards. One major way out for addressing climate change would be to impose low carbon standards on the production of ordinary everyday goods such as meat, mobile phones, and plastics. But if you impose standards on goods at home, the argument has always been that you must also impose them on imports or domestic industry will become uncompetitive and suffer⁷.

The question then arises whether or not international trade law allow States to impose low-carbon standards on imported goods? The answer is yes and no. A low or zero-carbon import policy is almost certain to violate World Trade Organization (WTO) law. There may be viable policies but they will be time-consuming and expensive to design, and there is no guarantee the WTO's principal court won't slap down any such policy on a

¹ Harmeling S, Bals C, Seltz K, Hirsch T. Making the Adaptation Fund work for the most vulnerable people. Germanwatch Website. December 2008. <http://www.germanwatch.org/klima/adfund08.pdf>. Accessed April 22, 2018.

² Stephen Humphreys, 'International Law Stays Silent on the Responsibility for Climate Change'. Rethinking Prosperity in the Guardian. 11th December, 2014.

³ *Ibid.*

⁴ Mary Robinson: 'International Law is coming up short in its response to climate change'. Rethinking Prosperity in the Guardian. 9th January, 2015.

⁵ Humphreys, *supra*.

⁶ *Ibid.*

⁷ Atsegbua L, *Environmental Law in Nigeria: Theory and Practice*. 2nd Ed. Ambik Press. Benin City. P. 272.

technicality¹. It is important to note that no country has yet tried such an option.

One would equally wonder then that why has the WTO not taken more proactive steps to tackle climate change and why has the estimated \$600billion, an equivalent of £382billion in annual subsidies to fossil fuels never been challenged², while paltry subsidies to support renewable energy technologies have been stopped? The answer lies in the sentiments of the handlers, the lack of political will and the unnerving power of vested interests at the international plane.

11.0 Climate Change and International Human Rights Law

One other prominent dimension of the somewhat weak international legal response to the challenges posed by climate change is the human right dimension. Given the self-evident harms inflicted by climate change on internationally protected human rights to health, food, water, shelter and to life itself, one might expect human rights law to provide a viable route to mount a challenge against the deleterious activities of man and machinery to climate change issues. But this has proved complicated. Many of the principal victims of climate change do not live in the countries where emissions are highest, a key feature of climate injustice.

There is lack of will and funds to pursue litigation of this kind and many of the cases have international dimension which makes the cases more difficult to pursue or impossible to sue the high-powered and often wealthy perpetrators. Where people directly affected by the changing climate already live in high-emitting countries such as the US, Canada, Japan, Australia or the European nations, human rights may yet provide some effective relief³. Litigation is beginning to happen in some of these places, but there are still significant hurdles and the pace has been incredibly slow. As regards harm to the climate, courts are faced with lengthy and complicated causal chains that appear at first sight quite unlike the existing case law. Courts need imagination in these cases, but so far they have rarely displayed it.

An International Bar Association report 'Achieving Justice and Human Rights in an Era of Climate Disruption' looked at each of these areas in some detail and at several others: international migration law, environmental law, the law of state responsibility. In each case, the report found that progress in internalising the urgent demands of climate change remained weak or non-existent. Fortunately the report has some solid suggestions for improving the international environmental legal response to climate change.⁴

12. 0 Conclusion

In conclusion, a robust, comprehensive and more formidable international legal response is desired to stem the tide of the challenges posed by climate change across the globe. An appropriate enforcement mechanism should also be put in place. Health concerns should equally play a crucial role in the resolution of these key debates in UNFCCC negotiations, but it is by no means certain that they will. Environmental governance structures have largely failed to include health advocates and policymakers in a coordinated response to climate change. This is a critical time for everyone genuinely desirous of preserving our earth and not losing it to the deleterious activities of man and machinery to advocate to demand that political leaders across the globe and nations who have signed several earth-preservation conventions to safeguard the health of the world's population, be genuinely committed to reducing carbon emission, promote environmental-friendly energy solutions, with particular attention to the survival needs of the most disadvantaged and show serious commitment to cutting carbon emission and reducing drastically greenhouse gases especially because climate justice requires extreme solidarity between nations, thus, whilst the law can certainly help promote change, it is up to every human and every nation to accept, acknowledge, drive and take responsibilities.

13. 0 Recommendations

It is hereby recommended that a comprehensive reform of the attendant enabling legislation at the international plane geared towards a more workable, functional and all-encompassing regulatory framework for addressing climate change issues by both the developed and the developing nations is desired.

Countries should be prevented from unilaterally altering and modifying or renege on their international obligations by refusing to assent and ratify climate-friendly Treaties to suit their selfish sentiments. Sanctions should be issued for disobedience of Agreements at the international plane to prevent nations from engaging in acts that only suit their whims and caprice and precluded from evading their voluntarily entered contractual obligations on the grounds that they are no longer bound by climate-protection International Treaties.

Countries across the globe should make sustainable development, commitment, dedication, integrity and

¹ Neira M, Campbell-Lendrum D. Saving lives, saving money. World Conservatives. 2009;1:24-26

² *Ibid.*

³ *Ibid.*

⁴ Humphreys, *supra*.

honesty the core components of their socio-political, environmental policies and economic operations and learn to live up to their statutory responsibilities of national preservation whether or not they contribute substantially to climate change or not.

Further and better research is hereby advocated to determine the extent of damage caused by climate change and decide how the law can be used to regulate human activities harmful to the climate.

Dr. Aderonke Abimbola Ojo, (LL.B, B.L, LL.M, Ph.D) is a Nigerian Lawyer and Law Teacher. She was trained at the then University of Ado-Ekiti, Ekiti state, the University of Ibadan, Nigeria and obtained her Ph.D in Law from the Ekiti State University, Ado-Ekiti, Nigeria where she currently teaches Law of Torts and Labour Law.

Tosin Ezekiel Ayo, (LL.B, B.L, LL.M) is a Nigerian Legal Practitioner and Law Teacher. He obtained his LL.B degree from the University of Ado-Ekiti, Nigeria and his LL.M (Energy Law) from the University of Aberdeen, United Kingdom where he emerged with the result of the overall best performance in the LL.M Energy law programme in September 2013. He is currently a Ph.D in Law candidate at the Ekiti State University, Ado-Ekiti, Nigeria where he teaches oil and gas law and environmental law. His research interest is international environmental oil and gas law.

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