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Talking Foreign Policy: "Foreign Policy and Climate Change" November 20, 2023 Broadcast

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TALKING FOREIGN POLICY: “FOREIGN POLICY AND CLIMATE CHANGE”

NOVEMBER 20, 2023 BROADCAST

Talking Foreign Policy is broadcast on Cleveland’s NPR Station, WKSU 89.7 FM in Cleveland, and its syndicates throughout Ohio. It is streamed worldwide from Ideastream Public Media. It is also available to listen to as a podcast any time after it airs. Talking Foreign Policy has aired quarterly since 2012.¹ “Recent episodes of the program have addressed such topical issues as The Indictment of Vladimir Putin,² Lessons from the Afghanistan Fiasco,³ and Responding to Tyrants.”⁴ This transcript was transcribed, edited, and footnotes were added by Frederick K. Cox International Law Center Fellows Joel Berg and Lauren Hogan.⁵

Michael Scharf: September 2023 was the hottest month in recorded history.⁶ Last Summer, smoke from hundreds of Canadian forest fires blanketed the United States.⁷ Maui ignited.⁸ The Amazon

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1. *See About the Center*, CASE W. RSRV., <https://case.edu/law/centers-institutes/cox-international-law-center/about-center> [<https://perma.cc/R9NE-Q6M3>] (providing helpful background information about the Frederick K. Cox International Law Center).
 2. *Id.*
 3. *Id.*
 4. *Id.*
 5. *Id.*
 6. *2023 Was the World’s Warmest Year on Record, By Far*, NAT’L OCEANIC & ATMOSPHERIC ADMIN. (Jan. 12, 2024), <https://www.noaa.gov/news/2023-was-worlds-warmest-year-on-record-by-far> [<https://perma.cc/4Q9X-M7QL>].
 7. *See* Christine Hauser & Claire Moses, *Smoke Pollution from Canadian Wildfires Blankets U.S. Cities, Again*, N.Y. TIMES <https://www.nytimes.com/2023/07/17/us/wildfire-smoke-canada-ny-air-quality.html> [<https://perma.cc/W6KZ-L56D>] (July 18, 2023).
 8. Gary Partyka & Bennett Erdman, *Meteorologic Analysis of the August 2023 Maui Wildfires*, NASA, https://gmao.gsfc.nasa.gov/research/science_snapshots/2023/meteorologic-analysis-maui-wildfires.php [<https://perma.cc/RN9P-BN6J>].

burned.⁹ Libya was deluged.¹⁰ Sea levels rose.¹¹ The world’s great rivers and lakes are drying up,¹² while climate migrants are pouring across borders.¹³

Is it too late to stop climate change? What can the international community do to respond to this existential global crisis? I’m Michael Scharf, Dean of Case Western Reserve University School of Law. In this broadcast of Talking Foreign Policy,¹⁴ our expert panelists—including the former U.N. Special Rapporteur for Human Rights and the Environment—will discuss the global climate crisis, right after the news.

[STATION BREAK]

Michael Scharf: Welcome to Talking Foreign Policy, the quarterly radio show and podcast.¹⁵ I’m your host, Michael Scharf, Dean of Case Western Reserve University School of Law.¹⁶ Today we’re going

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9. *Amazon Rainforest Fires*, RAINFOREST FOUND. US, <https://rainforestfoundation.org/engage/brazil-amazon-fires/> [<https://perma.cc/YQ3Q-M5UJ>].
 10. *Libya Floods 2023: Tsunami-Like Floods Cause a Devastating Humanitarian Disaster*, British Red Cross, <https://www.redcross.org.uk/stories/disasters-and-emergencies/world/libya-flooding-news-2023> [<https://perma.cc/F5TB-CH6Y>] (Jan. 5, 2024).
 11. Rebecca Lindsey, *Climate Change: Global Sea Level*, CLIMATE.GOV (Apr. 19, 2022), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level> [<https://perma.cc/93EJ-P4YY>].
 12. Gloria Dickie, *More Than Half of the World’s Large Lakes Are Drying Up, Study Finds*, REUTERS (May 19, 2023, 10:45 AM), <https://www.reuters.com/business/environment/more-than-half-worlds-large-lakes-are-drying-up-study-finds-2023-05-18/> [<https://perma.cc/YGP5-QE2U>]; Natalie Crocker et al., *The World’s Rivers Are Drying Up From Extreme Weather*, CNN (Aug. 20, 2022, 3:30 AM), <https://www.cnn.com/2022/08/20/world/rivers-lakes-drying-up-drought-climate-cmd-intl/index.html> [<https://perma.cc/W84T-9N3M>].
 13. Paula Beltran & Metodij Hadzi-Vaskov, *How Climate Shocks Are Linked to Cross-Border Migration in Latin America and the Caribbean*, IMF (Dec. 8, 2023), <https://www.imf.org/en/News/Articles/2023/12/08/cf-how-climate-shocks-are-linked-to-cross-border-migration-in-latin-america-and-the-caribbean> [<https://perma.cc/S6HQ-YRJZ>].
 14. *“Talking Foreign Policy” Broadcast*, CASE W. RSRV (Nov. 16, 2023), <https://thedaily.case.edu/talking-foreign-policy-broadcast/> [<https://perma.cc/HLA5-RPQQ>].
 15. *Talking Foreign Policy*, CASE W. RSRV, <https://case.edu/law/centers-institutes/cox-international-law-center/talking-foreign-policy> [<https://perma.cc/8PUF-JG6L>].
 16. Michael Scharf is a co-dean of Case Western Reserve University School of Law and the Joseph C. Hostetler—Baker Hostetler Professor Law. He has written and published extensively in the area of international law. *Michael*

to be talking about responding to global climate change. Joining us today from North Carolina is our special guest, Professor John Knox of Wake Forest University School of Law.¹⁷ John and I worked together at the U.S. Department of State. Years later, John was the inaugural U.N. Rapporteur for Human Rights and the Environment.¹⁸ John, it is so great to have you on our program.

John Knox: It's great to be here, Mike. Thanks for inviting me.

Michael Scharf: And with us from Omaha Nebraska is Professor Mike Kelly, the Head of Creighton University's international law program and a member of the Board of Directors of the prestigious International Association of Penal Law.¹⁹ Welcome to Talking Foreign Policy, Mike.

Michael Kelly: Thanks so much, Michael—good to be here.

Michael Scharf: And joining us, once again, from the nation's capital is Dr. Paul Williams,²⁰ the President of the Public International Law and Policy Group—a Nobel Peace Prize nominated NGO.²¹ Welcome back to Talking Foreign Policy, Paul.

P. Scharf, CASE W. RSRV. UNIV., <https://case.edu/law/our-school/faculty-directory/michael-p-scharf> [<https://perma.cc/7JEZ-6DW5>].

17. *John H. Knox*, WAKE FOREST L., <https://law.wfu.edu/faculty/profile/knoxjh/> [<https://perma.cc/3JAU-VE2J>] (“John Knox is an internationally recognized expert on human rights law and international environmental law. From 2012 to 2015, he served as the first United Nations Independent Expert, and from 2015 to 2018, as its first Special Rapporteur, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.”).
18. *First U.N. Independent Expert on Human Rights and the Environment Recounts His Work*, YALE L. SCH., (Mar. 3, 2023), <https://law.yale.edu/yls-today/news/first-un-independent-expert-human-rights-and-environment-recounts-his-work> [<https://perma.cc/RZY5-Y8US>].
19. Michael Kelly is the coordinator of the International and Comparative Law Program at Creighton University School of Law. He is current a member of the Board of Directors of L'Association International du Droit Pénal (International Association of Penal Law), a Paris-based society of international criminal law professionals. *Michael J. Kelly, JD, LL.M.*, CREIGHTON UNIV., <https://www.creighton.edu/campus-directory/kelly-michael-j> [<https://perma.cc/GC98-H4DT>].
20. Paul Williams is a Professor at American University Washington College of Law. He is also the president of PILPG, a Nobel-Peace-Prize-nominated NGO that has provided legal counsel in a dozen peace negotiations over the past twenty-two years. *Paul Williams*, AM. UNIV. WASH. COLL. OF L., <https://www.wcl.american.edu/community/faculty/profile/pwilliams/bio> [<https://perma.cc/Z3HW-KFK7>].
21. *Dr. Paul Williams*, PUB. INT'L L. & POL'Y GRP, <https://www.publicinternationallawandpolicygroup.org/dr-paul-r-williams-bio> [<https://perma.cc/D3L2-4RLU>]; PILPG is a global pro bono law firm that provides free legal services for peace negotiations and post-conflict, war-crimes prosecution, and transitional justice issues. *Public International Law &*

Paul Williams: Thank you, Michael. It's a pleasure to be back on the program.

Michael Scharf: I'm joined in the Ideastream Studio in Cleveland by law professor Milena Sterio, who was recently awarded the highest accolade in academia, the distinguished university professorship at Cleveland State University.²² Welcome, Milena.

Milena Sterio: Thanks, Michael. It's great to be back.

Michael Scharf: In the first segment of our broadcast, we will be discussing the problem of global climate change. In the second, we'll be looking at the pros and cons of the possible solutions. And in the third segment, we will be joined by Dr. Shannon French, a world-renowned ethicist who is the Director of the Inamori International Center for Ethics and Excellence.²³ She'll help us understand the ethical dimensions of the climate crisis. So, let's start things off with John Knox. John, tell us how you became the U.N. Special Rapporteur for Human Rights and the Environment and what you did in that position.

John Knox: Thanks, Mike. Again—it's really a pleasure to be here. The United Nations' principal human rights body is called the Human Rights Council, and it has special rapporteurs that it appoints to investigate particular areas and to report on countries' compliance and try and promote compliance with human rights generally.²⁴ But, occasionally, it appoints an expert to just try and clarify part of the field. In 2012, it decided to appoint an independent expert to essentially explain the relationship between human rights and the environment.²⁵ I had done a fair amount of work in both areas, including for governments—especially the Maldives on a pro bono basis.²⁶ The Maldives is a small island state that was involved in the initiative to

Policy Group, PUB. INT'L L. & POL'Y GRP., <https://publicinternationallawandpolicygroup.org/> [<https://perma.cc/JXF9-UY7H>].

22. Milena Sterio is a distinguished, chaired professor at Cleveland-Marshall College of Law and an expert in international law. *Professor Milena Sterio*, PUB. INT'L L. & POL'Y GRP., <https://publicinternationallawandpolicygroup.org/professor-milena-sterio-bio> [<https://perma.cc/6HU6-WYB8>].
23. *Shannon E. French, PhD*, CASE W. RSRV., <https://case.edu/inamori/people/shannon-e-french-director> [<https://perma.cc/7Z5V-HGNN>].
24. Special rapporteurs refer to experts in the human rights field who are called upon by the United Nations to investigate and advise on important human rights topics. *See Special Rapporteur on Human Rights Defenders*, U.N. HUM. RTS. SPECIAL PROC., <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders> [<https://archive.fo/w2CcC>].
25. *Special Rapporteur on Human Rights and the Environment*, U.N. HUM. RTS. SPECIAL PROC., <https://www.ohchr.org/en/special-procedures/sr-environment> [<https://archive.fo/Fxstb>].
26. *John Knox, Former Special Rapporteur (2012–2018)*, U.N. OFF. OF THE HIGH COMM'R, <https://ohchr.org/en/special-procedures/sr-environment/john-knox-former-special-rapporteur-2012-2018> [<https://archive.fo/JIQvp>].

create this mandate,²⁷ and I applied, at the encouragement of the Maldives and some others, and the Council ended up appointing me. Over the next six years, I visited countries, I issued reports, I investigated the relationship of human rights in the environment in different places all over the world. Essentially, I tried to promote a better understanding of how the relationship is interdependent and that a healthy environment is necessary for the full enjoyment of human rights, and how the exercise of human rights is vital to the protection of the environment.²⁸

Michael Scharf: Well, John, now that we've established your bonafides, can you give us some background about the global climate crisis?

John Knox: Sure, and the global climate crisis is really the reason, I think, why the mandate was created because that is what particularly concerned the Maldives over ten years ago and so many other people around the world, as well.²⁹ The facts are probably pretty well known to many of your listeners. Carbon dioxide in the atmosphere contributes to the so-called greenhouse effect. That means that the atmosphere retains warmth from the sun, making conditions here on Earth warmer than they otherwise would be.³⁰ That, to be clear, is a good thing. The greenhouse effect is why life on Earth exists as it does,³¹ but the problem is, as a result of burning fossil fuels, we are rapidly increasing the level of carbon dioxide in the atmosphere. Essentially, it's like we're steadily turning up the thermostat on the entire planet.³² That's because ever since the Industrial Revolution, the most important fuels we use for energy have been carbon-based: coal, natural gas, and petroleum. When we burn them, their combustion produces carbon dioxide. As a result,

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27. Chaloka Beyani (Special Rapporteur on the Human Rights of Internally Displaced Persons), *Rep. of the Special Rapporteur on the Human Rights of Internally Displaced Person*, U.N. Doc. A/HRC/19/54/Add.1, at 4 (Jan. 30, 2012).
28. *Special Rapporteur on Human Rights and the Environment*, *supra* note 25.
29. *See, e.g.*, Manzo, Zee et al., *Facing Dire Sea Level Rise Threat, Maldives Turns to Climate Change Solutions to Survive*, AM. BROAD. CO. NEWS (Nov. 3 2021, 8:37 AM), <https://abcnews.go.com/International/facing-dire-sea-level-rise-threat-maldives-turns/story?id=80929487> [<https://perma.cc/TSC3-CKDT>].
30. *See, e.g.*, *Greenhouse Effect*, NAT'L GEOGRAPHIC, <https://education.nationalgeographic.org/resource/greenhouse-effect/> [<https://perma.cc/7T4H-YDKF>].
31. *See id.*
32. *CO₂: The Thermostat That Controls Earth's Temperature*, NASA (Oct. 2010), https://www.giss.nasa.gov/research/briefs/archive/2010_lacis_01/ [<https://perma.cc/T4E3-X6PW>].

the more our economies grow, the more carbon dioxide we produce.³³ As a result of that, we've now raised the global average temperature of the entire planet about 2° Fahrenheit, or a little over 1° Celsius, above where it was at the beginning of the Industrial Revolution.³⁴

Michael Scharf: You know, John, in this day and age, it's really hard to get everybody to believe the same facts. In fact, there's these statements like, "there's alternative facts!"³⁵ How do you answer those who say climate change isn't really a problem that we should be concerned about?

John Knox: I guess I would say that what you hear sometimes is an idea that, "well, the temperature of the planet has fluctuated quite a bit over its very lengthy, billion-plus year history," and that, of course, is true.³⁶ The problem is that most of that fluctuation—the vast, vast amount of it—has not involved human beings as we now are. For about the last 10,000 years, which is essentially all of recorded human history, the global average temperature of the planet has really not varied much (only within a range of about 1° C or, in other words, about half a degree either way).³⁷ We are now leaving that range and moving into uncharted territory. As a point of comparison, the last time the planet was outside that range was the end of the last ice age, about 12,000 years ago, when global temperatures were about 3 to 5 degrees colder than they are now.³⁸ For a sense of how much difference that makes, ice sheets then were a mile thick over what's now New York and Detroit and, I believe, Cleveland, as well.³⁹ So, small changes in the global average temperature can have gigantic effects and, in fact, we're already seeing them start. California has seen the worst wildfires in its

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33. Abbas Mardani et al., *Carbon Dioxide (CO2) Emissions and Economic Growth: A Systematic Review of Two Decades of Research from 1995 to 2017*, 649 SCI. TOTAL ENV'T 31, 44–45 (2019).
 34. *Earth Observatory*, NASA, <https://earthobservatory.nasa.gov/world-of-change/global-temperatures> [<https://perma.cc/3PA4-UY5>].
 35. *See Rampant Disinformation Is Delaying Climate Action*, U.N., <https://un.org/en/climatechange/rampant-disinformation-delaying-climate-action> [<https://perma.cc/CW98-XCM2>].
 36. *See Michon Scott & Rebecca Lindsey, What's the Hottest Earth's Ever Been?*, CLIMATE.GOV (Nov. 22, 2023), <https://www.climate.gov/news-features/climate-qa/whats-hottest-earths-ever-been> [<https://perma.cc/UAK2-XNR2>].
 37. Univ. of Ariz., *Global Temperatures over Last 24,000 Years Show Today's Warming 'Unprecedented'*, PHYS.ORG (Nov. 10, 2021), <https://phys.org/news/2021-11-global-temperatures-years-today-unprecedented.html> [<https://perma.cc/QTJ6-CJY6>].
 38. *Id.*
 39. *See John P. Rafferty, Laurentide Ice Sheet*, BRITANNICA, <https://www.britannica.com/place/Laurentide-Ice-Sheet> [<https://perma.cc/27XD-M7L7>].

history.⁴⁰ Pakistan has seen the worst flooding in its history.⁴¹ Just last week, Acapulco got hit with the second most rapidly intensifying hurricane ever recorded.⁴² These are all warning signs of the warmer world that we're moving into, and remember, the world as it is now is the coolest world we will all live in for the rest of our lives. It's only getting warmer from here on, which means the effects of that warming climate are going to intensify until we phase out fossil fuels.

Michael Scharf: John, on the other side of the coin, how do you answer those who say it's just too late now to do anything to stop climate change because we've already crossed these important tipping points?

John Knox: Well, the problem is the thermostat's just going to keep going up until we actually stop it. So, while it is too late to hold the temperature increase to 1°C, it's definitely not too late to hold it to 2°C.⁴³ A 2°C temperature rise would still be disastrous in many ways, but holding it at 2°C would be far better than letting it rise to 3°C, and so on and so forth.⁴⁴ However bad things get, there's no point at which it would ever be possible to say, "well, this is as bad as it can get. Things can't get any worse." Things can always get worse if the temperature keeps getting hotter, and stopping things from getting worse is always worth fighting for.

Michael Scharf: That's a really helpful way to put it. Let's bring our international law expert, Milena Sterio, into the conversation. Milena, can you provide us with some concrete examples of the threats that global climate change poses?

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40. Dana Hessheimer, *New Approaches Needed to Fight Wildfires*, CALMATTERS (Oct. 6, 2021), <https://calmatters.org/commentary/2021/10/new-approaches-needed-to-fight-wildfires/> [<https://perma.cc/8TC6-KR5Q>].
 41. Kathleen Magramo, *A Third of Pakistan Is Underwater Amid its Worst Floods in History*, CNN, <https://www.cnn.com/2022/09/02/asia/pakistan-floods-climate-explainer-intl-hnk/index.html> [<https://perma.cc/N7A6-JZAG>] (Sept. 2, 2022, 6:08 AM).
 42. *Hurricane Otis Causes Catastrophic Damage in Acapulco, Mexico*, NAT'L ENV'T SATELLITE, DATA, & INFO. SERV. (Nov. 2, 2023), <https://www.nesdis.noaa.gov/news/hurricane-otis-causes-catastrophic-damage-acapulco-mexico> [<https://perma.cc/8JNB-KHDD>].
 43. See Rebecca Hersher, *It's Unlikely, But Not Impossible, to Limit Global Warming to 1.5 Celsius, Study Finds*, NPR (Oct. 30, 2023, 12:17 PM), <https://npr.org/2023/10/30/1208241783/its-unlikely-but-not-impossible-to-limit-global-warming-to-1-5-celsius-study-fin> [<https://perma.cc/Y5M9-CQDY>].
 44. See *NASA Study Reveals Compounding Climate Risks at Two Degrees of Warming*, NAT'L AIR & SPACE ADMIN. GLOBAL CLIMATE CHANGE (Aug. 14, 2023), <https://climate.nasa.gov/news/3278/nasa-study-reveals-compounding-climate-risks-at-two-degrees-of-warming/> [<https://perma.cc/CD6K-9JE9>].

Milena Sterio: Sure, Michael. Some of such threats include things like rising sea levels or the threat of rising sea levels.

Michael Scharf: And why do we care about that?

Milena Sterio: We care about that because rising sea levels can submerge entire states, which literally means the disappearance of entire states.⁴⁵ Here, we can talk about Pacific Island nations—places like Tuvalu or Vanuatu⁴⁶—or also Indian Ocean nations, such as the Maldives—which John mentioned earlier.⁴⁷ Those instances where entire states are submerged, or parts of states are submerged, can lead to massive migrations of entire populations.⁴⁸ They can also lead to starvation because you have entire groups of people who can no longer produce food, who can no longer sustain themselves.⁴⁹ That can also lead towards war, conflict, violence as states start to aggressively battle each other over natural resources.⁵⁰

Michael Scharf: Alright, so the situation is pretty grave. Let me turn to Michael Kelly. The countries of the world have pledged to make significant reductions in so-called greenhouse gases when they signed the Paris Climate Agreement in 2015.⁵¹ Mike Kelly, what are some of the ways the countries can reach those targets?

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45. Jessie Yeung, *Rising Sea Levels Threaten Hundreds of Millions—and It's Much Worse Than We Thought*, CNN, <https://edition.cnn.com/2019/10/30/world/rising-sea-cities-study-intl-hnk-scli-sci/index.html> [<https://perma.cc/87B2-H98G>] (Oct. 30, 2019, 10:30 AM).
 46. Jess Shankleman, *Sinking Islands Turn to Court as They Fight for Climate Survival*, BLOOMBERG (Sept. 10, 2023), <https://www.bloomberg.com/news/articles/2023-09-10/sinking-islands-turn-to-court-as-they-fight-for-climate-survival> [<https://perma.cc/PJ87-HPGA>].
 47. See generally Martin Ras & Giulio Fabris, *The IPCC Report and the Climate Crisis in the Pacific*, U.N. DEV. PROGRAMME (Oct. 25, 2021), <https://www.undp.org/pacific/blog/ipcc-report-and-climate-crisis-pacific> [<https://perma.cc/P7US-G7QM>]; see also Naff Asim, *We're Being Swallowed by the Ocean and Running Out of Freshwater*, UNICEF (Nov. 18, 2023), <https://www.unicef.org/rosa/blog/were-being-swallowed-ocean-and-running-out-freshwater> [<https://perma.cc/X44R-SCTU>].
 48. Press Release, Secretary General, Stressing Rising Seas Already Creating Instability, Conflict, Secretary-General Says Security Council Has Critical Role in Addressing Devastating Challenges, U.N. Press Release SG/SM/21688 (Feb. 14, 2023) [hereinafter U.N. Press Release SG/SM/21688].
 49. See NIBIO, *Food Security Threatened by Sea-Level Rise*, PHYS.ORG (Jan. 18, 2017), <https://phys.org/news/2017-01-food-threatened-sea-level.html> [<https://perma.cc/FM99-26RN>].
 50. *Conflict and Natural Resources*, U.N. PEACEKEEPING, <https://peacekeeping.un.org/en/conflict-and-natural-resources> [<https://perma.cc/A6XH-G4E>].
 51. The Paris Agreement is an international treaty on climate change. Adopted in December 2015 and entering into force in November 2016, it was adopted by 196 state parties. Paris Agreement art. 2, Dec. 12, 2015, 3156 U.N.T.S. 79; See also *The Paris Agreement*, U.N. FRAMEWORK

Michael Kelly: Thank you, Michael. Yes, you're right. How do we actually get at reducing our carbon footprints? You can look at the usual suspects: reduce the use of electricity,⁵² produce electricity using different means than we use now (like solar and wind technology),⁵³ stop deforestation,⁵⁴ start reforestation,⁵⁵ reduce travel.⁵⁶ That last one—a lot of people don't want to hear about, but if you are going to travel, travel in an electric vehicle. A big component of American corporations beginning to meet their ESG standards,⁵⁷ and we'll talk about that a little bit more in segment three of this program, is converting their fleets to electric vehicles. We see Amazon doing this now actively across the United States.⁵⁸ Transportation is thirty percent of our greenhouse gas source production, according to the Environmental Protection Agency.⁵⁹ So that's a huge chunk of the pie that we can take a good whack at. In addition to that, realigning priorities within your federal departments is certainly one way to do this.⁶⁰ Carbon emissions are not just the EPA's responsibility; it's the Department of Transportation's responsibility, as well. And if they prioritize that, then we'll see more movement in this area.

CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement> [<https://perma.cc/Z3H3-QTZ>].

52. *What You Can Do About Climate Change*, EPA (DEC. 18, 2023), <https://www.epa.gov/climate-change/what-you-can-do-about-climate-change-energy> [<https://perma.cc/4KV4-4ULB>].
53. *Renewable Energy—Powering a Safer Future*, U.N., <https://www.un.org/en/climatechange/raising-ambition/renewable-energy> [<https://perma.cc/3S6R-PNMD>].
54. *See, e.g., India Must Urgently Step Up Its Reforestation Efforts*, FAIR PLANET (Aug. 26, 2023), <https://www.fairplanet.org/editors-pick/india-reforestation-efforts/> [<https://perma.cc/F6KW-2NRG>].
55. *Id.*
56. Ross Bennett-Cook, *It's Time to Limit How Often We Can Travel Abroad —'Carbon Passports' May be the Answer*, CNN (Nov. 27, 2023, 7:45 AM), <https://www.cnn.com/travel/carbon-passports-explainer/index.html> [<https://perma.cc/D58T-9BRQ>].
57. *Accelerating ESG Goals with Electric Vehicles and Fleet Electrification*, VOLTEUM (Nov. 12, 2023), <https://www.volteum.io/blog/Accelerating-ESG-goals-with-electric-vehicles-and-fleet-electrification> [<https://perma.cc/3JPW-N5WV>].
58. Annie Palmer, *Amazon Is Starting to Deliver Packages with Rivian Electric Vans*, CNBC, <https://www.cnbc.com/2022/07/21/amazon-is-starting-to-deliver-packages-with-rivian-electric-vans.html> [<https://perma.cc/P5DK-3RL8>] (July 22, 2022, 4:46 PM).
59. *Sources of Greenhouse Gas Emissions*, EPA, <https://epa.gov/ghge-missions/sources-greenhouse-gas-emissions> [<https://perma.cc/BZ8G-RNZ4>] (Feb. 23, 2024).
60. *See* TINA HODGES, U.S. DEP'T OF TRANSP. FED. TRANSIT ADMIN., PUBLIC TRANSPORTATION'S ROLE IN RESPONDING TO CLIMATE CHANGE 1 (2010).

Michael Scharf: Well, none of that's going to be cheap. Paul Williams, how difficult do you think it will be to stop catastrophic rising levels of CO₂ and methane without disrupting economic growth in a time when the economies of the world are all under pressure?

Paul Williams: Well, Michael, I think it's a three-part puzzle. As John had mentioned, we've based our economic infrastructure on fossil fuels as a result of the Industrial Revolution. Developing states looking to move into the upper tier of development, they're doing it based on fossil fuels.⁶¹ But as Mike Kelly has pointed out, there is technology—electricity, wind, solar, nuclear—the real problem that I want to put out there is that most of our concern with global warming seems to be performance art. People are really big on talking about global warming but, in order to restructure, we need to put down the steak knife. We need to put on the tennis shoes. We need to get off the airplane, and I think we see this. The Biden administration is the most pro-green administration we've had in a long time,⁶² but I'm not entirely sure it's serious. We look at the subsidies for electric vehicles—they're high-end electric vehicles. Who has fifty thousand dollars, even with the tax subsidy, to buy an electric vehicle?⁶³ We need to start getting serious about shifting our consumption patterns and getting people to genuinely embrace a low carbon footprint lifestyle. Otherwise, we're just going to keep talking in circles.

Michael Scharf: Well, that's a good place for us to take our first break. When we return, we're going to be talking about the international framework for addressing climate change, so stay with us.

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61. See Umair Ifran, *Who Gets to Keep Burning Fossil Fuels as the Planet Heats Up?*, VOX (Nov. 30, 2022, 10:40 AM), <https://www.vox.com/energy-and-environment/23458617/cop27-fossil-fuels-energy-developing-countries-coal-oil-gas-africa-finance> <https://perma.cc/K2UW-JZXN>.
 62. Press Release, U.S. Dept. of Agriculture, Biden-Harris Administration Invests \$1 Billion for Nearly 400 Projects to Expand Access to Trees and Green Spaces in Communities and Neighborhoods Nationwide through Investing in America Agenda (Sept. 14, 2023), <https://www.usda.gov/media/press-releases/2023/09/14/biden-harris-administration-invests-1-billion-nearly-400-projects> [<https://perma.cc/89CC-FB5K>].
 63. Emma Newburger, *Nearly Half of Americans Say it's Unlikely They'll Buy an Electric Vehicle as Their Next Car: Poll*, CNBC, <https://cnbc.com/2023/04/11/nearly-half-of-americans-say-its-unlikely-theyll-buy-an-ev-next-poll.html> [<https://perma.cc/4S77-CNNW>] (Apr. 11, 2023, 3:04 PM); EJ Antony & Anthony F. Esposito, *Taxpayers Are Subsidizing Rich Electric-Vehicle Owners—to the Tune of Billions*, THE HERITAGE FOUND. (Nov. 9, 2023), <https://heritage.org/government-regulation/commentary/taxpayers-are-subsidizing-rich-electric-vehicle-owners-the-tune> [<https://perma.cc/3UVP-M3PZ>]; Pete Grieve, *The Average Electric Car is 22% Cheaper than a Year Ago*, MONEY (Oct. 17, 2023), <https://money.com/ev-vs-gas-cars-price-difference-decreasing/> [<https://perma.cc/5JJ9-BLYQ>].

[STATION BREAK]

Michael Scharf: Welcome back to Talking Foreign Policy, brought to you by Case Western Reserve University and Ideastream Public Media. I'm Michael Scharf, Dean of Case Western Reserve University School of Law. I'm joined today from North Carolina by the former U.N. Special Rapporteur for Human Rights and the Environment, John Knox; from D.C. by the president of the Public International Law and Policy Group, Paul Williams; from Omaha, Nebraska, by Creighton University Professor Michael Kelly; and, here in the Ideastream studio, by Professor Milena Sterio of Cleveland State University School of Law. Now, in this segment of our show, we're going to be discussing the weaknesses of the Paris Climate Agreement and how to shore those up. So, let's begin with John Knox. John, what is the Paris Climate Agreement, and what does it do?

John Knox: So, Mike, the Paris Climate Agreement is the most important single climate agreement, and it was adopted in 2015 after years of negotiation.⁶⁴ Almost all of the countries in the world belong to it now.⁶⁵ The agreement is lengthy, but at its core, it's really pretty simple. Countries agreed to try to hold the increase in the global average temperature to well below 2°C above pre-industrial levels, and they said they will try and pursue efforts to limit the temperature increase to 1.5°C.⁶⁶ To that end, every country has to submit a so-called "nationally determined contribution," or "NDC."⁶⁷ The thing is, these nationally determined contributions are just what they sound like. That is, they're nationally determined. In other words, each country can decide for itself what it will do to reduce its own greenhouse gas emissions.⁶⁸ Then, every five years, every party is supposed to submit a new NDC, which should, in the words of the treaty, represent a progression beyond the parties' then-current nationally determined contribution and reflect its highest possible ambition reflecting its common but differentiated responsibilities.⁶⁹ So, the idea here is, in principle, when you add all these NDCs up, they should result in an overall performance that gets us well below 2°C.⁷⁰

64. Paris Agreement, *supra* note 51, at 25.

65. Melissa Denchak, *Paris Climate Agreement: Everything You Need to Know*, NRDC (Feb. 12, 2021), <https://nrdc.org/stories/paris-climate-agreement-everything-you-need-know> [<https://perma.cc/6XKE-XML9>].

66. Paris Agreement, *supra* note 51, art. 2.

67. *All About the NDCs*, U.N., <https://www.un.org/en/climatechange/all-about-ndcs> [<https://perma.cc/L6SQ-ZGKR>].

68. *See id.*

69. Paris Agreement, *supra* note 51, art. 4(9).

70. *All About the NDCs*, *supra* note 67.

Michael Scharf: So let me turn to Paul Williams. The Paris Agreement, which John was just describing, focuses not just on reducing greenhouse gases, but there are also provisions in there about climate change adaptation.⁷¹ What are some of the potential technologies that can mitigate the effects of climate change as envisioned by the agreement?

Paul Williams: Well, Michael, I think in terms of the technology end of the spectrum, we're in pretty good shape. In terms of being on the cusp of an ability to think through how to adapt to climate change, we should not take our foot off the gas, so to speak, on reducing the trajectory of global warming. But with artificial intelligence, we can be a lot smarter about how we manage our water, which is going to become an increasingly scarce resource with climate change.⁷² We can be a lot smarter about how we manage the food production, which is, as we see, already under threat from climate change.⁷³ So, I think, rather than worrying about Arnold Schwarzenegger and Skynet taking over the world, we should be all in on artificial intelligence to basically augment our thinking on how we can adapt to the changed climate.⁷⁴ As John said, it's never going to be cooler than it is now, so we need to adapt to that because we're already experiencing the consequences. And then we also, in addition, have to figure out how to stop it from getting warmer. But the technology is out there.⁷⁵ We just have to harness it.

Michael Scharf: Now, Paul, I don't know if former president Trump was afraid of the Terminator or not, but I do know that he didn't like the Paris Climate Agreement.⁷⁶ Is the United States a party to it or not? I'm kind of confused about its status.

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71. Paris Agreement, *supra* note 51, art. 7(1).
 72. Rifat Alam, *Five Ways Artificial Intelligence Is Going to Shape the Future of Water and Resilient Infrastructure*, WSP (Mar. 21, 2023), <https://www.wsp.com/en-us/insights/2023-artificial-intelligence-shaping-future-of-water> [<https://perma.cc/6NEF-HZ9B>].
 73. A. Gomez-Zavaglia et al., *Mitigation of Emerging Implications of Climate Change on Food Production Systems*, 134 FOOD RSCH. INT'L, Apr. 23, 2020, at 1.
 74. See Micah Minevich, *How to Fight Climate Change Using AI*, FORBES (July 8, 2022, 8:47 AM), <https://www.forbes.com/sites/markminevich/2022/07/08/how-to-fight-climate-change-using-ai/> [<https://perma.cc/R3UZ-594V>].
 75. See U.N. Framework Convention on Climate Change, Technology and the UNFCCC: Building the Foundation for Sustainable Development 2 (2016).
 76. See *Statement by President Trump on the Paris Climate Accord*, WHITE HOUSE: TRUMP ARCHIVES (Jun. 1, 2017), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-president-trump-paris-climate-accord/> [<https://perma.cc/CN8M-ZCFH>].

Paul Williams: Yes, no, yes. So we signed up for it in 2015,⁷⁷ then the Trump administration withdrew from it in 2020,⁷⁸ setting us back in our preparations and our adaptation. But the Biden administration has put us back into the Paris Agreement as of 2021.⁷⁹

Michael Scharf: Alright, so the second largest producer of greenhouse gases is back in business in the treaty.⁸⁰ Milena Sterio, John Knox alluded to this, but can you spell out some of the weaknesses of the Paris Agreement?

Milena Sterio: Sure, Michael. The Paris Agreement, unfortunately, is a fairly weak agreement. Although there are 195 countries that have signed on, this agreement is essentially not enforceable.⁸¹ As John mentioned, countries submit these so-called NDCs, nationally determined contributions, but these are essentially five-year cycles, five-year promises to adopt a certain number of measures to protect the environment—to reduce climate change. However, these are, as John said, nationally determined, and these are not really enforceable.⁸² And countries can't force each other to do something. So, if for example, the United States says we're going to do "x, y, and z," even if the "x, y, and z" is very weak, no other country can force the United States to do anything in particular under the Paris Accord. And Michael, very sadly, we know that as of September 2023, as of now, we know that most countries that are parties to the Paris Accords are not on target to meet their NDCs.⁸³

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77. Tanya Somanader, *President Obama: The United States Formally Enters the Paris Agreement*, WHITE HOUSE: OBAMA ARCHIVES (Sept. 3, 2016, 10:41 AM), <https://obamawhitehouse.archives.gov/blog/2016/09/03/president-obama-united-states-formally-enters-paris-agreement> [<https://perma.cc/89XV-S9C6>].
78. Drew Kann, *The US Is Officially Out of the Paris Climate Agreement. Here's What Could Happen Next*, CNN (Nov. 4, 2020, 10:25 AM), <https://www.cnn.com/2020/11/04/politics/us-exits-paris-climate-agreement-next-steps/index.html> [<https://perma.cc/22NT-UPAE>].
79. Press Release, Anthony J. Blinken, Secretary of State, The United States Officially Rejoins the Paris Agreement, Press Statement (Feb. 19, 2021), <https://www.state.gov/the-united-states-officially-rejoins-the-paris-agreement/> [<https://perma.cc/69A7-PFSG>].
80. *Greenhouse Gas Emissions by Country 2024*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/greenhouse-gas-emissions-by-country> [<https://perma.cc/7R2N-8JSN>].
81. Raymond Cléménçon, *The Two Sides of the Paris Climate Agreement: Dismal Failure or Historic Breakthrough?*, 25 J. ENV'T & DEV. 3, 8–11 (2016).
82. *Will the Paris Climate Deal Be Legally Binding? Experts Explain*, WORLD ECON. F. (Apr. 10, 2015), <https://www.weforum.org/agenda/2021/11/paris-climate-agreement-legally-binding/> [<https://perma.cc/NZK5-XQ9K>].
83. *Window to Reach Climate Goals 'Rapidly Closing,' UN Report Warns*, U.N. NEWS (Sep. 8, 2023), <https://news.un.org/en/story/2023/09/1140527> [<https://perma.cc/M5G9-YU43>].

Michael Scharf: Alright, it's not working. Mike Kelly, do you think we need some kind of an additional agreement to shore it up—a "Paris Agreement Protocol?" What would such an agreement do?

Michael Kelly: Well, yes, we do. The question is, how would you design it? Per the terms of the framework agreement itself, any protocol that comes along will likely be technology-based, and this will be hooked into technology transfer to nations that don't have the technology and capacity building. Those kind of go hand in hand. One of the stumbling blocks there is proprietary information from the businesses that develop the technology you're going to use. These are intellectual property issues.⁸⁴ But, when you think about it, we ran into the same stumbling block during COVID. Big Pharma didn't want to share a lot of its technology and its intellectual property, but we got around that in order to get the vaccinations we needed to Latin America, Africa, and Asia.⁸⁵ So we can do it, it's just a question of whether we'll be able to prioritize this in a way to do it. Another model that isn't really envisioned too much in the agreement itself is utilizing the IPCC⁸⁶ more. The IPCC is the Intergovernmental Panel on Climate Change. These are the U.N. scientists who are telling us what's going to happen. They have the science. If we let the IPCC, in a protocol, begin allotting reduction amounts to each country, instead of each country doing it themselves, on a scientific basis, that would have a lot more impact.

Michael Scharf: I love these ideas, Mike. But let me turn to Paul. Paul Williams, you've negotiated a number of international agreements.⁸⁷ You know how hard it is to do. What are the political obstacles to adopting the kind of proposal that Mike Kelly is talking about?

Paul Williams: Well, Michael, I think the primary political obstacle is that combating climate change has, in fact, become big business,⁸⁸ and so each state is going to look at the solution to climate change through the lens of its domestic economy. The French—nuclear

84. See Matthew Rimmer, *Beyond the Paris Agreement: Intellectual Property Innovation Policy, and Climate Justice*, 8 LAWS (SPECIAL ISSUE) 4–5 (2019).

85. See SUSI GEIGER & NICOLE GROSS, TECH SHARING, NOT TECH HOARDING: COVID-19, GLOBAL SOLIDARITY, AND THE FAILED RESPONSIBILITY OF THE PHARMACEUTICAL INDUSTRY 2 (2023).

86. Rold Lidskog & Göran Sundqvist, *Lost in Transformation: The Paris Agreement, The IPCC and the Quest for National Transformative Change*, FRONTIERS, Sept. 20, 2022, at 5.

87. PAUL R. WILLIAMS, LAWYERING PEACE ix–x (2021).

88. Justin Worland, *Planet Earth's Future Now Rests in the Hands of Big Business*, TIME (Apr. 14, 2022, 7:00 AM), <https://time.com/6166178/earths-future-big-business/> [<https://perma.cc/T66S-89Q5>].

power; that's the solution.⁸⁹ The Germans—wind farms, particularly wind machines that have been built in Germany.⁹⁰ The Chinese—solar, since they've cornered that market.⁹¹ The Americans—our technology on electricity.⁹² So, when you sit down with the scientists, they're going to be sitting next to the economists. And the economists are going to say, "have we got a deal for you?! Nuclear, wind, solar, electric." And then, as Michael Kelly noted, the transfer of technology—there are huge problems at the moment with transfer of technology and stealing of technology.⁹³ So, the solution, which is the transfer of technology—this is a very inopportune time politically to be suggesting we transfer technology on these highly, highly, highly valuable approaches to combating climate change.

Michael Scharf: So we have a flawed treaty. We have a lot of obstacles to fixing it. The latest development is the United Nations General Assembly adoption of a resolution recognizing a human right to a healthy environment.⁹⁴ Now, John Knox played a key role in the adoption of that resolution.⁹⁵ John, can you tell us about what it adds to what the U.N. human rights bodies have already said about climate change and human rights?

John Knox: Sure, the United Nations' recognition of the human right to a healthy environment is important because it's the first time that the international community, as a whole, has recognized that we all do have a human right to a clean, healthy, and sustainable environment.⁹⁶ And it's important to note that it did so by an overwhelming margin. 161 States voted in favor.⁹⁷ None voted against,

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89. Kate Abnett, *France Steps up Push for Nuclear-Based Fuels in EU Renewables Law*, REUTERS (Mar. 21, 2023, 4:35 AM), <https://www.reuters.com/business/energy/france-steps-up-push-nuclear-based-fuels-eu-renewables-law-2023-03-21/> [https://perma.cc/JR2S-52K4].
90. DPA, *German Wind Power Grew Dramatically in 2023, Industry Groups Say*, YAHOO (Jan. 16, 2024), <https://news.yahoo.com/german-wind-power-grew-dramatically-114208348.html> [https://perma.cc/JKU2-EHVC].
91. See Edward White, *How China Cornered the Market for Clean Tech*, FIN. TIMES (Aug. 9, 2023), <https://www.ft.com/content/6d2ed4d3-c6d3-4dbd-8566-3b0df9e9c5c6> [https://perma.cc/V49L-7SHX].
92. *Technology Development*, U.S. DEP'T OF ENERGY OFF. OF ELECTRICITY, <https://www.energy.gov/oe/technology-development> [https://perma.cc/6MZ4-TT97].
93. See, e.g., Nicholas Yong, *Industrial Espionage: How China Sneaks out America's Technology Secrets*, BBC (Jan. 16, 2023), <https://www.bbc.com/news/world-asia-china-64206950> [https://perma.cc/Y2MB-H9DT].
94. G.A. Res. 76/300 (July 26, 2022).
95. Jacob Katz Cogan, *Contemporary Practice of the United States Relating to International Law*, 117 AM. J. INT'L L. 128, 130–31 (2023).
96. *Id.* at 129–31.
97. *UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment*, IISD (Aug. 3, 2022), <https://sdg.iisd.org/news/unga->

and only a handful of states abstained, led by China, Iran, and Russia.⁹⁸ At the same time, while this U.N. recognition is a brand-new thing, it comes against the backdrop of at least twenty years of increasing application of a very wide range of human rights to environmental issues, including rights to life and health.⁹⁹ Human rights bodies, in other words, have already greened human rights by holding that states have obligations to take steps to protect people from environmental harm, including by respecting their rights to participate in environmental decision-making, to receive environmental information, to obtain effective remedies, and so forth.¹⁰⁰ Human rights are really, I think, the most exciting thing to happen to environmental law and policy in a long time. Plaintiffs around the world in national and international courts are successfully arguing that environmental harm of all types, including climate change, violates their human rights. The *Urgenda* decision by the Dutch Supreme Court may be the single most important precedent.¹⁰¹ In 2019, the court ordered the Netherlands to reduce its greenhouse gas emissions more quickly in order to comply with its obligations under the European Convention of Human Rights.¹⁰² But these developments aren't just in Europe. A state court in Montana, just this August, issued a decision that the right to a healthy environment contained in its state constitution requires the state to consider the effects of climate change and its decisions.¹⁰³ So, against this backdrop of just so much going on in this field of human rights in the environment, I think the main value of the resolution is not that it adds a new layer of law—the resolution itself isn't even

recognizes-human-right-to-clean-healthy-and-sustainable-environment/
[<https://perma.cc/CNN8-YVUR>].

98. Press Release, General Assembly, With 161 Votes in Favour, 8 Abstentions, General Assembly Adopts Landmark Resolution Recognizing Clean, Healthy, Sustainable Environment as Human Right, U.N. Press Release GA/12437 (July 28, 2022).
99. John H. Knox (Special Rapporteur) *Report on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, ¶14, U.N. Doc. A/HRC/37/59 (Jan. 24, 2018); Rep. of the G.A. ¶ 37, U.N. Doc. A/73/188 (2018).
100. *See, e.g.*, U.N. High Comm'r for Hum. Rts., *Understanding Human Rights and Climate Change*, at 2–5.
101. Isabella Kaminski, *Dutch Supreme Court Upholds Landmark Ruling Demanding Climate Action*, THE GUARDIAN (Dec. 20, 2019, 8:08 AM), <https://theguardian.com/world/2019/dec/20/dutch-supreme-court-upholds-landmark-ruling-demanding-climate-action> [<https://perma.cc/7QB8-UZYJ>]; HR 13 januari 2020, RvdW 2020, 19/00135 m.nt. (State of the Netherlands / *Urgenda*) [hereinafter *Urgenda*].
102. *Urgenda*, *supra* note 101, at 7.5.1.
103. *Held v. Montana*, No. CDV-2020-307, 97, 101–02 (Mont. Jud. Dist. Ct. Aug. 14, 2023).

legally binding¹⁰⁴—but, rather, that it continues to raise the visibility of the issue in a way that can catalyze further action. As Eleanor Roosevelt said about the Universal Declaration of Human Rights when it was adopted in 1948, “it will serve as a common standard of achievement for all peoples of all nations.”¹⁰⁵ Indeed, this new resolution, adding the human right to a healthy environment to the human rights pantheon, has been called effectively Article 31 of the Universal Declaration of Human Rights.¹⁰⁶

Michael Scharf: You know, I will note that the Universal Declaration of Human Rights is having its seventy-fifth Anniversary next month,¹⁰⁷ so it’s a good time to be thinking about its importance and its relationship to climate change. And I think what you’re describing, John Knox, is a paradigm shift where people are starting to think, and courts are starting to address climate change as a human rights problem. So let me go to Michael Kelly. What effect do you think that the General Assembly resolution will have on these ongoing cases and on the efforts to address climate change?¹⁰⁸

Michael Kelly: Oh, a huge effect. I mean there is a logical sequence, you can’t have a healthy environment unless you control climate change. The linkage there is obvious. This General Assembly Resolution really, in a sense, activates a lot of pre-existing language and a lot of modern constitutions and statutes within states around the world. Just to use John Knox’s example about the Dutch Court ordering the government of the Netherlands to comply with carbon reduction schemes, that was an order to comply with international law that came from a domestic court.¹⁰⁹ International law can be used by

104. U.N. Press Release, *supra* note 98.

105. “*My Most Important Task*” *Eleanor Roosevelt and the Universal Declaration of Human Rights*, ROOSEVELT HOUSE, <https://www.roosevelthouse.hunter.cuny.edu/exhibits/my-most-important-task/> [https://perma.cc/5V6N-98UU].

106. John Knox, *The Right to a Healthy Environment Joins the Pantheon of Human Rights*, OPEN GLOB. RTS. (Jan. 15, 2024), <https://www.openglobalrights.org/right-to-healthy-environment-joins-pantheon-human-rights/> [https://perma.cc/FCB9-5AQF].

107. *Human Rights Day 2023, Commemorating the 75th Anniversary of the Universal Declaration of Human Rights*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, <https://www.ohchr.org/en/get-involved/campaign/udhr-75> [https://perma.cc/T9TV-26Z4].

108. *See* Press Release, General Assembly, General Assembly Adopts Resolution Requesting International Court of Justice Provide Advisory Opinion on States’ Obligations Concerning Climate Change, U.N. Press Release GA12/497 (Mar. 29, 2023).

109. *Dutch Court Orders Shell to Reduce Emissions in First Climate Change Ruling Against Company*, CLEARLY GOTTLIEB (June 30, 2021), <https://www.clearlygottlieb.com/news-and-insights/publication-listing/dutch-court-orders-shell-to-reduce-emissions-in-first-climate-change-ruling->

domestic courts to force countries to take reductions. The Netherlands, in compliance with that, is going to be reducing over the next three years by twenty percent the number of flights coming into its giant airport, Schipol Airport.¹¹⁰ Because the Netherlands is a small country, it's got two things: it's got tulips and a giant airport. The way it's going to reduce its carbon footprint is to reduce the carbon footprint of that airport.¹¹¹

Michael Scharf: Milena Sterio, John Knox just mentioned the several international court cases that are pending that will address climate change. There are three advisory opinions pending before the International Court of Justice,¹¹² the Inter-American Court of Human Rights,¹¹³ and the Law of the Sea Tribunal.¹¹⁴ There are also three cases before the European Court of Human Rights,¹¹⁵ and then Mike Kelly was just telling us about some national cases as well. Can you briefly walk us through those cases, and what their potential ramifications would be?

Milena Sterio: Sure Michael, probably the most significant case is pending before the International Court of Justice in The Hague.¹¹⁶ This case was a request for an advisory opinion from the court coming through a general assembly resolution in the U.N. and really a campaign spearheaded by Vanuatu,¹¹⁷ which is one of these Pacific Island nations

against-company [<https://perma.cc/NNT6-FBLS>]; *Urgenda*, *supra* note 101, at 7.5.1.

110. *See generally* Cagan Koc and April Roach, *Dutch to Cut Amsterdam Airport's Capacity Over Noise Pollution*, BLOOMBERG (June 24, 2022, 12:32 PM), <https://bloomberg.com/news/articles/2022-06-24/dutch-to-cut-amsterdam-airport-s-capacity-over-noise-pollution> [<https://perma.cc/4DR2-355F>].

111. Xiaofei Xu, *One of Europe's Busiest Airports to Cap Passengers Through Early 2023*, CNN (Mar. 22, 2023, 1:58 PM), <https://www.cnn.com/travel/article/amsterdam-schiphol-cut-flights-carbon-emissions-climate/index.html> [<https://perma.cc/H7VX-HJU8>].

112. Maria Tigre & Jorge Carrillo Banuelos, *The ICJ's Advisory Opinion on Climate Change: What Happens Now?*, SABIN CTR. FOR CLIMATE CHANGE L. (Mar. 29, 2023), <https://blogs.law.columbia.edu/climatechange/2023/03/29/the-icjs-advisory-opinion-on-climate-change-what-happens-now/> [<https://perma.cc/S25K-RQMX>].

113. *Id.*

114. *Id.*

115. Lesley Clark, *Climate Fights at European Court May Ripple Across the Globe*, E&E NEWS (Mar. 28, 2023, 6:43 AM), <https://www.eenews.net/articles/climate-fights-at-european-court-may-ripple-across-the-globe/> [<https://perma.cc/V228-ULB6>].

116. *See* Tigre & Banuelos, *supra* note 112.

117. Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change, Rep. of the G.A., at 1, U.N. Doc. A/77/L.58 (2023) [hereinafter U.N. Doc. A/77/L.58].

threatened by rising sea levels.¹¹⁸ That request for an advisory opinion from the International Court of Justice essentially asked the court to say, “what are the States’ legal obligations when it comes to climate change and protecting the environment?”¹¹⁹ That case pending would have huge ramifications depending on what the court rules. There are also other cases pending before Regional Human Rights courts. You mentioned the European Court of Human Rights; there are three cases pending there: one brought from Portugal, one from Switzerland, and one from Norway.¹²⁰ There’s also a request for an advisory opinion pending in the Inter-American Court of Human Rights.¹²¹ This is a case brought by Chile and Colombia also asking the court to decide what the states’ obligations are under the American Convention on Human Rights.¹²² Then there’s a case at the International Tribunal for the Law of the Sea brought by small island nations threatened by rising sea levels asking the court to tell us more about state obligations to protect the marine environment.¹²³ The potential ramifications of all of these cases, coupled with the national cases, which John and Mike Kelly just mentioned, are tremendous.

Michael Scharf: Do the countries have to follow the decisions of these different courts?

Milena Sterio: While an Advisory Opinion of the International Court of Justice is not binding, it has tremendous persuasive authority.¹²⁴ On the other hand, the decisions of Regional Human

118. Busani Bafana, *Climate Change is No ‘Future Scenario’ for Pacific Island Nations; Climate Change is ‘Real,’* RELIEF WEB (Nov. 15, 2022), <https://reliefweb.int/report/world/climate-change-no-future-scenario-pacific-island-nations-climate-change-real> [<https://perma.cc/LY9K-SLBE>].

119. U.N. Doc. A/77/L.58, *supra* note 117, at 3.

120. Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, App. No. 53600/20 (Apr. 2022), <https://hudoc.echr.coe.int/eng?i=002-13649> [<https://perma.cc/GV23-43FV>]; Duarte Agostinho and Others v. Portugal, App. No. 39371/20 (Dec. 2020), <https://hudoc.echr.coe.int/fre?i=002-13055> [<https://perma.cc/HA4U-7QAB>]; Greenpeace Nordic v. Norway, App. No. 34068/21 (Dec. 16, 2021), <https://hudoc.echr.coe.int/fre?i=001-214943> [<https://perma.cc/4ZFP-LT3P>].

121. *Request for an Advisory Opinion on the Scope of the State Obligations for Responding to the Climate Emergency*, CLIMATE CHANGE LITIG. DATABASE (2023), <https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/> [<https://perma.cc/J29E-4849>].

122. *Id.*

123. Agence France-Presse, *Small Islands Take Ocean Protection Case to UN Court*, VOA (Sept. 11, 2023, 11:47 AM), <https://www.voanews.com/a/small-islands-take-ocean-protection-case-to-un-court/7263220.html> [<https://perma.cc/75KC-UWUL>].

124. S. Gozie Ogbodo, *An Overview of the Challenges Facing the International Court of Justice in the 21st Century*, 18 ANN. SURV. INT’L & COMP. L. 93, 100-01 (2012).

Rights courts are binding on the States that are covered by those Regional Human Rights treaties.¹²⁵

Michael Scharf: Paul Williams, you've actually argued cases before international courts.¹²⁶ The most famous one was the Abyei arbitration that you were involved in.¹²⁷ How do you think that these cases that Milena just described will be decided, and how is the timing of these cases potentially important?

Paul Williams: Well Michael, I think the timing of these cases is important because of the hierarchy. If the International Court of Justice issues the decision, it's likely that the European Court, Inter-American Court, and the Law of the Sea Tribunal would feel compelled to follow that. Now the downside is the International Court of Justice is the least innovative and most conservative of the international tribunals. You're more likely to get forward-leaning outcomes linking human rights and the environment from the European Court or the Inter-American Court. And so, unless the ICJ goes first, we're likely to get some divergent decisions from the Law of the Sea Tribunal, the European Court of Human Rights, and the Inter-American Court of Human Rights on climate change. And then we'll have confusion, and this won't be a good thing. So, great that they're doing the full court press on using rule of law,¹²⁸ us law professors were very excited about that. Not so great that they're forum shopping¹²⁹ for the best linkage between the environment and human rights. And if it's muddled, then it's easy to say it's muddled business as usual, let's just keep warming the planet.

Michael Scharf: Well, that's going to be another concern that we'll have to muddle through, as you say Paul. It's time for another short break. When we return, we're going to be joined by a renowned international ethicist, and we'll talk about the ethical issues related to addressing global climate change. Back in a moment.

125. Alexandre Galand, *Defer or Revise? Horizontal Dialogue Between UN Treaty Bodies and Regional Human Rights Courts in Duplicative Legal Proceedings*, 23 HUM. RTS. L. REV. 1, 5 (2023).

126. *See, e.g., Prosecutor v. Ongwen*, ICC-02/04-01/15-422-Red, Amicus Curiae Observations by Public International Law & Policy Group, ¶ 1 (Dec. 23, 2021).

127. *The Government of Sudan/The Sudan People's Liberation Movement/Army (Abyei Arbitration)*, PERMANENT CT. OF ARB., <https://pca-cpa.org/en/cases/92/> [<https://perma.cc/9HZY-HMQS>].

128. *See How the Court Works*, I.C.J., <https://www.icj-cij.org/how-the-court-works> [<https://perma.cc/LMM5-37LF>].

129. *See* Joost Pauwelyn & Luiz Eduardo Salles, *Forum Shopping Before International Tribunals: (Real) Concerns, (Im)Possible Solutions*, 42 CORNELL INT'L. L.J. 77, 79–85 (2009).

[STATION BREAK]

Michael Scharf: This is Michael Scharf, Dean of Case Western Reserve University School of Law, and we're back with "Talking Foreign Policy." I'm joined today by experts on international environmental law and policy, and we're talking about the international response to the global climate change crisis. In this final segment, we're going to be focusing on ethical issues related to climate change. With perfect timing, Dr. Shannon French of the Inamori International Center for Ethics and Excellence at Case Western Reserve University¹³⁰ has just entered the studio. Shannon, thanks for being with us.

Shannon French: Thank you for having me, Michael.

Michael Scharf: So Shannon, it's said that there are three major ethical dilemmas that complicate the climate change debate: first, how to balance the rights and responsibilities of the developed and developing world; second, how to evaluate geoengineering schemes designed to reverse or slow climate change; and third, how to assess our responsibility to future generations who must live with a climate that we are shaping today.¹³¹ Shannon, as an ethicist, what is your take on those three dilemmas?

Shannon French: I see you put me right in it the moment I walked in, which is only fair; that's what I'm here for. To the first point about balancing the rights and responsibilities of developed and developing worlds, parts of the world. Unfortunately, and this will come as a surprise to no one, it is the most vulnerable places on Earth that are the least able to make a difference when it comes to climate change because they aren't the ones producing the most damage.¹³² So, even if they did everything exactly right and lowered their carbon footprint as low as it could go, they will still suffer from the effects of the practices in other nations.¹³³ Particularly those that are developed and those on the higher end of the developing scale who are ramping up their levels

130. Dr. Shannon French is the Director of the Inamori International Center for Ethics and Excellence, and Professor of Philosophy, at Case Western Reserve University School of Law. She is author of the acclaimed book, *CODE OF THE WARRIER*, and previously taught at the U.S. Naval Academy in Annapolis. *Shannon E. French*, *supra* note 23.

131. Richard Sommerville, *The Ethics of Climate Change*, YALE ENV'T 360 (June 2, 2008), https://e360.yale.edu/features/the_ethics_of_climate_change [<https://perma.cc/FMN7-95JL>].

132. Kristalina Georgieva et al., *Poor and Vulnerable Countries Need Support to Adapt to Climate Change*, IMF BLOG (Mar. 23, 2022), <https://www.imf.org/en/Blogs/Articles/2022/03/23/blog032322-poor-and-vulnerable-countris-need-support-to-adapt-to-climate-change> [<https://perma.cc/2MRK-ZLY5>].

133. Marie Claire Brisbois, *Climate Change Won't Wait for Future Innovation-We Need Action Now*, NATURE (Feb. 28, 2022), <https://www.nature.com/articles/d41586-022-00560-2> [<https://perma.cc/22C6-V83R>].

of industry and so forth.¹³⁴ When you look at that, what it creates is this injustice that runs very deep across the international scheme, and the people who are suffering the most are also not necessarily the ones who have the greatest voice or the ability to advocate for themselves in that context. So, you have the need even more than ever for activists to draw attention to the plight of these places. But they're unfortunately really against a headwind because they have to convince the countries that aren't suffering this much, or not as radical effects, to make what will feel to them like radical changes to protect places that are out of sight and out of mind. So, this is a deep, deep concern.

Michael Scharf: So, the second part was about the geoengineering schemes. I know that some of these are high-risk ideas like seeding clouds¹³⁵ and so forth, what's your take on that?

Shannon French: Well, I'm all for us exploring technological solutions, but you can hear the but coming right? So, the but is, we have to be careful not to fall for hype. There is something out there called technological optimism.¹³⁶ It sounds so nice and cheery, but it can be a negative when people rely on it overly much in place of other tried and true solutions. So, going forward, the ethical approach is to make sure that, if you are funding these high-risk, potentially high-return engineering options that may make a huge difference, you can't then cut off the funding to the things we know are making perhaps more incremental but important and tried and true progress. Because if you put all your eggs in one basket, then again, you are just throwing some people under the environmental bus, and that's not acceptable.

Michael Scharf: And then you know, U.S. policy seems to be made every two years with a change of congress—every four to eight years with a change of presidency—how do we make the long-range issues, the responsibility to protect future generations, something that the current policymakers actually care about?

Shannon French: This is a huge issue, and I first want to applaud the fact that there are some really outstanding and notable advocates and activists in the youngest generation at the moment. Of course, everyone's heard of Greta Thunberg.¹³⁷ But there are many others as well who are speaking up and demanding that people who are above

134. See Jonah Busch, *Climate Change and Development in Three Charts*, CTR. FOR GLOB. DEV. (Aug. 18, 2015), <https://cgdev.org/blog/climate-change-and-development-three-charts> [<https://perma.cc/R4MH-5ZSJ>].

135. See *Cloud Seeding*, NOAA, https://www.aoml.noaa.gov/hrd/hrd_sub/cseed.html [<https://perma.cc/GSY5-D3UT>] (Cloud seeding is a method that introduces substances, such as silver iodide, in order to improve a cloud's ability to produce precipitation).

136. James Krier & Clayton Gillette, *The Un-Easy Case for Technological Optimism*, 84 MICH. L. REV. 405, 405 (1985).

137. *Greta Thunberg: Who is the Climate Activist and What Has She Achieved?*, BBC (Feb. 5, 2024), <https://www.bbc.com/news/world-europe-49918719> [<https://perma.cc/BF79-93XX>].

them in age but don't seem to be thinking of them in their decision-making take them seriously. But the problem is that whenever you're asking people to vote to protect future generations, you are asking for a sacrifice. You are saying, "we need you to let go of something you wanted here and now in order that others can have something in the future." Here's where that idea of technological optimism comes into play. A lot of people will try to smooth over their conscience about what we're doing to the planet by saying "oh, by the time these kids grow up or the kids who aren't born yet grow up some solution will have been found and they'll be fine." There's just no basis for that truly to rely on, and it's certainly not an ethical decision to do that. And I would simply want to add to that, in thinking about what we owe to future generations, we have to think in terms of: these are people who have the least amount of voice you can possibly imagine. I've talked about those in vulnerable countries having a problem trying to get attention, but future generations are not even born yet. They can't stand up and say, "look what you did to my planet!" So, short of time travel, they can't say what's going to happen and so they can't make this persuasive case except by doing what they're trying to do, which is say, "care!"

Michael Scharf: I want to return to John Knox, the former U.N. Rapporteur for Human Rights and the Environment, and ask you, John, about the responsibility to one of the vulnerable populations out there that are affected by climate change. And by that, I'm talking about the so-called climate refugees.¹³⁸ Those are people who have to flee their countries because they've been submerged or because of drought or because of fires, and they literally don't have anywhere else to go, they don't have any rights,¹³⁹ John, what is your take on that problem?

John Knox: So, it's a thorny problem legally in some ways and not in others. Part of the problem is that the term refugee is defined by international law, narrowly, as someone who's unable or unwilling to return to their home country because of a well-founded fear of being persecuted for various reasons, including race religion, or nationality.¹⁴⁰ That doesn't really fit climate migrants.¹⁴¹ That's not really the issue.

138. *See Climate Change and Disaster Displacement*, UNHCR, <https://www.unhcr.org/what-we-do/build-better-futures/environment-disasters-and-climate-change/climate-change-and> [<https://perma.cc/EE48-2ML2>].

139. *Historic UN Human Rights Case Opens Door to Climate Change Asylum Claims*, OHCHR (Jan. 21, 2020), <https://www.ohchr.org/en/press-releases/2020/01/historic-un-human-rights-case-opens-door-climate-change-asylum-claims> [<https://perma.cc/4XXX-RBUK>].

140. *See, e.g., What is a Refugee?*, UNHCR, <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/> [<https://perma.cc/7TK8-V9EA>].

141. Dina Ionesco, *Let's Talk About Climate Migrants, Not Climate Refugees*, U.N. SUSTAINABLE DEV. (June 6, 2019), <https://www.un.org/sustainable>

So, the problem is that existing refugee law doesn't really seem to apply very well to them. However, the international human rights body that oversees the International Covenant on Civil and Political Rights has interpreted that to say that even those who aren't refugees in that sense still have a right not to be returned to a country if doing so would cause a risk of irreparable harm to their right to life.¹⁴² In other words, you can't send someone back to a country if there's a really good chance that they're going to be killed as a result or lose their life.¹⁴³ That body, the Human Rights Committee, it's called, in 2020, interpreted the Covenant on Civil and Political Rights to say: you know, that rule applies to climate migrants as well.¹⁴⁴ The situation in that case was one involving a small island state, Kiribati, in the South Pacific; and the committee basically said, while right now we can't say that New Zealand is violating its obligations by sending someone back to this vulnerable small island state, that could well change, in fact we expect it probably will, without what they called robust national and international efforts.¹⁴⁵ In other words, in the not very far future it's going to be more and more a violation—a clearer violation of human rights law—to send climate migrants back to places where they would be essentially risking their lives. Now that's the legal standard, but practically it's just extremely hard to imagine the large-scale evacuation of the literally millions of people who live in low-lying coastal areas or small island states or in other areas of the world that are increasingly going to be made uninhabitable unless we change our ways.¹⁴⁶ So, another way of thinking about this is we really cannot rely on large-scale migration to solve this problem. We simply have to find ways to reduce greenhouse gas emissions, which again, means we have to phase out fossil fuels as quickly as possible.

Michael Scharf: So, you know, based on that last observation, let me ask what happens to a country and its people if it's submerged and

development/blog/2019/06/lets-talk-about-climate-migrants-not-climate-refugees/ <https://perma.cc/A6V2-WRXU>].

142. Andrej Mahecic, *UN Human Rights Committee Decision on Climate Change is a Wake-Up Call, According to UNHCR*, UNHCR (Jan. 24, 2020), <https://www.unhcr.org/us/news/briefing-notes/un-human-rights-committee-decision-climate-change-wake-call-according-unhcr> [<https://perma.cc/KJY2-47BA>].

143. *Historic UN Human Rights Case Opens Door to Climate Change Asylum Claims*, *supra* note 139.

144. Mélissa Godin, *Climate Refugees Cannot Be Forced Home, U.N. Panel Says in Landmark Ruling*, TIME (Jan. 20, 2020, 1:04 PM), <https://time.com/5768347/climate-refugees-un-ioane-teitiota/> [<https://perma.cc/L5BF-YMFT>]; U.N. Hum. Rts. Comm., Views Adopted by the Committee under article 5(4) of the Optional Protocol, U.N. Doc. CCPR/C/127/D/2728/2016, at 9.3–9.5 (Sept. 23, 2020).

145. U.N. Hum. Rts. Comm., *supra* note 144, at 9.11–9.12.

146. U.N. Press Release SG/SM/21688, *supra* note 48.

it no longer has land. Does it lose its status at the United Nations and other international organizations? What happens to its treaties? What happens to its people's nationality? Milena, do you want to take a crack at that?

Milena Sterio: Sure, that's obviously a catastrophic outcome. Imagine the heartache and all the unfortunate legal consequences flowing from the fact that a state is disappearing. Now we do have precedent in the international arena for states disappearing because of other reasons. So, for example, the USSR was dismantled in the early nineties;¹⁴⁷ so was the former Yugoslavia;¹⁴⁸ so were some other states;¹⁴⁹ and when that happens, typically those larger states break apart into smaller chunks, smaller entities.¹⁵⁰ But that is different than when an entire country disappears. You know, many of these legal issues would have to be negotiated with other states, and I think the biggest difficulty, probably one of the hardest legal challenges, would be where did the people of that state go? Do other countries have a responsibility to take them in as refugees? And as John Knox just explained, the problem is that refugee law is not well suited for these environmental crises because these, you know, environmental migrants don't necessarily qualify as refugees.¹⁵¹

Michael Scharf: There is another unexpected challenge to the environmental crisis. Shannon: your expertise is in the area of war and morality. Armed conflicts often cause considerable environmental damage. Does the "just war" tradition that you've written so much about have anything to say about this?¹⁵²

Shannon French: Well, yes, I just came from my war and morality class. Well, surprisingly, to many people, the "just war" tradition has actually cared about environmental damage since ancient

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147. *The Collapse of the Soviet Union*, U.S. OFF. HISTORIAN, <https://history.state.gov/milestones/1989-1992/collapse-soviet-union> [<https://perma.cc/N76K-EWH5>].
148. *The Breakup of Yugoslavia, 1990–1992*, U.S. OFF. HISTORIAN, <https://history.state.gov/milestones/1989-1992/breakup-yugoslavia> [<https://perma.cc/Z57B-86AJ>].
149. See, e.g., Stephen Engelberg, *Czechoslovakia Breaks in Two, to Wide Regret*, N.Y. TIMES, Jan. 1, 1993, at 1 <https://www.nytimes.com/1993/01/01/world/czechoslovakia-breaks-in-two-to-wide-regret.html> [<https://perma.cc/D5PG-FPKV>].
150. See, e.g., Kazimierz M. Slomczynski & Goldie Shabad, *Guest Editors' Introduction: Reconfiguration of Eastern Europe After the Fall of Communism: An Overview*, 28 INT'L J. SOCIO. 3, 4 (1998).
151. See Stephanie Garcia, *What a UN Ruling Could Mean for Climate Refugees*, PBS (Jan. 22, 2020), <https://www.pbs.org/newshour/science/as-cop-25-ends-a-look-at-why-climate-migrants-dont-have-refugee-status> [<https://perma.cc/QWR2-BJPJ>] (Jan. 22, 2020, 6:43 PM).
152. See DAVID FISHER, MORALITY AND WAR: CAN WAR BE JUST IN THE TWENTY-FIRST CENTURY? 66–67 (2011).

times.¹⁵³ That's not that well-known, but here's an example. In the code of Deuteronomy,¹⁵⁴ which is found in the Old Testament, it talks about how it's against the rules of war to cut down fruit-bearing trees.¹⁵⁵ And the argument behind it is made very clear, that it's a multi-generational harm. That it takes so long to cultivate the trees back to where they were that you're harming future generations—back to our earlier point. That's seen as a crime, and in that context, actually also a sin, which is interesting. So, there's this awareness that is beyond the allowable acts of war. However, the "however" in this case is it keeps happening. And we know that some of the weapons of war, obviously nuclear weapons, but other things that have been used like Napalm and so forth, have obvious and lasting environmental damage.¹⁵⁶ And then there are other consequences of large, deployed forces, like the now notorious burn pits, which were used by U.S. forces, hurting both them and the broader environment that they left behind and leaving long-term health consequences.¹⁵⁷ So, war, is this, unfortunately, accelerator of environmental damage.

Michael Scharf: Now, Paul Williams, as a peace negotiator, what role should responsibility for the destruction of the environment as Shannon was describing play in any peace agreement following a conflict? Let's say, for example, the Russian invasion of Ukraine.¹⁵⁸

Paul Williams: Yeah Michael, I think given that you know there's plenty of damage happening to the environment through global warming, we should be outraged by topping it up with intentional damage during a time of war. I think what we've seen is Russia, very aggressively, not only targeting the people and the infrastructure of Ukraine but also the environment of Ukraine.¹⁵⁹ You know, blowing up

153. Gregory Reichberg & Henrik Syse, *Protecting the Natural Environment in Wartime: Ethical Considerations from the Just War Tradition*, 37 J. PEACE RSCH. 449, 458 (2000).

154. *Deuteronomy* 20:20.

155. *Id.*

156. Doug Weir, *How Does War Damage the Environment?*, CONFLICT & ENV'T OBSERVATORY (June 4, 2020), <https://ceobs.org/how-does-war-damage-the-environment/> [<https://perma.cc/JQ2C-T77H>]; Jason Van Meding & Hang Thai, *How U.S. Chemical Warfare in Vietnam Unleashed an Enduring Disaster*, PHYS.ORG (OCT. 4, 2017), <https://phys.org/news/2017-10-chemical-warfare-vietnam-unleashed-disaster.html> [<https://perma.cc/46KX-KTPC>].

157. Michael Riess, *Actually, We Did Start the Fire, and It Keeps on Burning: The Environmental Health Effects of Military Burn Pits in Afghanistan and Iraq*, 23 VILL. ENV'L. L.J. 117, 117–18 (2012).

158. CTR. PREVENTATIVE ACTION, *War in Ukraine*, GLOBAL CONFLICT TRACKER, <https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine> [<https://perma.cc/54R8-9VXZ>] (Feb. 9, 2024).

159. *See generally* ANDRIY YERMAK, ET AL., HIGH-LEVEL WORKING GROUP ON ENV'T CONSEQUENCES OF WAR, AN ENVIRONMENTAL COMPACT FOR

the Kakhovka Dam in order to flood, you know, thousands of hectares out of “a military desire.”¹⁶⁰ There has to be accountability. We should double down on our efforts to make ecocide a crime.¹⁶¹ The peace agreement and whenever it comes should have clear provisions for holding those in Russia who committed these environmental crimes, this ecocide, responsible.¹⁶² You can’t negotiate it away. You can’t, on one hand, be trying to negotiate a global compact to reduce climate change and global warming, and on the other hand, negotiating amnesties and immunities for ecocide and environmental crimes and a peace agreement because, well, it’s war.¹⁶³ No, I think now is the time to hold people responsible across the board for their damage to the environment, specifically, if it’s done intentionally during a time of war.

Michael Scharf: And Milena is waving at me from across the studio. Milena, Paul just mentioned this crime of ecocide. Can you tell us about the proposals to recognize that as a new crime, the efforts, and why those are important?¹⁶⁴

Milena Sterio: Yes, Michael. So, as of now, crimes that have to do with the intentional destruction of the environment can be prosecuted as war crimes that Paul already alluded to. So for example, under the International Criminal Court’s Rome Statute, Article 8 2(b) already provides as one of the enumerated war crimes: the intentional launching of an attack in the knowledge that such an attack will cause widespread long-term and severe damage to the natural environment.¹⁶⁵

UKRAINE: A GREEN FUTURE: RECOMMENDATIONS FOR ACCOUNTABILITY AND RECOVERY (2024).

160. See Katerina Sergatskova, *Aftermath of the Kakhovka Dam Collapse*, WILSON CTR. (June 20, 2023), <https://www.wilsoncenter.org/blog-post/aftermath-kakhovka-dam-collapse> [<https://perma.cc/7494-VYAW>].
161. Kate Mackintosh & Lisa Oldring, *Watch This Space: Momentum Toward an International Crime of Ecocide*, JUST SEC. (Dec. 5, 2022), <https://www.justsecurity.org/84367/watch-this-space-momentum-toward-an-international-crime-of-ecocide/> [<https://perma.cc/TPD3-EJSF>].
162. Andriy Yermak & Margot Wallström, *Russia Is Committing Grave Acts of Ecocide in Ukraine—and the Results Will Harm the Whole World*, THE GUARDIAN (Aug 16, 2023, 1:00), <https://theguardian.com/comment-isfree/2023/aug/16/russia-ecocide-ukraine-world-war-crimes> [<https://perma.cc/TPW2-934Q>].
163. See Armenak Ohanesian, *Holding Russia Accountable for the Crime of Ecocide in Ukraine*, WILSON CTR. (Apr. 11, 2023), <https://www.wilsoncenter.org/blog-post/holding-russia-accountable-crime-ecocide-ukraine> [<https://perma.cc/TR9Z-EUKZ>].
164. *See Is It Time for “Ecocide” to Become an International Crime?* THE ECONOMIST (Feb. 28, 2021), <https://www.economist.com/international/2021/02/28/is-it-time-for-ecocide-to-become-an-international-crime> [<https://perma.cc/NGQ9-HARV>].
165. Rome Statute of the International Criminal Court, art. 8(2)(b)(iv), July 17, 1998, 2187 U.N.T.S. 3.

However, at the ICC at least, no such crimes have actually been prosecuted. And so, because of that, over the last two to three years—

Michael Scharf: —The ICC is the International Criminal Court.

Milena Sterio: The International Criminal Court, which actually has jurisdiction over the situation in Ukraine,¹⁶⁶ to go back to your hypothetical. Most recently though, over the last two-three years, a group of experts and advocates have been leading the so-called “Stop Ecocide” International Campaign, which has convened a panel of experts to develop the definition of ecocide and to lobby states towards including the crime of ecocide as an additional crime under the Rome Statute of the International Criminal Court.¹⁶⁷ According to this group, the definition of ecocide would be—the crime would consist of unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe, and neither widespread nor long-term, damage to the environment being caused by those acts.”¹⁶⁸ So, the fact that we would develop a wholly separate crime, a fifth crime, under the statute of the International Criminal Court is extremely significant, as it could potentially influence prosecutors at the International Criminal Court to actually go ahead and charge individuals with this crime as a separate crime, not just this one of many enumerated war crimes.¹⁶⁹

Michael Scharf: All right, I want to switch from this idea of war crimes back to the bigger picture and go back to John Knox, our former U.N. Special Rapporteur for Human Rights and the Environment. Generational politics are playing a role in the climate change policy-making debate. Shannon French mentions Greta Thunberg, the famous young Swedish environmental activist, who was Time Magazine’s Person of the Year.¹⁷⁰ So, John, is Greta Thunberg a naive teenager, or a rising leader of a global movement?

John Knox: I think I would pick the second Mike, with the caveat that, as Shannon said, she’s actually only one of many youth leaders rising up. I think she and they are trying to speak for the children and youth who want to be living in the world that we are now making. Our decisions—and by “our,” I mean the adult leaders in the world today—

166. Julian Borger, *ICC Prosecutor to Investigate Possible War Crimes in Ukraine*, THE GUARDIAN (Feb. 28, 2022, 15:56), <https://www.theguardian.com/world/2022/feb/28/ukraine-russia-belarus-war-crimes-investigation-the-hague> [<https://perma.cc/8D5J-4REB>].

167. *Driving the Global Conversation: Ecocide Law*, STOP ECOCIDE INT’L, <https://www.stopecocide.earth/> [<https://perma.cc/GJ5N-735X>].

168. Katie Surma & Yuliya Talmazan, *The Push to Make ‘Ecocide’ an International Crime Takes a Big Step Forward*, NBC (June 22, 2021, 9:00 PM), <https://nbcnews.com/news/world/push-make-ecocide-international-crime-takes-big-step-forward-n1272059> [<https://perma.cc/WLD2-B9KY>].

169. Rome Statute, *supra* note 165.

170. Charlotte Alter et al., *Greta Thunberg: TIME’s Person of the Year 2019*, TIME, <https://time.com/person-of-the-year-2019-greta-thunberg/> [<https://perma.cc/8L52-9RW3>].

are shaping their lives, and they have every reason to be concerned about that. They have very little input into the decisions that are being made.¹⁷¹ I mean frankly no one on this podcast is likely to be alive in 2080, much less 2100. I hope this won't come as a shock to anyone, but many people living on the planet now will be. I have two nieces, for example, who were born in 2016. In 2100 they're going to celebrate their eighty-fourth birthdays, which means that they will then be a year younger than my mother, their grandmother, is right now. That future is just not that far away. So, voices like Greta Thunberg,¹⁷² are here to remind us that the next generation, her generation, and those of our children, are watching us and are already blaming our generation for the incredible disasters we're threatening to leave for them if we don't change our ways now.

Michael Scharf: All right, in the last two minutes of our program, I want to turn to Michael Kelly and ask you, what are the tools that the young environmental activists are successfully using to pursue change?

Michael Kelly: Well, Michael, lawsuits, lawsuits, lawsuits. In a lawsuit brought by sixteen teenagers, a Montana trial court ruled in August of this year that a provision of the Montana Environmental Policy Act prohibiting consideration of greenhouse gas emissions and climate change impacts in its environmental reviews violated these kids' right to a clean and helpful environment under the Montana Constitution.¹⁷³ So, they actually leveraged a piece of the Constitution, which guarantees them a clean environment, in which the court said, "includes climate as part of the environmental life-support system." The judge went on to say that "[w]hat happens in Montana has a real impact on fossil fuel energy systems, CO2 emissions, and global warming," and that Montana's actions to permit fossil fuel activities with no climate-carbon footprint analysis increased Montana's emissions and "exacerbate[d] anthropogenic climate change and cause[d] further

171. See, e.g., Amanda Ripley, *Why Do American Students Have So Little Power?*, THE ATLANTIC (March 12, 2015), <https://www.theatlantic.com/education/archive/2015/03/why-do-american-students-have-so-little-power/387634/> [https://perma.cc/QEB5-AWGG]; see also Seth Borenstein & Suman Naishadham, *Fed Up Young Climate Activists: 'Adults Aren't Listening,'* AP NEWS (Nov. 10, 2022, 11:58 PM), <https://apnews.com/article/science-mexico-climate-and-environment-government-politics-543dafba41cd5da908d47195ec5255a2> [https://perma.cc/TUP5-EJKR]; see also Gerardo Berthin, *Why Are Youth Dissatisfied with Democracy?*, FREEDOM HOUSE (Sept. 14, 2023), <https://freedomhouse.org/article/why-are-youth-dissatisfied-democracy> [https://perma.cc/YY98-PVRU].

172. *Greta Thunberg*, *supra* note 137.

173. Kate Selig, *Judge Rules in Favor of Montana Youths in Landmark Climate Decision*, WASH. POST (Aug. 14, 2023, 6:13 PM), <https://www.washingtonpost.com/climate-environment/2023/08/14/youths-win-montana-climate-trial/> [https://perma.cc/4N85-FQTZ].

harms to Montana's environment and its citizens, especially its youth."¹⁷⁴ This Montana trial court judge actually singled them out.¹⁷⁵

Michael Scharf: That's a really great place to bring our program to a close. We're out of time, and I would like to thank our experts for being with us today and helping us understand the ramifications of responding to the problems caused by global climate change. And, as Mike Kelly was just talking about, what everybody, including the youth, can do about it. John Knox, Paul Williams, Mike Kelly, Milena Sterio, and Shannon French, thank you so much for providing your insights about this important topic. I'm Michael Scharf, you've been listening to "Talking Foreign Policy."

174. *Held v. Montana*, CDV-2020-307, 79–80, 102 (Mont. 1st Jud. Dist. Ct. Aug. 14, 2023).

175. *Id.* at 9–10.