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Human rights and the international protection of biodiversity – A promising alliance (Part I)

ROMY KLIMKE — 4 June, 2018



For a long time, the legal and political endeavours to protect humans from violations of their basic rights seemed in no way connected to the preservation of biodiversity. In the past, this paradigm has been reflected by indifferent international responses to biodiversity issues: Whereas the promotion and protection of human rights has in recent decades become a major concern of the international community and the relationship between human rights and the environment has increasingly been acknowledged, the potential implications of the numerous threats to biodiversity for human well-being seem to have gone largely unnoticed. However, newer developments within the UN system point to a change of paradigm. In March 2017, a Report by the UN Special Rapporteur on Human Rights and the Environment explicitly recognized biodiversity as essential to human rights for the first time.

This post examines this recent effort by the UN Special Rapporteur on Human Rights and the Environment with regard to human rights and biodiversity. It suggests that a human rights perspective can significantly advance international efforts to protect biodiversity insofar as a specific connection to human well-being can be determined. Making biodiversity a human rights issue pursues two complementary objectives: to guarantee the full enjoyment of human rights by protecting its natural foundation and to overcome the lack of implementation of the current biodiversity law regime. However, an anthropocentric approach to biodiversity has its limits as a clear connection between human well-being and the protection of species cannot always be drawn. Thus, a human rights perspective should only serve as a complement to the existing obligations of states under the international biodiversity law

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters explicitly aims at contributing to the protection of the right of every person to live in an environment adequate to his or her health and well-being (Art. 1). The convention has been considered as the “world’s foremost international instrument that links environmental and human rights”. At the international level, the Stockholm and Rio declarations represented a significant turn towards a human rights perspective on environmental matters, even though they did not refer to an individual right to a healthy environment as such. However, not a single international human rights contract stipulates a stand-alone right to the protection of the environment, let alone biodiversity.

The conceptual relationship between the environment and biodiversity

As the forementioned human rights instruments in each case refer exclusively to the environment, it seems vital to distinguish more carefully between the concepts of the environment in general and biodiversity specifically and to look at their interrelation. A common definition of biodiversity can easily be found as it has been laid down in the Convention on Biological Diversity: According to Art. 2 para. 1, biodiversity encompasses “the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems”. However, there is no coherent response to the question on how to define the environment. In its broadest sense, the environment can be described as the natural world as a whole, which evidently includes biodiversity. This understanding seems to guide the efforts of the UN Environment Programme (UNEP). According to a UNEP background note, environmental issues “relate to the quality and functioning of the natural environment and natural systems including biodiversity loss; greenhouse gas emissions, renewable energy, energy efficiency, natural resource depletion or pollution; waste management; ozone depletion; changes in land use; ocean acidification and changes to the nitrogen and phosphorus cycles”. However, it appears that in human rights law, the environment is commonly understood in a much narrower, anthropocentric sense, primarily covering the soil, water and air that surround human beings, and only incidentally flora and fauna, and even then, only as far as they are in immediate human surroundings. Biodiversity as a whole does not fit into this narrow scheme. Against this background, it appears that the relationship of human rights and biodiversity in international law has so far remained unresolved at best. This omission may not be accidental: indeed, human rights are by definition anthropocentric, and it is therefore of little surprise that they are concerned first and foremost with the environmental issues that most directly and immediately impact on the well-being of humans. This is also why international environmentalists and animal rights activists have persistently argued that species primarily deserve protection for

their own sake. However, while this moral argument is perfectly convincing in theory, it has not proven effective to trigger the international response necessary to reduce biodiversity loss.

The restrictive approach to environmental protection prevalent in human rights instruments is short-sighted and does not take into account the wide-ranging implications of biodiversity loss for the environment as a whole, and its inevitable impact on human life. However, recent developments point to a change of paradigm. At the UN level, the UN Special Rapporteur on Human Rights and the Environment has made some important steps toward the integration of biodiversity and human rights. The second part of this essay will examine and discuss his contribution.

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