
Discourses of Fear on Climate Change in International Human Rights Law

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Abstract

Discourses of fear on climate change are pervasive. International human rights law frequently refers to climate change as one of the most serious threats to human rights, and this language of threat reveals a discourse of fear. Fearful representations of climate change are justified by scientific data and can be effective in drawing attention to the issue and incentivizing necessary action. However, psychologists and communications experts have demonstrated that fear can also lead to disengagement, ‘climate change fatigue’ and active opposition to climate change policies. By invoking a discourse of fear on climate change, human rights actors are not only reflecting accurate climate science but also engaging in emotional rhetoric. The discourse of fear that presents climate change itself as the main threat to human rights, moreover, contributes to framing climate change primarily as a physical and scientific problem and obscures other important dimensions of climate change. Those individuals engaging with international human rights law must acknowledge the rhetorical and emotive power of the language they speak and engage more seriously with the literature on discourses of fear and their effects on a broad general audience. Only then can we truly work towards effective action on climate change, supported by international law.

1 Discourses of Fear on Climate Change

The doomsday clock, a symbolic countdown to global catastrophe developed in 1947 by the Science and Security Board of the *Bulletin of the Atomic Scientists*, moved to 100 seconds to midnight in 2020 and remains there in 2022.¹ The doomsday clock

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¹ J. Mecklin (ed.), ‘2022 Doomsday Clock Statement: At Doom’s Doorstep: It Is 100 Seconds to Midnight’, *Science and Security Board Bulletin of the Atomic Scientists*, 20 January 2020, available at <https://thebulletin.org/doomsday-clock/current-time/>.

originated as a figurative warning of the threat of nuclear warfare during the Cold War. Since 2007, the *Bulletin of the Atomic Scientists* has also been taking into account climate change in setting the clock. The closer the clock is to midnight, the more imminent the global catastrophe. The doomsday clock is now closer to midnight than it has ever been, even surpassing the threats of 1953 at the height of the Cold War. The last four statements from 2019, 2020, 2021 and 2022 present climate change as an ‘existential threat’ or ‘existential danger’ that, if left unresolved, will lead to doomsday, the complete or partial destruction of human civilization.²

Climate change is one of the most pressing global issues of our times, and fearful representations of climate change are pervasive. In line with the doomsday clock, climate change is widely described as an impending catastrophe, a looming apocalypse and a path to irreversible damage that may even result in human extinction.³ Sociologist David Altheide has noted that fear becomes a discourse when it “‘expands” beyond a specific reference to use as a more general orientation’.⁴ In this understanding, certain communications around climate change reflect discourses of fear. International law plays an important role in devising ways to deal with the enormous problem of climate change on a global scale, and actors invoking international law fervently conjure discourses of fear around climate change. Climate science plays an important role in informing climate change policies, including international law. Even though there is a growing field of literature on communicating climate science, there is a paucity of attention within the international legal discipline for the importance of communicating climate science and the role of international law as a language through which climate science is communicated to a broad general audience.⁵

Climate change is a potentially existential threat and failing to adequately address climate change can have catastrophic impacts for the environment and for human life. However much grounded in science, discourses of fear are also forms of rhetoric, ways of communicating about climate change that shape our understanding of the problem. Discourses of fear frame our understanding of climate change in a particular way, notably emphasizing the physical threats of climate change. These physical threats are real, and discourses of fear are justified, but such frames, as Altheide notes, ‘focus on what will be discussed, how it will be discussed, and above all, how it

² J. Mecklin (ed.), ‘2019 Doomsday Clock Statement: A New Abnormal: It Is Still 2 Minutes to Midnight’, *Science and Security Board Bulletin of the Atomic Scientists*, 24 January 2019, at 2, 4, 7, 8, 14, available at <https://thebulletin.org/doomsday-clock/2019-doomsday-clock-statement>; J. Mecklin (ed.), ‘2020 Doomsday Clock Statement: Closer Than Ever: It Is 100 Seconds to Midnight’, *Science and Security Board Bulletin of the Atomic Scientists*, 23 January 2020, at 3, 9, available at <https://thebulletin.org/doomsday-clock/2020-doomsday-clock-statement/>; J. Mecklin (ed.), ‘2021 Doomsday Clock Statement: This Is Your COVID Wake-up Call: It Is 100 Seconds to Midnight’, *Science and Security Board Bulletin of the Atomic Scientists*, 27 January 2021, at 2, 3, 8, available at <https://thebulletin.org/doomsday-clock/current-time/>; ‘2022 Doomsday Clock’, *supra* note 1, at 5, 6, 16.

³ M. Hulme, ‘Reducing the Future to Climate: A Story of Climate Determinism and Reductionism’, 26 *Osiris* (2011) 245, at 247, n. 10; M. Hulme, *Weathered: Cultures of Climate* (2017), ch. 7 ‘Fearing Climate’.

⁴ D.L. Altheide, *Creating Fear: News and the Construction of Crisis* (2002), at 3.

⁵ On communicating science, see Kahan, ‘What Is the “Science of Science Communication”?’ 14(3) *Journal of Science Communication* (2015) 1.

will not be discussed'.⁶ By invoking certain discourses of fear, the language of international law not only reflects climate science but also plays an active role in framing the problem of climate change and, by consequence, its possible solutions. In this article, I explore how international human rights law, understood as language, frames climate change for a general audience, not specifically for an expert audience. As scholars in other disciplines are convincingly arguing, communicating on climate change through discourses of fear is not always and not necessarily effective in formulating climate change policies and motivating climate change action.⁷

As a starting point in this exploration of discourses of fear on climate change in international human rights law, I draw on the burgeoning field of law and emotions scholarship.⁸ The dominance of climate science in informing international law on climate change reflects a prevailing rationalist assumption in the legal discipline that favours 'objective' facts and evidence over 'subjective' feelings and beliefs.⁹ Law and emotions scholars have been working for over two decades to demonstrate that emotions influence the field of law at all levels. They draw on established scholarship from the fields of neuroscience and social psychology to show that reason and emotion contribute to cognition, that cognition informs law and that, therefore, emotion and reason inform law.¹⁰ Discourses of fear on climate change are expressions of collective emotion. In line with law and emotions scholars, I do not suggest that climate science is false or inaccurate, nor do I propose that science should be disregarded. Rather, I contend that discourses of fear as emotionally charged language influence the framing of the problem of climate change and that invoking discourses of fear in climate change communications influences climate change action. In this understanding, international law is not only a technical legalistic tool but also a powerful language tool and form of communication.¹¹ Considering the central role of international law

⁶ Altheide and Michalowski, 'Fear in the News: A Discourse of Control', 40 *Sociological Quarterly* (1999) 475, at 478.

⁷ Aarti Gupta in a recently published book makes a compelling case for growing inequality as the most pressing issue of our time and for understanding climate change as a political, rather than an environmental, problem. See Gupta, '1. Is Climate Change the Most Important Challenge of Our Times?', in M. Hulme (ed.), *Contemporary Climate Change Debates* (2020) 12, at 12–18; see also notes 30–39 below.

⁸ I will expand on the study of 'emotions and international law' in a four-year project under the same title funded by the Swiss National Science Foundation starting in September 2023. For more information on this project, see www.graduateinstitute.ch/communications/news/new-snf-project-prof-anne-saab.

⁹ On the dominance of reason and rationality in the legal discipline, see Simpson, 'The Sentimental Life of International Law', 3 *London Review of International Law* (2015) 1; P. Schlag, *The Enchantment of Reason* (1998); Saab, 'Emotions and International Law', 10(3) *European Society on International Law Reflections (ESIL Reflections)* (2021) 1.

¹⁰ See, e.g., S. Bandes, *Passions of Law* (2000); Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field', 30 *Law and Human Behavior* (2006) 119, at 120; Abrams and Keren, 'Who's Afraid of Law and the Emotions?', 94 *Missouri Law Review* (2010) 1997. For more recent work, see S.A. Bandes *et al.* (eds), *Research Handbook on Law and Emotion* (2021).

¹¹ Media attention for climate change increases not only with important Conferences of the Parties (COPs) but also, for instance, when the USA announced its withdrawal from the Paris Agreement. See Hase *et al.*, 'Climate Change in News Media across the Globe: An Automated Analysis of Issue Attention and Themes in Climate Change Coverage in 10 Countries (2006–2018)', 70 *Global Environmental Change* (2021) 1.

in the global public debate on climate change, those employing international law must be aware of their influence in framing the global climate change debate through emotive language as well as through science.

International human rights law has been successful in framing climate change as a human rights issue for a broad public audience, and human rights language is a particularly powerful form of rhetoric. Human rights law frequently uses the language of ‘threat’ to depict the impacts of climate change on human rights, and this language of threat reflects a ‘discourse of fear’. This discourse of fear invoked in human rights law contributes to framing a certain dominant understanding of the problem of climate change – namely, of climate change as primarily a physical and scientific problem. This dominant frame reflects the authoritative role of climate science in informing international law on climate change and leaves little space for viewing climate change as something other than a physical and scientific problem. While such a frame is not incorrect, as climate change is a scientific and physical problem, what is left outside of the frame can hinder effective action and policies to address the range of complex and urgent problems related to climate change.

I understand human rights law broadly, encompassing the work of United Nations (UN) human rights actors as well as journalists and the words of government officials and human rights activists. In this understanding, the effects of the language of human rights on a broad public audience are not limited to the technical usage of human rights as understood by legal experts. My central objective is to generate awareness among the various actors of international human rights law of the rhetorical and emotive power of the language of human rights and to suggest ways in which human rights actors might counteract the adverse effects of discourses of fear on climate change.

I start this article by setting out that international law on climate change is primarily informed by climate science and largely ignores its own rhetorical power in framing the debate. I then present potential effects of discourses of fear on climate change as analysed by scholars and commentators from various disciplines. These effects include passive disengagement and ‘climate change fatigue’, active opposition and denialism and the creation of space for promoting quick technological fixes. In the third and main part of the article, I turn to international human rights law and how it engages with discourses of fear on climate change. Human rights proponents have been successful in highlighting the impacts of climate change on human rights and, in doing so, are particularly active in employing fearful rhetoric to motivate urgent action on climate change. However, I argue in essence that particular discourses of fear on climate change in international human rights law frame climate change itself as the perpetrator of human rights harms and that this framing contributes to concealing underlying and important questions of unequal responsibility for causing climate change and unequal shouldering of the burdens of climate change. I discuss these potential adverse effects and suggest ways in which human rights proponents can adjust their language and rhetoric in communicating about climate change.

2 How International Agreements Communicate Climate Science

International law on climate change has developed in parallel with science on climate change. The UN Framework Convention on Climate Change (UNFCCC) came into being in 1992 as a direct response to the first assessment report by the Intergovernmental Panel on Climate Change (IPCC) published in 1990.¹² In line with the scientific data presented in the first IPCC assessment report, the ‘ultimate objective’ of the UNFCCC is the ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’.¹³ The Kyoto Protocol came into being in 1995, and it provides the technical legal mechanism to implement emissions reductions.¹⁴ The IPCC has published five assessment reports since its first one in 1990; the sixth and latest report published in 2022.¹⁵ Each of these subsequent reports contain more scientific evidence of the speed at which climate change is occurring and the devastating impacts that climate change is already having and will continue to have.¹⁶ The Paris Agreement reflects the scientific consensus built up over several decades affirming the enormity and complexity of climate change and its impacts.¹⁷

Communications experts and social psychologists are emphasizing that providing more scientific facts on climate change, reflecting an increasingly grim climate reality and future, is not necessarily helpful in combating climate change. Now that there is broad consensus on climate science, there must be more attention to the science of communicating climate change and the psychology of motivating action on climate change.¹⁸ Communicating climate science involves not only presenting the facts but also framing those facts and constructing particular narratives around what the problem of climate change is.¹⁹ Language used in describing climate change, including discourses of fear, frames climate change in a certain way and consequently affects beliefs and behaviours towards climate change.

Our understanding of the environment is informed by scientific information, but it is at the same time a normative exercise, as English literary scholar and professor

¹² Intergovernmental Panel on Climate Change (IPCC), First IPCC Assessment Report (1990); United Nations Framework Convention on Climate Change (UNFCCC) 1992, 1171 UNTS 107.

¹³ UNFCCC, *supra* note 12, Art. 2.

¹⁴ Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997, 37 ILM 22 (1998).

¹⁵ Sixth IPCC Assessment Report, available at www.ipcc.ch/assessment-report/ar6/.

¹⁶ Lee, ‘Statement on the 30th Anniversary of the First IPCC Assessment Report’, 31 August 2020, available at www.ipcc.ch/2020/08/31/st-30th-anniversary-far/.

¹⁷ Paris Agreement on Climate Change, UN Doc. FCCC/CP/2015/L.9/Rev.1, 12 December 2015.

¹⁸ Dan Kahan has been particularly forceful in promoting the need to communicate science. See Kahan, *supra* note 5; see also K. Hall Jamieson, D. Kahan and D.A. Scheufele (eds), *The Oxford Handbook of the Science of Science Communication* (2017).

¹⁹ R. Hendricks, ‘Communicating Climate Change: Focus on the Framing, Not Just the Facts’, *The Conversation*, 6 March 2017, available at <https://theconversation.com/communicating-climate-change-focus-on-the-framing-not-just-the-facts-73028>.

of environmental humanities Greg Garrard emphasizes.²⁰ Communicating about climate change is a form of rhetoric, and climate science informs, but does not define on its own, the narrative of climate change. Climatologist James Risbey makes this point astutely in his analysis of, among others, Mike Hulme's work on fearful representations of climate change.²¹ Risbey has studied some of the key terms – including 'catastrophic', 'irreversible', 'urgent' – that Hulme identifies in his work as alarmist representations of climate change. Risbey concludes that these representations are sound and justified from a climatological perspective but that such a narrow perspective misses a big part of the problem.²² Climate science can tell us with a high degree of certainty that average global temperatures are rising because of anthropogenic emissions and that this is an urgent problem. Climate science alone cannot tell us why this is a problem, for whom it is a problem, who is responsible for this problem and what costs and benefits must be weighed in addressing this problem.

Climate science plays an important role in informing international law on climate change, and the increasingly certain scientific evidence on the urgency of climate change has evoked discourses of fear that are by now pervasive in official statements, press releases and general communications on climate change. These discourses of fear based on climate science emanate from powerful and mostly Western actors in the international climate change scene. Then French president François Hollande stated before the UN General Assembly in September 2015, ahead of the 21st Conference of the Parties (COP-21), that reaching an agreement on climate change in Paris was the last chance to save humankind.²³ Similar language has been used during the high-level opening statements of COP-25 in December 2019 in Madrid.²⁴ The UN secretary general referred to a 'critical juncture' and 'the point of no return' and emphasized that choosing the wrong path at the juncture and going beyond that point would lead to 'catastrophic disaster'.²⁵ The executive secretary of the UNFCCC in her opening address at COP-25 said that '[w]e are not acting quickly enough to enact the deep transformation throughout society that will save humanity's future on this planet', adding that 'we are out of time'.²⁶ US climate envoy John Kerry echoed Hollande's

²⁰ G. Garrard, *Ecocriticism* (2nd edn, 2012), especially at 4–6.

²¹ M. Hulme, 'Chaotic World of Climate Truth', *BBC News*, 4 November 2006, available at <http://news.bbc.co.uk/2/hi/science/nature/6115644.stm>.

²² Risbey, 'The New Climate Discourse: Alarmist or Alarming?', 18 *Global Environmental Change* (2008) 26.

²³ His exact words were: 'Je vous l'assure ici et je vous l'affirme tout net: si ce n'est pas à Paris, ce sera trop tard pour le monde.' Déclaration de M. François Hollande, Président de la République sur la Conférence de Paris sur le Climat, la Situation en Syrie et sur la Reforme de L'ONU, 28 September 2015, available at www.elysee.fr/front/pdf/elysee-module-13478-fr.pdf.

²⁴ All the official speeches and statement of COP-25 are available at <https://unfccc.int/process-and-meetings/conferences/un-climate-change-conference-december-2019/speeches-and-statements-at-cop-25>.

²⁵ The UN Secretary-General Remarks to 25th Conference of Parties to the United Nations Climate Change Convention, Madrid, 2 December 2019, available at <https://unfccc.int/sites/default/files/resource/UN%20Secretary-General%27s%20remarks%20at%20opening%20ceremony%20of%20UN%20Climate%20Change%20Conference%20COP25.pdf>.

²⁶ Address of UNFCCC Executive Secretary Patricia Espinosa at Opening of High Level Segment of COP25, 10 December 2019, available at https://unfccc.int/sites/default/files/resource/PEC%20-%20Opening%20HLS%20-%20Final_.pdf.

words in 2021 by stating that COP-26, held in Glasgow in November 2021, would be ‘the last best chance the world has to come together in order to do the things we need to do to avoid the worst consequences of the climate crisis’.²⁷

Prior to COP-26, John Kerry said that ‘now we have nine years left to try to do what science is telling us we need to do’.²⁸ This statement reinforces the prevailing idea that climate change policies, and, by extension, international law on climate change, are informed primarily by climate science. As such, discourses of fear on climate change as invoked in the public statements by high-ranking officials are considered to be nothing more than true representations of climate science. However, even if climate science entirely justifies the language of ‘last chances’, ‘running out of time’ and ‘catastrophic disaster’, such language highlights – or frames – certain features of the complex problem of climate change and obscures others.²⁹

3 Multidisciplinary Approaches to the Effects of Discourses of Fear on Climate Change

Law and emotions scholars have been carving out crucial space for engaging with the role and influence of emotions – in its many varied forms – for law, and international lawyers are following suit.³⁰ The influence of emotions, communication, rhetoric and other forms of ‘non-science’ has long been recognized and studied in other disciplines. Scholars and commentators from a range of disciplines and perspectives have extensively studied discourses of fear and their effects, including in the field of climate change. With the important role that international law plays in the understanding and the proposed solutions to the global problem of climate change, it is essential for those who employ international law as a language to be aware of the potential effects of discourses of fear. Invoking discourses of fear plays an important role in directing attention to the urgent problems of climate change and incentivizing action. Indeed, some research shows that fear can be an effective method to stimulate behavioural

²⁷ A. Cochrane, ‘John Kerry: COP26 Climate Summit in Glasgow Is World’s “Last Chance”’, *The National*, 28 January 2021, available at www.thenational.scot/news/19045611.john-kerry-cop26-climate-summit-glasgow-worlds-last-chance/.

²⁸ ‘John Kerry: UK Climate Summit “Last Best Chance”’, *BBC News*, 28 January 2021, available at www.bbc.com/news/world-us-canada-55836163 (emphasis added).

²⁹ Altheide and Michalowski, *supra* note 6.

³⁰ Recent work on international law and emotions includes Popovski, ‘Emotions and International Law’, in Y. Araffin, J.-M. Coicaud and V. Popovski (eds), *Emotions in International Politics* (2015) 184; Verlinden, ‘To Feel or Not to Feel: Emotions and International Humanitarian Law’, in M. Deland, M. Klamberg and P. Wrangle (eds), *International Humanitarian Law and Justice: Historical and Sociological Perspectives* (2018) 134; Bianchi and Saab, ‘Fear and International Law-Making: An Exploratory Inquiry’, 32 *Leiden Journal of International Law* (2019) 351; A. Saab, ‘Emotions and International Law’, 10(3) *ESIL Reflections* (2021) 1; Kidd White, ‘Imagines of Reach, Range, and Recognition: Thinking About Emotions in the Study of International Law’, in Bandes *et al.*, *supra* note 10, 492; Sutton, ‘How the Emotions and Perceptual Judgments of Frontline Actors Shape the Practice of International Humanitarian Law’, in Bandes *et al.*, *supra* note 10, 477; S. Karstedt, ‘Between Micro and Macro Justice: Emotions in Transitional Justice’, in Bandes *et al.*, *supra* note 10, 460; J. Bens, *The Sentimental Court: The Affective Life of International Criminal Justice* (2022).

changes necessary to address climate change.³¹ At the same time, other research from communications experts, psychologists and sociologists, among others, demonstrates that discourses of fear can also lead to passive disengagement, ‘climate change fatigue’ and even active opposition or denialism when the fearful representations are viewed as excessive or exaggerated or when catastrophic predictions fail to materialize. Discourses of fear, moreover, can contribute to creating a context in which quick technological fixes appear preferable to long-term systemic solutions.

Communications experts and psychologists looking into the effects of fearful communications and representations of climate change have argued that, while fear may lead to effective climate change action, it does not necessarily have this effect. In a study of fearful visual representations of climate change, researchers from the Tyndall Centre for Climate Change Research have concluded that, ‘although such representations have much potential for attracting people’s attention to climate change, fear is generally an ineffective tool for motivating genuine personal engagement’.³² In a similar vein, a report by the American Psychological Association Task Force on the Interface between Psychology and Global Climate Change noted that ‘well-meaning attempts to create urgency about climate change by appealing to fear of disasters or health risks frequently lead to the exact opposite of the desired response: denial, paralysis, apathy, or actions that can create greater risks than the one being mitigated’.³³

Norwegian psychologist and economist Per Espen Stoknes has noted that an excess in doomsday rhetoric creates feelings of fear, guilt or both and that psychological research demonstrates that these emotions can lead to so-called ‘apocalypse fatigue’.³⁴ He specifically addresses the need to ‘reframe’ the climate change problem and make calls for action that are more positive, engaging and personal rather than presenting enormous doomsday scenarios.³⁵ Other researchers echo the call for more active agency instead of passive victimhood, the latter of which is encouraged by discourses of fear reflected in apocalyptic doomsday scenarios.³⁶

³¹ Wormbs and Wolrath Söderberg, ‘Knowledge, Fear, and Conscience: Reasons to Stop Flying Because of Climate Change’, 6 *Urban Planning* (2021) 314; Skurka *et al.*, ‘Emotional Appeals, Climate Change, and Young Adults: A Direct Replication of Skurka *et al.* (2018)’, 48 *Human Communication Research* (2022) 147.

³² O’Neill and Nicholson-Cole, ‘“Fear Won’t Do It”: Promoting Positive Engagement with Climate Change through Visual and Iconic Representations’, 30 *Science Communication* (2009) 355, at 375.

³³ American Psychological Association Task Force on the Interface between Psychology and Global Climate Change, ‘Psychology and Global Climate Change: Addressing a Multi-faceted Phenomenon and Set of Challenges’, 2010, at 80, available at www.apa.org/science/about/publications/climate-change; see further Moser and Dilling, ‘Making Climate Hot: Communicating the Urgency and Challenge of Global Climate Change’, 46 *Environment* (2004) 32.

³⁴ Suttee, ‘How to Overcome “Apocalypse Fatigue” around Climate Change’, *Greater Good Magazine*, 23 February 2018, available at https://greatergood.berkeley.edu/article/item/how_to_overcome_apocalypse_fatigue_around_climate_change.

³⁵ P. Espen Stoknes, *What We Think About When We Try Not to Think About Global Warming: Toward a New Psychology of Climate Action* (2015).

³⁶ E. Arnold, ‘Doom and Gloom: The Role of the Media in Public Disengagement on Climate Change’, *Harvard Kennedy School Shorenstein Center on Media, Politics and Public Policy*, 29 May 2018, available at <https://shorensteincenter.org/media-disengagement-climate-change/>. This article explores the media portrayal of climate change effects in rural Alaska and the Arctic more generally. The author argues that ‘resilience and response’ are being ‘framed out’ in these media portrayals, with victims portrayed as hopeless and little attention for action that can be taken.

Further studies have noted that emotions such as anger and concern are more effective in motivating action than fear and anxiety, highlighting that, while the former leads to action, the latter leads to feelings of hopelessness and disengagement.³⁷ There are also calls for focusing more on positive emotions such as hope to incentivize action on climate change.³⁸ Professor of the psychology of sustainable development Tobias Brosch, in a review of recent studies on emotions and climate change action, emphasizes the need to balance negative emotions such as fear with positive emotions such as hope.³⁹ Other research has shown that the sequencing of emotions – including fear and hope – in climate communications needs to be taken into account to achieve the desired effects.⁴⁰ The many studies on the effects of discourses of fear on climate change have varying outcomes, but there is common recognition that fear is not always effective and can even be counteractive for climate change action.

An influential book by Greg Garrard on how nature and the environment are imagined in literature contains a chapter on the ‘Apocalypse’ in which he distinguishes between tragic apocalyptic narratives and comic apocalyptic narratives.⁴¹ A tragic apocalyptic narrative generally has a clear and inevitable – tragic – endpoint, whereas a comic apocalyptic narrative is more open-ended and episodic. Garrard and others lament the tragic narratives that prevail in contemporary environmental discourse, with frequent allusions to phrases such as ‘last chances’, ‘running out of time’ and ‘we have X more years’.⁴² A tragic frame can lead to disengagement because there seem to be no alternatives, no hope of avoiding the inevitable. The inevitable in this case is doomsday, the end of the world, which is getting closer and closer.⁴³ The rhetoric of big international climate change negotiations as ‘last chances’ also risks continually pushing the problem into the future and concealing the lack of real action.⁴⁴ Because of its seeming inevitability, a tragic apocalyptic narrative leaves little room for the varied actions necessary to tackle the multiplicity of problems that constitute climate change. Sociologist Frank Furedi in his work on ‘culture of fear’ and ‘politics of

³⁷ Stanley *et al.*, ‘From Anger to Action: Differential Impacts of Eco-Anxiety, Eco-Depression, and Eco-Anger on Climate Action and Wellbeing’, 1 *Journal of Climate Change and Health* (2021) 1.

³⁸ See, e.g., K. Hayhoe, *Saving Us: A Climate Scientist’s Case for Hope and Healing in a Divided World* (2021).

³⁹ Brosch, ‘Affect and Emotions as Drivers of Climate Change Perception and Action: A Review’, 42 *Current Opinion in Behavioral Sciences* (2021) 15.

⁴⁰ Nabi, Gustafson and Jensen, ‘Framing Climate Change: Exploring the Role of Emotion in Generating Advocacy Behavior’, 40 *Science Communication* (2018) 4.

⁴¹ Garrard, *supra* note 20, at 95. Garrard draws on a distinction between a tragic frame of acceptance and a comic frame of acceptance made by rhetorician Stephen O’Leary.

⁴² See notes 21–28 above.

⁴³ See notes 1 and 2 above.

⁴⁴ Former Executive Secretary of the UNFCCC, Richard Kinley, writes in a recent editorial about the seemingly inverse relationship between strong rhetoric of ‘last chances’ and real effective climate action. R. Kinley, ‘Let’s Not Over-Hype Glasgow’s COP26’, *Katoikos*, 22 February 2021, available at <https://katoikos.world/editorials-op-eds/op-ed/lets-not-over-hype-glasgows-cop-26.html>.

fear' vehemently opposes the lack of space for questioning the adverse effects of such discourses of fear.⁴⁵

Geographer Mike Hulme has written extensively on representations of climate change, and he contends that pervasive apocalyptic rhetoric on climate change does not only lead to passive disengagement but can also trigger polarization and active opposition to climate change policies.⁴⁶ He has argued that there are real risks attached to presenting climate change as an 'emergency', including 'suspension of normal governance, the use of coercive rhetoric, calls for "desperate measures", shallow thinking and deliberation, and even militarization', and he contends that 'a little less rhetorical heat will allow for more cool-headed policy development'.⁴⁷ Desperate measures may include resorts to technological solutions such as geoengineering that may well contribute to addressing some of the symptoms of climate change, but they do not respond to the underlying systemic problems.⁴⁸ Hulme was the founding director of the Tyndall Centre for Climate Change Research and for many years worked on collecting and analysing climate change data and developing future scenarios of climate change impacts, including as a member of the IPCC and contributor to its influential assessment reports. He does not deny the urgency of climate change, nor does he dismiss climate science. Rather, he protests, in his words, the 'thirst for environmental drama and exaggerated rhetoric' and warns that 'the discourse of catastrophe is in danger of tipping society onto a negative, depressive and reactionary trajectory'.⁴⁹

As these studies from various disciplines show, scientifically accurate discourses of fear on climate change are also powerful forms of rhetoric. This emotional rhetoric may well contribute to motivating behavioural change and incentivizing effective action on climate change, but fearful rhetoric can also be counterproductive for successful climate change policies. International law as an authoritative language in addressing global climate change must acknowledge and engage with the effects of discourses of fear, including the potential detrimental effects, and with its own role in producing such discourses. In the next part of this article, I will explore discourses of fear on climate change in international human rights law and discuss how insights on

⁴⁵ F. Furedi, *Culture of Fear* (1997; rev. edn 2002 and 2007); 'Frank Furedi: Narratives of Existential Threats in the Climate and Covid Era', 2020 Global Warming Policy Foundation Annual Lecture, 16 December 2020, available at www.thegwpf.org/frank-furedi-narratives-of-existential-threats-in-the-climate-and-covid-era/. In the latter lecture, Furedi notes an increase in the pervasiveness of discourses of fear on climate change between the first publication of *Culture of Fear* in 1997 and today. See also C. Nugent, 'Terrified of Climate Change? You Might Have Eco-Anxiety', *Time*, 21 November 2019, available at <https://time.com/5735388/climate-change-eco-anxiety/>.

⁴⁶ Some of Mike Hulme's main works on the topic of climate change include M. Hulme, *Why We Disagree About Climate Change* (2009); M. Hulme, *Weathered: Cultures of Climate* (2016) and his most recent book M. Hulme, *Climate Change* (2021). Specifically on the history and evolution of discourses of fear on climate change, see Hulme, 'The Conquering of Climate: Discourses of Fear and Their Dissolution', 174 *The Geographical Journal* (2008) 1, at 5–16.

⁴⁷ M. Hulme, 'Against Climate Emergency', 17 October 2018, available at <https://mikehulme.org/against-climate-emergency/>.

⁴⁸ Sillmann *et al.*, 'Climate Emergencies Do Not Justify Engineering the Climate', 5 *Nature Climate Change* (2015) 290.

⁴⁹ Hulme, *supra* note 21.

the effects of discourses of fear from various disciplines can inform the deliberate use of human rights rhetoric to contribute to effective solutions to the enormous problems of climate change.

4 How Human Rights Law Frames Climate Change

International human rights law has evolved as a special and distinct area of international law, and it has gained a tremendous influence and reach beyond the limited world of legal and technical experts dealing with human rights. Human rights law has become a public language that speaks to a broad audience. One can find the language of human rights not only in formal legal texts and documents but also in widely available and accessible reports, policy papers and media sources. More so than other areas of international law, human rights law sets out to engage with a broad public. It is an area of international law that is conspicuously imbued with emotions and moral values. These features make human rights law a particularly powerful form of rhetoric with an expansive reach beyond the technical legal world of human rights lawyers. As such, it is especially imperative that those actors invoking human rights law are aware of, and engage actively with, their rhetorical force and emotional appeals, including discourses of fear on climate change.

Human rights advocates have actively and successfully advanced a framing of climate change as a human rights problem. This powerful account has developed over the past 15 years or so and has added a valuable dimension to the problem of climate change and to its potential solutions. In the relatively short time span, it has become widely accepted that climate change forms a threat to the realization of human rights and that human rights can and should be employed as tools to guide strategies in dealing with the impacts of climate change. The field of human rights has therefore successfully framed climate change as a deeply human problem, going beyond the environmental and economic perspectives on climate change. This framing has focused attention on the real impacts of climate change on human lives, on questions of vulnerability, justice and the deeply unequal ways in which climate change affects different people.

Like international climate change law and policy more generally, human rights law invokes discourses of fear to reflect and attract attention to the growing scientific certainty of the human causes of climate change and its enormous and urgent impacts on human lives. While acknowledging that human rights law is a rich and diverse field, and many various discourses can be found even within the narrow section of human rights law that address the impacts of climate change, I identify and explore a particular discourse of fear. This discourse of fear is reflected in the language of 'threat' that is regularly used in human rights law and rhetoric when dealing with climate change. In this discourse, climate change itself is presented as the primary threat, contributing to a framing of the problem that focuses on the physical scientific perspective of the climate change problem. I am not interested here in the technical legal meaning of the term 'threat' in human rights law but, rather, in the broader

language and its effects on a general non-expert public audience. This broad audience does not – and cannot be expected to – engage in detailed or technical readings of human rights texts. Technical and existential uses of the term ‘threat’ get entirely conflated in public communications and public understandings of climate change and its impacts on human rights. Therefore, the discourse of fear that I am interested in for the purpose of this article is a discourse heard and understood by a non-expert audience.

In the next subsections of this article, I discuss the potential impacts of such a discourse of fear reflected in the language of ‘threat’ by referring to the scholarship on discourses of fear on climate change from other disciplines. I look first at formal international human rights texts, especially resolutions and reports by the UN Human Rights Council (HRC) in relation to climate change that establish the relationship between climate change and human rights. I also look at discourses of fear in human rights academic scholarship, policy reports, civil society movements, official government statements and media. I consider all these voices as speaking the language of human rights and promoting the rhetoric of human rights for a broad public audience.

A Discourses of Fear in Human Rights Law on Climate Change

Actors in the field of human rights law started presenting the impacts of climate change as threats and potential violations to human rights from the mid-2000s. In 2005, a petition was filed with the Inter-American Commission for Human Rights on behalf of all Inuit populations in the American and Canadian Arctic that argued that the USA should be held accountable for human rights violations on the ground of historical and continued carbon emissions that contribute to climate change.⁵⁰ In 2007, small island developing states in the Malé Declaration expressed concerns that climate change has ‘clear and immediate implications for the enjoyment of human rights’.⁵¹ While the Inuit petition and the Malé Declaration identify high-emitting countries as responsible for climate change and its adverse impacts, the language used in human rights texts often presents climate change itself as a responsible actor. The HRC published Resolution 7/23 in 2008 expresses concern that ‘climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights’.⁵² In a subsequent 2009 report in which the HRC further explores the relationship between climate change and human rights, the word ‘threat’ is used 22 times across 29 pages, consistently presenting climate change as a threat to human rights.⁵³ The suggestion in this early framing of

⁵⁰ Inuit circumpolar Council Canada, Inuit Petition Inter-American Commission on Human Rights to Oppose Climate Change Caused by the United States of America, 7 December 2005; see also Center for International Environmental Law, ‘Inuit Petition and the IACHR’, available at www.ciel.org/project-update/inuit-petition-and-the-iachr/.

⁵¹ Malé Declaration on the Human Dimension of Global Climate Change, adopted 14 November 2007, Malé, available at www.ciel.org/Publications/Male_Declaration_Nov07.pdf.

⁵² ‘Human Rights and Climate Change’, Human Rights Council Res. 7/23 (2008) (second emphasis added).

⁵³ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report on the Relationship between Climate Change and Human Rights, Doc. A/HRC/10/61, 15 January 2009.

the relationship between climate change and human rights is that climate change is the threat, or the perpetrator, and human rights are the victims. The responsibility of states is not denied, but the language and syntax obscure the agency of states and accentuate instead the agency of climate change itself.

The language of 'threat' to describe climate change in its relationship to human rights reflects a discourse of fear, and it remains a dominant discourse frequently invoked by human rights actors in addressing the issue of climate change. The UN HRC has played a central role in drawing attention to the human rights impacts of climate change at the international level. After the initial resolution from 2008, the HRC has published various reports on human rights effects of climate change for specific groups, including older persons (2021),⁵⁴ persons with disabilities (2020),⁵⁵ gender-responsive climate action (2019),⁵⁶ cross-border migrants (2018)⁵⁷ and children (2017).⁵⁸ These reports, while also clearly highlighting the varied and unequal impacts of climate change and the responsibility of states, still frequently present climate change itself as the threat to these particular human rights. Headings contained in these reports include 'Climate change impacts on older persons', 'The impacts of climate change on persons with disabilities', 'Gendered impacts of climate change' and 'Key impacts of climate change on children'. The report on climate change and cross-border migrants notes: 'Since 2008, an estimated 22.5 million people per year had been displaced, internally or across borders, *by weather or climate-related disasters*.'⁵⁹ While the use of the word 'threat' to describe climate change in its relation to human rights may seem inconsequential in each separate instance, and especially so since the description is accurate, the overall impression that is created is that of a big ambiguous and inevitable threat. Language and syntax matter, and a general audience will be more influenced by titles of human rights reports that present climate change itself as the actor than by the far more nuanced framing included in the texts of these reports that focus on the responsibilities of state actors.

The UN human rights system has also paid attention to the links between climate change impacts and specific human rights, notably the right to food and the right to health, and it employs similar language of threat and concern therein. The UN Office of the High Commissioner for Human Rights (OHCHR) cited the previous special rapporteur on the right to food in emphasizing that 'climate change poses [a] major threat to food security', which 'could subject an additional 600 million people to

⁵⁴ OHCHR, Analytical Study on the Promotion and Protection of the Rights of Older People in the Context of Climate Change, Doc. A/HRC/47/46, 30 April 2021.

⁵⁵ OHCHR, Analytical Study on the Promotion and Protection of the Rights of Persons with Disabilities in the Context of Climate Change, Doc. A/HRC/44/30, 22 April 2020.

⁵⁶ OHCHR, Analytical Study on Gender-Responsive Climate Action for the Full and Effective Enjoyment of the Rights of Women, Doc. A/HRC/41/26, 1 May 2019.

⁵⁷ OHCHR, Summary of the Panel Discussion on Human Rights, Climate Change, Migrants and Persons Displaced Across International Borders, Doc. A/HRC/37/35, 14 November 2017.

⁵⁸ OHCHR, Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child, Doc. A/HRC/35/13, 4 May 2017.

⁵⁹ OHCHR, Summary of the Panel Discussion, *supra* note 57, at 2 (emphasis added).

malnutrition by 2080'.⁶⁰ In Resolution 29/15, the HRC emphasized the urgent need to continue to address the adverse consequences of climate change for all and called for a panel discussion and analytical study on the impacts of climate change on the enjoyment of the right to health.⁶¹ A recent press briefing by a spokesperson for the OHCHR starts with the assertion that '[c]limate change poses the biggest existential threat to humankind and indeed to the survival of our shared world'.⁶²

The language of threat is adopted by various actors invoking human rights beyond the HRC. Columbia Law School's Sabin Center for Climate Change Law released a report on climate change and human rights in December 2015, which starts by stating that 'anthropogenic climate change is the *largest, most pervasive threat* to the natural environment and human rights of our time'.⁶³ The term 'threat' is mentioned a further 25 times throughout the report to describe climate change impacts.⁶⁴ The report concludes by saying that 'there is widespread agreement among human rights bodies, states and scholars that climate change does interfere with the enjoyment of human rights protected by international law and that this interference will greatly increase over time unless current climate policy dramatically changes'.⁶⁵ Greenpeace in an online publication states that '[s]o many of our human rights, such as right to life, health, food, and an adequate standard of living, are adversely affected by climate change'.⁶⁶ Online human rights magazine *OpenGlobalRights* frequently writes about the relationship between climate change and human rights and emphasizes that 'climate change and its associated impacts – higher global temperatures, rising water levels, and increasingly frequent and extreme weather events – pose significant threats to people around the world'.⁶⁷ Media also pick up on the discourses of fear on climate change in human rights rhetoric, reiterating the dominant frame of climate change as the threat and human rights as the victims.⁶⁸

⁶⁰ OHCHR, 'Climate Change Poses Major Threat to Food Security, UN Expert Warns', 3 November 2015, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16702&LangID=E.

⁶¹ UN Human Rights Council (HRC), Climate Change and Human Rights, Doc. A/HRC/RES/29/15, 2 July 2015.

⁶² R. Shamdasani, Spokesperson for the UN High Commissioner for Human Rights, Press Briefing Notes on Climate Change, 16 March 2021, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26903&LangID=E.

⁶³ UN Environment Programme, in cooperation with Sabin Center for Climate Change Law, Columbia Law School, Climate Change and Human Rights, December 2015, at 1 (emphasis added).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Greenpeace International, 'What Does Climate Change Have to Do with Human Rights?', 10 December 2018, available at www.greenpeace.org/international/story/19885/what-does-climate-change-have-to-do-with-human-rights/.

⁶⁷ OpenGlobalRights, 'Climate Change and Human Rights: What Exactly Are the Opportunities and Challenges for Human Rights Advocacy Surrounding Climate Change?', available at www.openglobalrights.org/climate-change-and-human-rights/.

⁶⁸ P. Verkooijen and A.K. Abdul Moomen, 'The Climate Crisis Is Destroying the Human Rights of Those Least Responsible for It', *The Guardian*, 30 September 2021, available at www.theguardian.com/global-development/2021/sep/30/the-climate-crisis-is-destroying-the-human-rights-of-those-least-responsible-for-it:~:environmentalThreats%20GreatestChallenge%20to%20HumanRights%3AUN%20Aljazeera, 13 September 2021, available at www.aljazeera.com/news/2021/9/13/environment-to-become-biggest-challenge-to-human-rights-un.

Framing climate change as a threat – as the perpetrator of human rights violations – is based on the scientific facts about climate change. Independent human rights experts to the HRC submitted a joint statement to the UNFCCC ahead of COP-24 in 2018 specifying that the threat of climate change to human rights is ‘illustrated in the recently released Special Report by the Intergovernmental Panel on Climate Change (IPCC), which describes the ways in which climate change is transforming life on earth and adversely impacting the lives and livelihoods of millions of people’.⁶⁹ Science supports the fact that climate change indeed is a threat to human rights, but, given the powerful language of human rights and its wide reach to an audience far beyond technical legal experts, human rights actors must be aware of the potential adverse effects of such a framing of the problem of climate change.

B Effects of Discourses of Fear in Human Rights Law on Climate Change

In this subsection, I draw on the literature identified in section 3 of this article to argue that discourses of fear on climate change invoked in human rights law can lead to passive disengagement from the issue of climate change and to active opposition against climate action and may unintentionally contribute to promoting quick technological fixes.

1 From Passive Disengagement to Active Opposition

Human rights actors have been exceedingly successful in framing climate change as a human rights issue, including through the effective use of discourses of fear. Now that the relationship between climate change and human rights is beyond doubt, continued invocations of discourses of fear no longer have the same effects. Presenting climate change as one of the biggest threats to human rights may still provide motivation for human rights proponents to act. For a broader audience, however, such a framing can create the impression of an intangible and obscure problem, the solutions to which are entirely out of their reach. When human rights actors – from the HRC, to civil society, to public officials, to media – repeatedly identify climate change as ‘the most pervasive threat to human rights’, it can play into the climate change fatigue or apocalypse fatigue of which psychologists warn.⁷⁰ Such a framing can lead to disengagement, particularly when the same human rights actors offer their broader audience few tangible solutions as ways forward. Framing climate change itself as the primary threat can lead people to think that there is nothing that they can do as individuals to avert the catastrophe. The effect is a sense of hopelessness and feeling overwhelmed, resulting in apathy.⁷¹

⁶⁹ OHCHR, Joint Statement of the United Nations Special Procedures Mandate Holders on the Occasion of the 24th Conference of the Parties to the UNFCCC, ‘Climate Change and Human Rights’, 6 December 2018, available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23982&LangID=E.

⁷⁰ O’Neill and Nicholson-Cole, *supra* note 32; American Psychological Association Task Force, *supra* note 33; Suttee, *supra* note 34.

⁷¹ Suttee, *supra* note 34.

Discourses of fear can also result in polarization and active opposition to climate policies, especially when the fearful scenarios appear exaggerated and other issues are seemingly neglected. Human rights law as well as international (climate change) law more generally are powerful and popular languages that reach a wide audience but are still often perceived as elitist affairs. World leaders, and spokespeople for the UNCCC, the IPCC, the HRC and influential human rights organizations, repeatedly proclaim that climate change poses an existential threat to human rights and that every next international climate conference is our last chance before catastrophe strikes. Such rhetoric conceals the fact that for many people in the world catastrophe has already struck and that the impacts of climate change merely aggravate their already dire situations. Non-Western leaders regularly emphasize these issues of justice and equality in the global debate on climate change,⁷² but these discourses are subordinate to the rhetoric by US and European (EU) leaders and heads of the IPCC and the UNFCCC.⁷³ With all the good intentions in the world, discourses of fear on climate change emanating from powerful Western leaders risk alienating those who are not in the privileged position to be concerned about the looming problems of climate change and human rights because they have much more immediate and tangible concerns.⁷⁴

By framing climate change as the principal threat, human responsibility for creating vulnerabilities to the impacts of climate change as well as climate change policies is too often neglected. Even though there is attention within climate science as well as human rights law for questions of vulnerabilities and inequalities, framing climate change itself as the threat remains a dominant and pervasive representation. The adjective ‘anthropogenic’ is regularly used to signify the human activities that cause climate change, but there is no similar consideration for the human activities that create conditions of vulnerability to the impacts of climate change.⁷⁵ Stephen Humphreys has written that ‘[c]limate change becomes a human rights problem – a legal problem, in principle – because humans are responsible for it; not just because they are harmed by it’.⁷⁶ This is a key observation. The discourse of fear as reflected in the language of ‘threat’ highlights the physical threat of climate change but obscures the threat of human systems that create vulnerabilities. Global elites hammering on threats of climate change to human rights while doing little to address immediate

⁷² See, e.g., the official statements by the Marshall Islands on behalf of the Pacific small island developing states and the prime minister of Barbados at COP-26 in November 2021, available at <https://unfccc.int/documents/3111016> and <https://unfccc.int/documents/309276>. The minister of justice of Tuvalu recorded a speech for the same COP-26 meeting while standing knee-deep in water, making a clear visual statement of the immense and imminent impacts of climate change on this island state. ‘Tuvalu Minister Stands in Sea to Film COP26 Speech to Show Climate Change’, *Reuters*, 9 November 2021, available at www.reuters.com/business/cop/tuvalu-minister-stands-sea-film-cop26-speech-show-climate-change-2021-11-08/.

⁷³ See notes 23–28 above.

⁷⁴ Arnold, *supra* note 36.

⁷⁵ For a discussion on the use of the term ‘anthropogenic’, see also A. Saab, *Narratives of Hunger in International Law: Feeding the World in Times of Climate Change* (2019), at 143.

⁷⁶ Humphreys, ‘Anthropocentric Rights’, in M. Di Paola and D. Kamal, *Climate Change and Human Rights: The 2015 Paris Conference and the Task of Protecting People on a Warming Planet* (Global Policy e-book, 2015).

concerns of a large part of the world population can result in further polarization and active opposition.

An example of how discourses of fear frame the problem of climate change and can lead to a 'negative, depressive, and reactionary trajectory' is the yellow vest movement that began in late 2018 in France.⁷⁷ The immediate impetus for these protests was a rise in fuel prices in France, which affected the working and middle classes disproportionately. Some protesters themselves were adamant to emphasize that they fully supported necessary action on climate change, but their grievances were based on feeling that they were shouldering too much of the burden.⁷⁸ Discourses of fear that frame the physical phenomenon of climate change as the primary threat instigate solutions that aim principally at reducing greenhouse gas emissions – in this example, disincentivizing fuel consumption by raising prices. This dominant framing takes attention away from the enormously unequal socio-economic realities that ultimately produce the vulnerabilities to climate change and to climate change policies and risks causing such reactionary responses. Climate denialism and opposition against climate change policies, of course, are incredibly varied. Whichever form the opposition takes, it is crucial for lawmakers and policy-makers to hear and pay attention to the real concerns of different groups and people.

There is a risk that discourses of fear in human rights law are in a sense preaching to the choir. Those who already subscribe to the message that climate change is a tremendous threat and human rights one of its victims continue to voice their message. Continuing to highlight the threat of climate change risks further alienating, instead of persuading, those who are sceptical of climate change policies and human rights strategies for varying reasons. Rather than upping the fearful discourses, human rights proponents may consider other strategies of communication that seek dialogue and can speak to a wider and more diverse audience. This is especially important at a time when human rights actors have already been very successful in establishing the clear links between climate change and human rights. Human rights discourse must move beyond fearful messages that present climate change as the leading threat and contribute to offering distinct ways forward.

2 *Obscuring Non-Climatological Dimensions of Climate Change and Encouraging Quick Technofixes*

Discourses of fear on climate change can also contribute to creating a favourable context for promoting technological fixes by obscuring non-climatological dimensions of the problem. Mike Hulme and others have pointed out this potential effect of discourses of fear on climate change, arguing that creating a 'state of emergency' on climate change can encourage 'desperate measures'.⁷⁹ By presenting climate change

⁷⁷ Hulme, *supra* note 21.

⁷⁸ C. Bejar-Garcia, 'France's Yellow Vest Movement and the Global Debate on Climate Change', *Harvard International Review*, 27 April 2020, available at <https://hir.harvard.edu/frances-yellow-vest-movement-and-the-global-debate-on-climate-change/>.

⁷⁹ Hulme, *supra* note 47; Sillmann *et al.*, *supra* note 48.

as the primary threat to human rights, human rights law frames climate change as principally a physical scientific problem, most prominently a problem of increases in global average temperatures and weather extremes because of excessive greenhouse gas emissions. This dominant framing contributes to creating a context in which technological solutions to these physical problems appear as necessary and sufficient solutions. There is an urgent need to address greenhouse gas emissions and to counter the physical impacts of climate change, and technology has an important role therein, but quick technofixes will not address the underlying problems of climate change.

Notable proponents of technological fixes for climate change problems are author and journalist Michael Shellenberger and political scientist Bjørn Lomborg. One of Shellenberger's long-standing contentions is that modernization and technological innovation are the solutions to climate change problems.⁸⁰ Similar to Shellenberger, Lomborg argues that climate change is indeed a problem but that an exaggerated apocalyptic framing does not lead to effective solutions and is in fact counterproductive.⁸¹ The viewpoints of Shellenberger and Lomborg are subject to harsh criticism and often dismissed for greatly oversimplifying the problems and solutions of climate change.⁸²

There are many valid reasons to be critical of technological fixes proposed by people such as Shellenberger and Lomborg, not in the least because these solutions address only symptoms and not underlying problems.⁸³ Such criticism is, however, rather ineffectual without also considering the context within which these technological solutions have come to have great popular appeal. After more than a decade of hearing politicians and public spokespeople announce our last chances, declare that our time is running out and signal the imminent arrival of climate catastrophe with little noticeable hard action, it is no wonder that tangible – and exceedingly simplistic – solutions gain more traction. A valid criticism of a tragic apocalyptic narrative of climate change told through discourses of fear is that such a narrative consists of big words

⁸⁰ Michael Shellenberger together with Ted Nordhaus co-founded the Breakthrough Institute in 2005, 'a global research center that identifies and promotes technological solutions to environmental and human development challenges'. See 'About', *The Breakthrough*, available at <https://thebreakthrough.org/about>. In his recently published book, *Apocalypse Never*, Shellenberger argues that, while climate change is a real problem, it is not our main problem. M. Shellenberger, *Apocalypse Never: Why Environmental Alarmism Hurts Us All* (2020).

⁸¹ B. Lomborg, *False Alarm: How Climate Change Panic Costs Us Trillions, Hurts the Poor, and Fails to Fix the Planet* (2020).

⁸² See, e.g., B. Ward, 'False Alarm by Bjorn Lomborg; Apocalypse Never by Michael Shellenberger – Review', *The Guardian*, 9 August 2020, available at www.theguardian.com/books/2020/aug/09/false-alarm-by-bjorn-lomborg-apocalypse-never-by-michael-shellenberger-review.

⁸³ For example, Clive Hamilton, professor of public ethics, contends that focusing on technological fixes disregards the complex politics of climate change. C. Hamilton, 'The Technofix Is In: *An Ecomodernist Manifesto* Fails to Acknowledge the Political Forces at Work in the Battle over Climate Change, and So Fails to Chart a Way Forward', *Earth Island Journal*, 22 April 2015, available at www.earthisland.org/journal/index.php/articles/entry/the_technofix_is_in. Mike Hulme has made a similar case against technofixes, and particularly geoengineering. M. Hulme, *Can Science Fix Climate Change? A Case against Climate Engineering* (2014).

but little action,⁸⁴ and technological solutions appear to be welcome actions in a world of fearful discourses. The message that people such as Shellenberger and Lomborg bring is a more hopeful one than the doomsday proponents. They present tangible possibilities and solutions to a seemingly irresolvable and entirely overwhelming problem. As psychologists and communications experts have emphasized, messages of hope may be more effective in stimulating action than messages of fear.⁸⁵ By invoking a particular discourse of fear on climate change, human rights actors may be unintentionally contributing to the popularity of quick technofixes.

Even when discourses of fear are based on good science and even when technological innovations may provide necessary solutions to some of the causes and impacts of climate change, attaching the label of ‘threat’ to climate change itself contributes to a frame that conceals underlying structural problems. This frame can lead to a situation in which the symptoms of climate change are addressed without dealing with deep structural changes that are needed. As geographer Erik Swyngedouw aptly notes, ‘[t]he imaginary of crisis and potential collapse produces an ecology of fear, danger, and uncertainty while reassuring “the people” (or, rather, the population) that the techno-scientific and socio-economic elites have the necessary tool-kit to readjust the machine such that things can stay basically as they are’.⁸⁶ If carbon emissions are the threat, technofix proponents may say, then innovations such as geoengineering and carbon storage can eliminate the threat. However, addressing the physical causes and effects of climate change does not deal with crucial questions around climate justice, including but not limited to: who is responsible; who is feeling the impacts of climate change and in what ways; why are some people more vulnerable to the impacts of climate change; and what are the effects of climate change strategies on other aspects of human life? Ignoring these questions risks more resistance, as illustrated in the example of the yellow vest movement.

Human rights law at its essence is precisely intended to promote climate justice, and human rights advocates seek to garner attention for those groups most vulnerable to the impacts of climate change.⁸⁷ And, yet, the discourse of fear that emphasizes climate change itself as the main threat to human rights continues to frame climate change principally as a physical problem of carbon emissions and rising temperatures. This framing of climate change in human rights law is entirely legitimate from a scientific perspective, but it also results in deflecting necessary attention away from social, economic, cultural and ethical perspectives that are at least equally valuable in understanding and addressing climate change.⁸⁸ There is a real risk that discourses of fear that focus so much on climate change itself result in oversimplifications of

⁸⁴ See Kinley’s critique of the ‘last chances’ rhetoric around COP-26. Kinley, *supra* note 44.

⁸⁵ Hayhoe, *supra* note 38.

⁸⁶ Swyngedouw, ‘Apocalypse Now! Fear and Doomsday Pleasures’, 24 *Capitalism Nature Socialism* (2013) 9, at 10–11. Naomi Klein makes a similar point in writing about the Great Reset and conspiracy theories. N. Klein, ‘The Great Reset Conspiracy Smoothie’, *The Intercept*, 8 December 2020, available at <https://theintercept.com/2020/12/08/great-reset-conspiracy/>.

⁸⁷ See the various OHCHR reports cited in notes 54–58 above.

⁸⁸ See Risbey, *supra* note 22.

the problem and, ultimately, that solutions comprise dealing primarily with symptoms that are most easily measured and tallied. Of course, climate change itself is a physical and scientific threat, and greenhouse gas emissions must be reduced, but these goals alone will not tackle the enormously complex and multidimensional problem that is climate change.

5 Towards a Comic Apocalyptic Narrative on Climate Change in Human Rights Law

Climate science leaves no doubt that human activities are greatly accelerating climate change and that the impacts of climate change are potentially catastrophic and pose existential threats to human life. The doomsday scenarios and fearful discourses that are pervasive in communications about climate change to the general public are accurate from this scientific perspective, but, as argued in this article, are more than mere reflections of scientific data. Discourses of fear are emotive appeals – forms of rhetoric – that frame the issue of climate change in a particular way. A prevalent discourse of fear invoked by various human rights actors frames climate change itself as the principal threat to human rights. This framing reinforces a tragic apocalyptic narrative that articulates the real and urgent threats of climate change but offers a limited perspective on the problem and limited prospects for a better future.⁸⁹ Well over a decade after successfully initiating the human rights and climate change conversation, human rights actors must acknowledge the effects of fearful discourses on a broad public audience and strive to contribute to a narrative that supports real possibilities for effective action on climate change. At the core of contributing to a more nuanced and contingent narrative is being deliberate about the emotions that we as international lawyers invoke and the effects of these emotions.

As a powerful language spoken by various actors and with a wide audience, human rights law can play an important role in paving the path away from a tragic apocalyptic narrative towards a more comic apocalyptic narrative on climate change. Comic apocalyptic narratives are narratives ‘that emphasize provisionality of knowledge, free will, ongoing struggle and a plurality of social groups with differing responsibilities’.⁹⁰ Human rights law, as well as climate change discourse more broadly, does recognize the provisionality of knowledge and the plurality and complexity of climate change and its varied human implications and responsibilities. Nevertheless, these perspectives that acknowledge the complexity of climate change are overshadowed by powerful discourses of fear that present climate change itself as the threat to human rights. In the early phases of identifying the effects of climate change on human rights, there were strategic reasons to simplify the threat to ‘climate change’, understood as the physical phenomenon of a changing climate because of human actions – notably, excessive greenhouse gas emissions. Now that there is widespread consensus that

⁸⁹ See Garrard, *supra* note 20.

⁹⁰ *Ibid.*, at 115.

climate change is an urgent threat and that the impacts of climate change adversely affect human rights, discourses of fear are no longer effective in garnering attention but can instead result in disengagement, opposition and support for treating symptoms without addressing the underlying problems.

There are already examples of human rights actors using language more effectively to emphasize the complexity and multidimensionality of climate change beyond the climatological perspective and contributing to a comic apocalyptic narrative. One example of such use of language that reflects a more nuanced narrative is from Amnesty International's website describing the relationship between climate change and human rights in the following way: '[Climate change] will compound and magnify existing inequalities. And its effects will continue to grow and worsen over time, creating ruin for current and future generations. This is why *the failure of governments to act on the climate crisis in the face of overwhelming scientific evidence may well be the biggest inter-generational human rights violation in history.*'⁹¹ Amnesty International emphasizes that it is 'the failure of governments to act on the climate crisis' that is the biggest threat and potential human rights violation. Framing the issue in this way shifts the focus from climate change itself as the primary threat to government (in)action as the biggest threat. Climate change is not presented as the perpetrator, but, rather, the spotlight is put on governments as the perpetrators by failing to act to mitigate climate change. In this communication, Amnesty International still uses emotive language – especially in the words 'ruin' and 'biggest ... human rights violation in history' – but it uses emotive discourse to draw attention to the responsibility and accountability of governments – entities with agency – rather than climate change. These words convey anger and indignation at the lack of government action, emotions that some psychologists argue may be more effective in inspiring action than discourses of fear.⁹²

Human rights law also advances comic apocalyptic narratives on climate change through the surge in climate change-related case law before numerous courts.⁹³ One prominent example is the so-called *Carbon Majors* case. In the aftermath of several devastating typhoons that hit the Philippines, Greenpeace South Asia and a group of local rural organizations and individuals filed a petition to the Commission of Human Rights of the Philippines.⁹⁴ In this petition, they argue that '[c]limate change interferes with the enjoyment of our fundamental rights as human beings. Hence, *we demand*

⁹¹ 'Climate Change', *Amnesty International*, available at www.amnesty.org/en/what-we-do/climate-change/ (emphasis added).

⁹² Stanley *et al.* *supra* note 37.

⁹³ There has been an incredible surge in climate change litigation, and the importance of climate change litigation goes well beyond the technical legal outcomes of cases and has a powerful symbolic value. See, e.g., J. Peel and H. Osofsky, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (2015), especially ch. 1 (which discusses why climate change litigation matters).

⁹⁴ *Petition to the Commission on Human Rights of the Philippines Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change*, 5 December 2015, available at http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2015/20150512_Case-No.-CHR-NI-2016-0001_petition.pdf.

accountability of those contributing to climate change'.⁹⁵ While the claimants do identify climate change as interfering with the enjoyment of human rights, the central point of their petition is to draw attention to the accountability of those companies (private and public owned) that are responsible for the largest proportion of greenhouse gas emissions, referred to as 'carbon majors'. The Commission of Human Rights concluded in 2020 after a three-year investigation that the 47 carbon majors can indeed be held liable for human rights violations, based on their contributions to causing climate change.⁹⁶ A senior attorney at the Center for International Environmental Law who provided legal support in this case has stated: 'As the human rights impacts of climate change increase, existing national human rights institutions must urgently step up within the terms of their mandate to address this existential threat.'⁹⁷ This statement goes beyond requesting accountability from the carbon majors; it also appeals to national human rights institutions to act. To emphasize an earlier point, these uses of human rights law and language do not deny or overlook the real threat of climate change, nor do they shy away from emotive language, but they do bring the important question of accountability more explicitly into the frame.

Another example of an important – albeit much less heard of – climate change and human rights case is that of *Leghari v. Federation of Pakistan*. A Pakistani farmer brought a case before the Pakistani court in 2015 claiming that his human rights as stipulated in the Pakistani Constitution had been violated because Pakistan was not doing enough to implement its national climate change policies. The claimant put forth that his right to life (Article 9 of the Constitution) and his right to a healthy environment and dignity (Article 14 of the Constitution) had been violated because climate change was severely affecting his farming practices. The Lahore High Court in 2018 judged in favour of the claimant and demanded the Pakistani government to do more to implement its 2012 National Climate Change Policy and the 2014–2030 Framework for Implementation of Climate Change Policy.⁹⁸ Unlike the *Carbon Majors* case in which the claimants constituted and were represented by big and influential organizations, the claimant in the Leghari case was a single individual Pakistani farmer. This case clearly demonstrates that persons who are most directly affected by the impacts of climate change are not only victims of potential human rights violations but can also be active agents in demanding accountability and action.⁹⁹ The *Leghari* case

⁹⁵ *Ibid.*, at 3 (emphasis added).

⁹⁶ I. Kaminsky, 'Carbon Majors Can Be Held Liable for Human Rights Violations, Philippines Commission Rules', *Business and Human Rights Resource Centre*, 9 December 2019, available at www.business-human-rights.org/en/latest-news/carbon-majors-can-be-held-liable-for-human-rights-violations-philippines-commission-rules/.

⁹⁷ Center for International Environmental Law, 'Groundbreaking Inquiry in Philippines Links Carbon Majors to Human Rights Impacts of Climate Change, Calls for Greater Accountability', 9 December 2019, available at www.ciel.org/news/groundbreaking-inquiry-in-philippines-links-carbon-majors-to-human-rights-impacts-of-climate-change-calls-for-greater-accountability/.

⁹⁸ *Asghar Leghari v. Federation of Pakistan*, WP no. 25501/2015, 4 September 2015, available at www.informea.org/en/court-decision/asghar-leghari-vs-federation-pakistan; see also 'Climate Case Chart', available at <http://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/>.

⁹⁹ Arnold, *supra* note 36.

has received much less public attention outside the realm of legal experts with a particular interest in this subject matter, which underscores the point of human rights law and climate change law being perceived as elitist.¹⁰⁰

These few examples demonstrate that there is much potential in human rights law to advance narratives that embrace the divergent experiences of the various problems under the umbrella of climate change and that leave space for the necessary diverse strategies to tackle these problems. The threat is not climate change itself alone. It is necessary to consider the responsibility and accountability of states, corporations and human rights organizations and to view persons not only as passive victims of potential human rights violations but also as active agents in demanding accountability and making real changes. Calling on human rights actors to be aware of their own rhetorical power and particularly to engage with the potential adverse effects of discourses of fear does not entail dismissing the existence or the use of emotions in law. On the contrary, those speaking the language of international human rights law must engage with the messy realities of climate change, science, reason and emotion.

¹⁰⁰ 'Tuvalu Minister Stands in Sea', *supra* note 72.