

## Fair balance

There remains the question of how can we reconcile the inevitable tension between the complaint of an actual individual who claims to be victim, here and now, of a violation of his human rights and the rights of future generations? Furthermore, where should governments stand with regard to their obligation to provide the greatest good to the greatest number?

The difficulty is shown in *Hatton and Others v. the United Kingdom* (2001), concerning complaints of nuisances caused by the increase of night flights in Heathrow airport in London. The European Court stated in its judgment that “*the State can be said to have struck a fair balance between [the interests of the economic well-being of the country] and the conflicting interests of the persons affected by noise disturbances, including the applicants. Environmental protection should be taken into consideration by States acting within their margin of appreciation and by the European Court in its review of that margin, but it would not be appropriate for the European Court to adopt a special approach in this respect by reference to a special status of environmental human rights.*” Taking into account the measures taken by the domestic authorities to mitigate the effects of aircraft noise and the fairness and transparency of the decision-making process, the European Court concluded that there was no violation of Article 8. However, a minority of five judges (against twelve) considered on the contrary that “*reasons based on economic arguments referring to ‘the country as a whole’*

*without any ‘specific indications of the economic cost of eliminating specific night flights’ are not sufficient. Moreover, it has not been demonstrated by the respondent State how and to what extent the economic situation would in fact deteriorate if a more drastic scheme – aimed at limiting night flights, halving their number or even halting them – were implemented.*” The minority pointed out that “*concern for environmental protection shares common ground with the general concern for human rights*” and concluded that there was a violation of Article 8 of the ECHR.

## Conclusion

While the right to a healthy environment is, as such, not protected by the ECHR, it is possible to protect it indirectly if an individual (not *actio popularis*) alleges that another ECHR right was violated. The right to a healthy environment is therefore a judicially enforceable right, at least in some of its aspects. Nevertheless, it has to be compatible with the general interests of the community: a fair balance between all competing interests has to be found.

## Notes:

1. The views presented here are the author’s and do not represent the position of the European Court of Human Rights.
2. ECHR Article 1 of Protocol No. 1, regarding the protection of private property, and ECHR Article 10, concerning freedom of information, could be seen to further support such a environmental human right but we are limited by space to these two.

3. *Hatton and Others v. the United Kingdom*, Application No. 36022/97, judgement of 8 July 2003 [GC], paragraph 96.

4. *Hatton and Others v. the United Kingdom*, Application No. 36022/97, judgement of 8 July 2003 [GC], paragraph 98.

5. Parliamentary Assembly of the Council of Europe (Bota, José Mendes) (2009): Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, Doc. 12003 11 September 2009.

6. Parliamentary Assembly of the Council of Europe (Bota, José Mendes) (2009): Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, Doc. 12003 11 September 2009.

## Biography:

Abel Campos has a degree in Law and in Economic and Legal Sciences from the University of Coimbra. After a period in the European Commission in Brussels, he worked for a law firm in Lisbon. Since 1991 he has been in Strasbourg, first with the then European Commission of Human Rights and from 1998 with the European Court of Human Rights, where he is currently Senior Lawyer and Head of Legal Division. He has published various articles and lectured on European Convention themes, particularly in the University of Coimbra and in the Institut des Hautes Etudes Européennes (University of Strasbourg).

## CONFERENCE PAPERS

### Implementing intergenerational justice: Children at the heart of policy making

by Lucy Stone

Focusing on children and their future is a powerful way to transform the confused attempts to tackle climate change into renewed implementation of sustainable development. Protecting children’s rights to health and education for example, and planning ahead for children’s future, is not a hugely controversial idea. But when applied to climate change it renews efforts to focus decision making not on the short

term but on long term, more sustainable decisions.

Climate science indicates that even the most conservative predictions will have considerable impacts on children, particularly those in countries least responsible but most at risk; the least developed nations. The window of opportunity to prevent the worst scenarios of climate change is fast closing and many of the potential environmental

impacts are likely to be irreversible. Therefore, the current generation of adults alive today will decide the fate of many generations to come. UNICEF UK explored how focusing on child rights provides an opportunity to implement intergenerational justice in the context of climate change.

The United Nations Convention of the Rights of the Child (CRC) is the most widely ratified international human rights

treaty in history. The CRC enshrines specific rights of all children with principles of respect for the views of the child, best interest of the child, non-discrimination and the right to life, survival and development. This provides a useful framework for guiding decisions about the scale and speed of the transition from fossil fuel based economies to low carbon modes of development. It also provides a framework for international payments from countries with historical responsibility for greenhouse gas emissions to countries bearing the brunt of the impact but with little contribution to the problem.

Intergenerational principles have been used in the UK to argue for greater spending by the current generation rather than delaying spending for future generations (who it is argued may be better able to pay, or have better technological means of adapting to the changes). Lord Stern was commissioned by the previous UK government to conduct an analysis of the economics of climate change. He concluded that the economic decisions on climate change (how much to spend on a low carbon transition now, and how much the future costs of inaction may be) have such great potential impact that it is essentially an ethical decision: *“Questions of intra- and inter-generational equity are central. Climate change will have serious impacts within the lifetime of most of those alive today. Future generations will be even more strongly affected, yet they lack representation in present day decisions.”*<sup>1</sup>

A social contract based on intergenerational justice agrees that each generation passes on the land, country or world in a better or no worse state than it was received. Options and opportunities should be the same or increa-

sed for children as it was for their parents and grandparents. This principle can be found in the creation of a Trust for future beneficiaries, in conservation and land managed on behalf of the nation (e.g. National Trust).

A child rights approach to climate change would ensure that the views of children are heard on key policy decisions, and that government decisions are made in the best interests of the child. Considering the huge risk of climate change to child health and development both in the UK and internationally, this should mean action on mitigating greenhouse emissions, investing in a low carbon economy and adequate support for children in developing countries. A first step to a child rights approach has been taken with the establishment of a ‘youth panel’ by the Department for Energy and Climate Change, to consult young people on key policy decisions. But action on support for low carbon industry, penalties for greenhouse gas emissions, and financing for adaptation in developing countries, is not yet happening at the



*Third Panel “Intergenerational Justice and International Law”: Sébastien Jodoin, Lucy Stone, Dr. Marisa Matias and Patrick Wegner*

scale required to avert the impacts on child rights that has been forecast.

The new UK coalition government has already stated that: *“we need to protect the environment for future generations, make our economy more environmentally sustainable, and improve our quality of life and well-being.”* A child rights framework could ensure this vision becomes reality.

#### Notes:

1. Stern, N. (2006): Stern Review on the Economics of Climate Change. London: HM Treasury: p. 23.
2. <http://ww2.defra.gov.uk/about/>

#### Biography:

Lucy Stone leads the climate change programme for UNICEF UK based in London. This involves advocating for a child-centred approach to climate policy, and innovative funding for climate adaptation in countries most vulnerable to climate change. With expertise in climate change policy, behaviour change and community participation, she has worked as a policy advisor and researcher for UK-based think tanks. She has contributed to international conferences, such as the Global Environmental Change and Human Security conference in Oslo, the British German Environment Forum in Berlin and the UNFCCC Conference of the Parties in Copenhagen. She has an MSc in Environmental Technology at Imperial College and a degree in philosophy and religion from Newcastle University. Recent publications include a policy briefing on climate change and intergenerational justice with the Institute for Development Studies.

## CONFERENCE PAPERS

### The Failure of Copenhagen and its consequences for International Relations *by Dr. Marisa Matias*

Almost everything has been said about the Copenhagen Summit: its failure, the disappointment, the unrealised goals, a new global order, the re-configuration of power relations, the new ‘maps’ for inter-relations, the role of the United States and China, the news spaces generated by the counter-summit and the organization of the Cochabamba meeting on the rights of Mother Earth, the emer-

gence of a new civil society. Without unanimous agreement, the problems emerging from climate change raise important questions that demand reflection and action. One of the key issues is the role of the United Nations in the governance of climate change and the renewal of discussions regarding a dedicated commission inside its structure. Another important matter involves the attempts, mainly by some Latin American

countries, to create an International Court to deal with climate ‘crimes’. Finally, there is a transversal debate that cuts across all aforementioned dimensions: what is the role of politics in dealing with climatic problems and climate justice. How can our politics deal with a possible new global order together with issues of climate justice and issues of redistribution?