

Climate Protest and the Right of Resistance in International Law

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Abstract	511
Keywords	512
I. Introduction	512
II. Human Rights Law and the Criminalisation of Climate Protests	517
1. The Right to Protest Under International Human Rights Law	517
a) The Definition of a ‘Peaceful’ Protest and ‘Violence’	518
b) Restrictions and Proportionality	519
2. Criminalisation of Climate Protests – Examples from State Practice	520
III. Global Injustice, Resistance, and Climate Protest	522
1. Climate Change and Global Injustice	523
2. Climate Protest as Civil Disobedience	524
a) The Definition of Civil Disobedience – The Element of Violence	525
b) Civil Disobedience and Climate Change	527
3. The Right to Resistance Under International Law	528
a) Rebellion – the Preamble of the Universal Declaration of Human Rights	529
b) Self-Determination and the Right to a Remedy: The International Covenant on Civil and Political Rights	531
4. The Right to Resistance as Applied to Climate Protest	532
a) Resistance Against ‘Tyranny and Oppression’	532
b) Resistance as a ‘Last Resort’	534
c) The Content of a Right to Resistance in the Context of Climate Change	535
IV. Conclusions	537

Abstract

This paper examines the actions of the current climate protest movement and the criminal sanctions and other laws which have been introduced in a number of jurisdictions aimed at restricting such protests. It analyses these developments from an international human rights law perspective and argues that utilising the concept of a right of resistance under international law appropriately and accurately reflects the historical and socio-economic under-

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pinnings of climate change harms and, as such, is a helpful and appropriate concept to utilise in balancing competing interests involved in establishing the lawful remit of climate protest. In doing so, it examines the scope of necessary and proportionate climate protest exercised as an act of resistance and whether this would cover acts which cause disruption or property damage.

Keywords

The right to protest – social movements – resistance – civil disobedience – climate change – global injustice – colonialism – human rights law

I. Introduction

The boundaries of lawful protest have been the subject of intense debate in the past few years in light of the increasing numbers of protest across the world¹ and the criminalisation of those protest actions in various jurisdictions.² In particular, the actions of one group in the global protest movement – *climate protestors* – have been the subject of significant criticism and restrictive measures by governments in some countries, including significant financial penalties and terms of imprisonment.

The restrictions placed on climate protest are often justified on the basis that the actions of protestors are ‘disruptive’, ‘harmful’, or ‘violent’.³ Of particular focus are acts which disrupt road traffic or fossil fuel operations. However, when one examines the context in which climate protest is taking place, we can observe that protestors are framing their calls for action in terms of a *climate emergency* – that the climate crisis requires urgent action to avoid the destruction of the planet, that this is the most urgent crisis facing humanity and that states are not taking sufficient action to address this situation.⁴ Such protests can therefore be viewed as an act of resistance against state inaction on a matter threatening humanity. Indeed, leading environmental

¹ See Isabel Ortiz, Sara Burke, Mohamed Berrada and Hernán Saenz Cortés, *World Protests: A Study of Key Protest Issues in the 21st Century* (Palgrave Macmillan 2022), 1-79.

² See discussion of this in Section II. below.

³ Dunja Mijatović, ‘Human Rights Comment: Crackdowns on Peaceful Environmental Protests Should Stop and Give Way to More Social Dialogue’, Council of Europe Commissioner for Human Rights, 2 June 2023, <www.coe.int/bg/web/commissioner/-/crackdowns-on-peaceful-environmental-protests-should-stop-and-give-way-to-more-social-dialogue>, last access 19 March 2026.

⁴ See discussion of some of this messaging in Fadeke Banjo, Lana Lenfant Al Zouheiri, and Tess Lowery, ‘11 of the Most Powerful Quotes from Climate Activists at Power Our Planet: Live in Paris’, Global Citizen, 23 June 2023, <www.globalcitizen.org/en/content/quotes-climate-activists-power-our-planet/>, last access 19 March 2026.

protest group, Extinction Rebellion, explicitly describe their protest campaigns as acts of *rebellion*.⁵ This paper therefore asks whether the acts of climate protestors can be framed as an act of resistance under international law and how that should be considered in assessing the lawful remit of their protest actions.

To provide context to this debate and the background to current protest actions, it is first important to set out the current state of climate change. The threat to humanity posed by climate change is well-documented in scientific literature.⁶ The 2023 six assessment report of the Intergovernmental Panel on Climate Change (IPCC)⁷ notes that:

‘Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people (high confidence). Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected (high confidence).’⁸

The IPCC report also explicitly states that ‘[c]limate change is a threat to human well-being and planetary health (*very high confidence*)’,⁹ that ‘[t]here is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*)’¹⁰ and that ‘[l]imiting human-caused global warming requires net zero CO₂ emissions.’¹¹ As a reflection of this, some international organisations¹² and certain states¹³ have recognised the

⁵ Peter Gardner, Tiago Carvalho and Maria Valenstein, ‘The Global Spread of Extinction Rebellion Through Mass Protest’, *The Loop*, 10 August 2022, <<https://theloop.ecpr.eu/the-global-spread-of-extinction-rebellion-through-mass-protest/>>, last access 19 March 2026.

⁶ See IPCC, ‘Summary for Policymakers’, *Climate Change 2023: Synthesis Report*, Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, 2023, 1-34, <www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf>, last access 19 March 2026; Julia Rosen, ‘The Science of Climate Change Explained: Facts, Evidence and Proof’, *New York Times*, 6 November 2021, <www.nytimes.com/article/climate-change-global-warming-faq.html#link-2bcb067a>, last access 19 March 2026.

⁷ The IPCC is the intergovernmental body of independent experts established to review and assess the science related to climate change.

⁸ IPCC (n. 6), 5, para. A2.

⁹ IPCC (n. 6), 24, para. C1.

¹⁰ IPCC (n. 6), 24, para. C1.

¹¹ IPCC (n. 6), 19, para. B5.

¹² See e.g. UN Environment Program: ‘The world is in a state of climate emergency, and we need to shift into emergency gear’: ‘The Climate Emergency’, <www.unep.org/climate-emergency>, last access 19 March 2026.

¹³ See Climate Emergency Declaration and Mobilisation in Action (CEDAMIA) Global Climate Emergency Declaration (CED) fact sheet, <www.cedamia.org/fact-sheets/>, last access 19 March 2026.

existence of a 'climate emergency'. Therefore, there seems to be a *prima facie* justification for resistance action in order to protect a number of human rights: the right to life, the right to health and the right to a clean, healthy, and sustainable environment.¹⁴

Whilst some international action to address climate change is being undertaken, many individuals and environmental groups believe that the actions taken are deficient and that significantly greater changes are necessary in order to avert the harms which will occur. For instance, Greenpeace UK, Last Generation in Germany and Just Stop Oil have demanded the cessation of fossil fuel extraction.¹⁵ Greenpeace UK have also called for the tripling of renewable energy and the decarbonisation of industry.¹⁶ However, states and corporations have not yet actioned those recommendations and many individuals and groups across the world have increasingly engaged in protests to call for urgent action. For instance, Extinction Rebellion UK has underlined the urgent need for action to prevent a climate catastrophe:

'Time has almost entirely run out to address the climate and ecological crisis which is upon us, including the sixth mass species extinction, global pollution, and increasingly rapid climate change. If urgent and radical action isn't taken, we're heading towards 4°C warming, leading to societal collapse and mass loss of life.'¹⁷

As noted above, the aim of this paper is to examine the lawful remit of such protests in the context of a climate emergency and the conceptualisation of climate protest as an act of resistance under international law. Central to the concept of 'resistance' is whether acts of resistance are necessary and

¹⁴ See e.g. the European Court of Human Rights judgment *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* where the Court found that Article 8 of the European Convention on Human Rights encompasses a right for individuals to effective protection by State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life: ECtHR (Grand Chamber), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, judgment of 9 April 2024, no. 53600/20. UNGA Res 76/300 of 28 July 2022, A/RES/76/300. For a fuller discussion of the impact of climate change on human rights, see Stephen Humphreys (ed.), *Human Rights and Climate Change* (Cambridge University Press 2009).

¹⁵ See Greenpeace UK, *How Government Should Address the Climate Emergency*, May 2019, <www.greenpeace.org.uk/wp-content/uploads/2019/08/0861_GP_ClimateEmergency_Report_Pages-1.pdf>, last access 19 March 2026; Just Stop Oil: <<https://juststopoil.org/faqs/>>, last access 19 March 2026. See e.g. Last Generation Group: <<https://letztegeneration.org/en/wer-wir-sind/>>, last access 19 March 2026.

¹⁶ Greenpeace UK (n. 15).

¹⁷ Extinction Rebellion UK, 'Extinction Rebellion Launches Its First UK-Wide Monthly Day of Action', 29 September 2023, <<https://extinctionrebellion.uk/2023/09/29/extinction-rebellion-launches-its-first-uk-wide-monthly-day-of-action/>>, last access 19 March 2026.

proportionate to the harm being resisted. Many commentators have stated that an act of resistance must be non-violent in nature.¹⁸ However, as this paper will demonstrate, the demarcation between ‘peaceful’ and ‘violent’ protest is not altogether clear. Many climate protest groups are committed to peaceful protest actions. For instance, Just Stop Oil describes itself as a ‘*nonviolent* civil resistance group demanding the United UK Government stop licensing all new oil, gas, and coal projects’¹⁹ and Last Generation, based in Germany, emphasise that they ‘are entirely nonviolent in actions and speech’.²⁰ However, the line between peaceful and violent protest is not as clear when one examines protest which disrupts society or causes damage to property. In some cases, protests may be seen as ‘disruptive’ on the basis that they block traffic (by sitting down on roads or gluing their hands to roads) and therefore subject to criminal penalties.²¹ In other cases, the acts may be seen as constituting ‘violence’ and subject to criminal penalties if the protest act involves trespass and interference or damage to public or private property.²² For instance, protestors have attempted to close down oil pipelines in the United Kingdom (UK), Canada and the United States (US) by engaging the ‘turn off’ valve on the pipelines.²³ They have been criticised by government and corporations on the basis that turning off the pipelines in that way

¹⁸ See discussion at Section III. below.

¹⁹ ‘Get involved – Just Stop Oil’, <<https://juststopoil.org/get-involved/>> [emphasis added], last access 19 March 2026.

²⁰ Last Generation, ‘Values and Protest Consensus’, Value 1, <<https://letztegeneration.org/mitmachen/werte-protestkonsens/>>, last access 19 March 2026.

²¹ See e.g. in Australia: ‘Blockade Australia Climate Protests Cause Traffic Chaos in Brisbane and Melbourne’, Australian Associated Press, 20 June 2023, <www.theguardian.com/environment/2023/jun/20/blockade-australia-climate-protests-cause-traffic-chaos-in-brisbane-and-melbourne>, last access 19 March 2023; Germany: ‘German Climate Protesters Glue Themselves to Berlin Streets’, Deutsche Welle (DW), 24 April 2023 <www.dw.com/en/germany-climate-activists-glue-themselves-to-berlin-streets/a-65416427>, last access 19 March 2026.

²² E.g. laws in Italy which introduced a sanction of up to six months imprisonment or a fine of up to EUR 1,000 for causing superficial damage to artworks and also the material used for their display or protection: Law No 6/2024 of 22 January 2024 which entered into force on 8 February 2024, discussed in Michael Forst, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, ‘State Repression of Environmental Protest and Civil Disobedience: a Major Threat to Human Rights and Democracy’, Position Paper, February 2024, 10, <https://unece.org/sites/default/files/2024-02/UNSR_EnvDefenders_Aarhus_Position_Paper_Civil_Disobedience_EN.pdf>, last access 19 March 2026.

²³ See reporting in Nia Williams, ‘Activists Disrupt Key Canada-U.S. Oil Pipelines’, Reuters, 12 October 2016, <www.reuters.com/article/us-usa-canada-pipelines-idUSKCN12B26O>, last access 19 March 2026; Blake Nicholson, ‘Companies Decry “Valve Turners” Who Shut Down Pipelines’, AP News, 10 March 2019, <<https://apnews.com/article/0fe28195510141eea0e407687fd49ce5>>, last access 19 March 2026.

posed a safety risk²⁴ and now a number of jurisdictions around the world have passed 'critical infrastructure protection' legislation which criminalises the damage of both energy-related infrastructure, but also a broad range of ancillary public infrastructure (such as train stations).²⁵

There are three questions which arise from this situation and which are addressed in this paper. First, what is the demarcation between 'peaceful' and 'violent' protest? And how do disruptive protests which harm state infrastructure fit within this framework? Second, what should human rights law (and law in general) say about those aspects of climate protest which are disruptive and/or damaging to property? For instance, those which involve sabotage of energy and telecommunications infrastructure? Third, should climate protest be treated differently to other protest movements given the nature of the threat which climate change poses to humanity (that is, the existence of a climate emergency). Specifically, should the law recognise a 'right of resistance' based on the existence of a climate emergency given that the international community has been unwilling or unable to properly address the harms caused by climate change?

This paper will address those questions by utilising international human rights law and literature on the right of resistance under international law. In Section II., I outline foundational concepts and principles by discussing relevant aspects of international human rights law and the criminalisation of climate protest. This is important context for the examination in Section III. of protest as civil disobedience and the right to revolution or rebellion in international law (or 'resistance' which is the term I use in this paper). In this section of the paper, I draw on literature on structural violence and global injustice to play the right to resistance within an appropriate historical and socio-economic context. Section IV. will then draw this analysis together to come to some conclusions as to whether it is possible to argue that a 'right of resistance' which would justify disruptive climate protest (including acts which cause serious damage to property) could be conceptualised by reference to international human rights law.

²⁴ For instance, Alan Olson, executive director of the Montana Petroleum Association: 'When environmental groups go out to cause physical harm or to harm infrastructure, in my mind that is domestic terrorism.', see citation in Blake Nicholson, 'Companies Decry "Valve Turners" Who Shut Down Pipelines', AP News, 10 March 2019, <<https://apnews.com/article/0fe28195510141eea0e407687fd49ce5>>, last access 19 March 2026.

²⁵ Discussed below at Section II. 2.

II. Human Rights Law and the Criminalisation of Climate Protests

In this section of the paper, I will set out the necessary background for understanding the arguments for and against the use of the discourse of resistance in the context of climate change. I begin by examining relevant aspects of international human rights law before turning to discuss how climate protests have been restricted and criminalised and then briefly canvass some current arguments used in litigation in this space, specifically the necessity doctrine.

1. The Right to Protest Under International Human Rights Law

The right to protest under international human rights law is drawn from the right to freedom of expression, freedom of assembly and freedom of association. For the purposes of this paper, I will focus on freedom of assembly which is protected under Article 21 of the International Covenant on Civil and Political Rights (ICCPR). Article 21 provides that '[t]he right of *peaceful* assembly shall be recognized'.²⁶ This has been interpreted by the United Nations (UN) Human Rights Committee as an important aspect of the operation of democracy, describing it as a 'fundamental human right, which is essential for public expression of one's views and opinions and indispensable in a democratic society'.²⁷

There are a number of points to note about the wording and scope of Article 21. First, it explicitly utilises the term 'peaceful' and, as discussed below, has been interpreted as excluding protests which are violent. Second, Article 21 of the ICCPR is a right which can be subject to restrictions. Under the terms of Article 21, these must be imposed 'in conformity with the law' and 'necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others'.²⁸

In analysing the application of international human rights to climate protest, I will focus in this section on two issues: the definition of a 'peaceful protest' and 'violence' and the applicability of the concept of proportionality.

²⁶ International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976), Article 21 ('ICCPR').

²⁷ See e.g. UN Human Rights Committee in *Sekerko v. Belarus*, CCPR/C/109/D/1851/2008, 28 October 2013, para. 9.3.

²⁸ Article 22(2) of the ICCPR makes similar provision in relation to freedom of association.

a) The Definition of a 'Peaceful' Protest and 'Violence'

The differentiation between peaceful, disruptive and violent protests has been addressed in a number of UN documents, but most recently in the UN Human Rights Committee's General Comment 37 on Article 21 – one of the most influential guidance documents on Article 21 of the ICCPR.²⁹ This emphasises that the right of peaceful assembly 'protects the non-violent gathering by persons for specific purposes, principally expressive ones'.³⁰ Helpfully, it discusses the demarcation between peaceful and violent acts of protest and recognises that lawful protest can cause disruption.³¹ In terms of the demarcation between a peaceful and violent protest, General Comment 37 states that:

“Violence” in the context of article 21 typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to “violence”.³²

This is helpful in clarifying that violence does not include disruption of traffic – an approach echoed by other organisations such as the Council of Europe's Commissioner of Human Rights³³ and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.³⁴ However, the definition of violence in General Comment 37 includes 'serious damage to property' which would encapsulate climate protest actions such as pipeline

²⁹ Although the UN Human Rights Committee is not a court and its General Comments do not have the force of law, they are nevertheless highly influential and regularly cited in domestic and regional courts. On this point, see Nisuke Ando who argues that UN General Comments 'tend to have quasi-legislative character': Nisuke Ando, 'General Comments/Recommendations' in: Rüdiger Wolfrum (ed.), *MPEPIL* (Oxford University Press 2012), para. 41. See also Max Lesch and Nina Reiners who have conceptualised General Comments as 'informal law-making instruments': Max Lesch and Nina Reiners, 'Informal Human Rights Law-Making: How Treaty Bodies Use "General Comments" to Develop International Law', *Global Constitutionalism* 12 (2023), 378-401 (394-396).

³⁰ United Nations Human Rights Committee, General Comment 37 on Article 21 (Right of Peaceful Assembly), CCPR/C/GC/37, 17 September 2020, 2, para. 4.

³¹ United Nations Human Rights Committee, General Comment 37 (n. 30), para. 7.

³² United Nations Human Rights Committee, General Comment 37 (n. 30), para. 15 (citations omitted). Aspects of this part of the General Comment have also been cited by Michael Forst, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention (n. 22), 5.

³³ , Dunja Mijatović (n. 3).

³⁴ Clément Nyaletsossi Voule, 'Protection of Human Rights in the Context of Peaceful Protests During Crisis Situations Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association', A/HRC/50/42, 16 May 2022, 7.

damage or the use of ‘lock-on’ devices.³⁵ This means that such actions would not enjoy the protection of the right to ‘peaceful’ assembly under Article 21 of the ICCPR. This is important for considering a right to resistance in the context of climate change as some climate organisations and leaders advocate for the use of property damage against fossil fuel industries.³⁶

Thus, given that climate protests resulting in significant property damage will take the protest action outside the protective remit of the ICCPR, we need to consider the legal status of those climate protests which are likely to harm or which do in fact harm property and how a right to resistance may apply to such actions.

b) Restrictions and Proportionality

A further principle which is relevant to the use of resistance actions as part of climate protest is that of proportionality. One issue discussed in this paper is the increasing criminalisation of climate protest across the world.³⁷ A starting point is that guidance from both the UN Human Rights Committee and the Council of Europe’s Commissioner for Human Rights states that any restrictions on protest must be necessary and proportionate.³⁸ I would argue that some of the examples of criminalisation of disruptive protest discussed in this paper, such as the imposition of significant terms of imprisonment in certain jurisdictions,³⁹ could be viewed as disproportionate under international human rights law. Another aspect of proportionality is how it relates to the exercise of a right to resistance by climate protestors. This is discussed in Part III. below.

³⁵ For a discussion of lock-on devices, see Aidan Ricketts, “‘Lock-On Devices’ Are a Symbol of Non-Violent Protest, But They Might Soon Be Banned in Queensland”, *The Conversation*, 2 September 2019, <<https://theconversation.com/lock-on-devices-are-a-symbol-of-non-violent-protest-but-they-might-soon-be-banned-in-queensland-122472>>, last access 19 March 2026.

³⁶ See e.g. Andreas Malm, ‘The Moral Case for Destroying Fossil Fuel Infrastructure’, *The Guardian*, 18 November 2021, <www.theguardian.com/commentisfree/2021/nov/18/moral-case-destroying-fossil-fuel-infrastructure>, last access 19 March 2026. I note that Malm makes a distinction between violence against persons and property, stating that there is no moral case for harming humans.

³⁷ See Section II. 2. below.

³⁸ United Nations Human Rights Committee, General Comment 37 (n. 30), para. 40; Dunja Mijatović (n. 3).

³⁹ See discussion of UK example at n. 46 below. See also the use of felony charges in the USA, which can carry imprisonment terms of 5 to 7 years: see discussion in Alexandria Herr (for Floodlight), ‘They Criminalize Us: How Felony Charges Are Weaponized Against Pipeline Protesters’, *The Guardian*, 10 February 2022, <www.theguardian.com/us-news/2022/feb/10/felony-charges-pipeline-protesters-line-3>, last access 19 March 2026.

Against this background, how have states responded to climate protests domestically?

2. Criminalisation of Climate Protests – Examples from State Practice

An analysis of human rights commentary over recent years shows that there has been an increase in restrictive measures and criminalisation of climate protest.⁴⁰ As noted earlier in this paper, some states have passed laws which restrict protest activities at or near public infrastructure sites. For instance, a large number of states in the US have passed ‘Critical Infrastructure Protection’ legislation which criminalise trespass and damage of mining operations and oil pipelines (and also a broad-range of other non-energy facilities).⁴¹ In the UK, the Public Order Act 2023 criminalises acts of protest which are viewed as ‘interfering with national infrastructure’ such as airports and introduces heavy penalties for certain actions (e. g. up to 3 years imprisonment for tunnelling).⁴² Similarly, a number of states in Australia have passed legislation which criminalises activities such as damage or disruption to major roads or major public facilities.⁴³ Such legislation raises significant concerns for the rights to freedom of assembly and freedom of expression as it does not appear to be necessary or proportionate to achieve a legitimate purpose.⁴⁴

⁴⁰ See discussion in Forst (n. 22).

⁴¹ According to the US Protest Law Tracker webpage, 42 states in the USA have passed such infrastructure laws: <www.icnl.org/usprotestlawtracker/?location=&status=&issue=6&date=&type=>, last access 19 March 2026. One significant problem is that many of these ‘infrastructure’ protection laws use vague and broad language to define relevant criminal offences and impose severe penalties for acts such as trespass. For instance, Section 1 of the 2021 Arkansas Critical Infrastructure Law (Act 712 of 2021) includes a very wide definition of ‘critical infrastructure’ which encompasses buildings such as food processing or manufacturing facilities and telecommunications facilities.

⁴² The Public Order Act 2023 UK introduced offences which cover the act of tunnelling (that is, creating a tunnel, participating in creating a tunnel and being present in a tunnel). The maximum penalties for these offences are 3 years imprisonment, an unlimited fine or both: see UK Government factsheet: <<https://www.gov.uk/government/publications/public-order-bill-overarching-documents/public-order-bill-factsheet>>, last access 19 March 2026.

⁴³ See discussion in Human Rights Watch, Sophie McNeill, ‘Australia: Climate Protesters’ Rights Violated: Disproportionate Punishments, Excessive Bail Conditions’, Human Rights Watch, 22 June 2022, <www.hrw.org/news/2022/06/22/australia-climate-protesters-rights-violated>, last access 19 March 2026.

⁴⁴ See e. g. the comments by the Office of the UN High Commissioner for Human Rights on the UK laws: OHCHR, ‘UN Human Rights Chief Urges UK to Reverse “Deeply Troubling” Public Order Bill’, Press Release, 27 April 2023, <www.ohchr.org/en/press-releases/2023/04/un-human-rights-chief-urges-uk-reverse-deeply-troubling-public-order-bill>, last access 19 March 2026.

In addition to these public infrastructure laws, protests which are seen as ‘disruptive’ are being subject to significant criminal penalties⁴⁵ and other protestors who have been charged with conspiracy offences have received sentences of up to 5 years imprisonment.⁴⁶ In addition to this, courts have issued injunctions in some instances to prevent protests taking place⁴⁷ and some corporations have engaged in Strategic Lawsuits Against Public Participation (SLAPPs) aimed at restricting the rights to freedom of expression and assembly by civil society actors and human rights defenders.⁴⁸ Therefore, the current legal and political environment in many states is one characterised by restrictions and repression of climate protests.

Some protestors have attempted to invoke the common law defence of necessity to excuse from incurring criminal liability on the basis that their actions were a justified and necessary response to the climate threat about which they were protesting.⁴⁹ In some instances, this argument has resulted in an acquittal of defendants.⁵⁰ However, most ‘climate emergency’ argu-

⁴⁵ As one example, in the UK, two protestors from Just Stop Oil who occupied the Queen Elizabeth II Bridge at Dartford in London were given sentences of 2 years, 7 months and 3 years, respectively: Just Stop Oil, ‘Bridge Climbers Get 3 Years in Longest Ever Sentence for Peaceful Climate Action’, 21 April 2023, <<https://juststopoil.org/2023/04/21/bridge-climbers-get-3-years-in-longest-ever-sentence-for-peaceful-climate-action/>>, last access 19 March 2026.

⁴⁶ For instance, in 2024, Roger Hallam – the co-founder of Extinction Rebellion and Just Stop Oil – was sentenced to five years for ‘conspiracy to intentionally cause a public nuisance’ after he held a zoom meeting at which he discussed plans to block the UK’s M25 motorway. See discussion in Isabelle Walker, ‘Freedom of Expression: Climate Protestors Singled Out by Draconian Laws’, International Bar Association, 17 October 2024, <<https://www.ibanet.org/climate-protestors>>, last access 19 March 2026. This was reduced to 4 years on appeal: The Supreme Court of the United Kingdom (UKSC), *R v. Hallam and Others*, judgment of 7 March 2025, case ID UKSC/2025/0096.

⁴⁷ For instance, in 2022 and 2023, the UK High Court issued a series of injunctions to prevent protests occurring at a pipeline running across southern England see Brian Farmer, ‘Judge Bars Unlawful Protests Against Esso Oil Pipeline Project’, The Independent, 31 August 2023, <www.independent.co.uk/business/judge-bars-unlawful-protests-against-esso-oil-pipeline-project-b2402635.html>, last access 19 March 2026.

⁴⁸ See discussion in UN Office of the High Commissioner for Human Rights, ‘The Impact of SLAPPs on Human Rights & How to Respond’, 29 April 2024, 4, <www.ohchr.org/sites/default/files/documents/publications/briefer-the-impact-slapps-hr-how-resond.pdf>, last access 19 March 2026. As discussed in this report, some jurisdictions have enacted anti-SLAPP laws to combat this type of misuse of litigation.

⁴⁹ See discussion in Lance N. Long and Ted Hamilton, ‘The Climate Necessity Defense: Proof and Judicial Error in Climate Protest Cases’, *Stan. Envtl. L. J.* 38 (2018), 57-115.

⁵⁰ E.g. UK case of the so-called ‘Kingsnorth Six’ where six Greenpeace protesters scaled a coal-fired power station on which they painted the word ‘Gordon’ in reference to (the then) UK Prime Minister Gordon Brown. They were charged with causing criminal damage but by majority, a jury of the UK’s Maidstone Crown Court returned a verdict of not guilty for lawful excuse: see <<https://climatecasechart.com/non-us-case/the-kingsnorth-six-trial/>>, last access 19 March 2026. See also the list of cases in which defendants were acquitted in Ivó Coca-Vila, ‘Punishing the Last Citizens? On the Climate Necessity Defence’, *Res Publica* 30 (2024), 567-587 (568 (fn. 3)).

ments in the climate protest context have not succeeded, either because the relevant court has denied the applicant an opportunity to present the defence or because the court has held that the protestors had other legal or non-legal alternatives available to them to effect change.⁵¹ This is relevant to the conceptualisation of a right to resistance as these cases demonstrate that, apart from a small number of isolated cases, climate protestors are punished for their protest actions even when they appeal to the concept of necessity. This establishes a basis for demonstrating that the right of resistance constitutes the last resort available to protestors (as discussed below in Section III.).

Against this background – where protest is being increasingly criminalised and court challenges to protect the right to protest are difficult to achieve, can developing a right to resistance against climate inaction support a right to climate protest going forward?

III. Global Injustice, Resistance, and Climate Protest

This section of the paper builds upon the above context to discuss whether it is possible to conceptualise climate protest as an exercise of a right to resistance under international law. In discussing this issue, I conceptualise climate change as an aspect of global injustice and highlight the need to understand climate change as a continuation of historical harms such as colonialism. As part of this discussion, the paper will also canvass the extensive literature on the right to civil disobedience as a concept closely related to the right to resistance (particularly in its consideration of the bounds of civil and uncivil disobedience and the acceptability of non-violent versus violent acts).

Before doing so, I highlight that my analysis should be read in light of the literature which has analysed the legal and political history of the right to resistance.⁵² Second, it is important to situate the debate about the right to resistance in the context of the literature on social movements and international law, particularly the concept of changing international law ‘from

⁵¹ See e.g. the UK cases of *DPP v. Ditchfield* [2021] EWHC 1090 (Admin); *Islington LBC v. Wells* [2021] EWHC 528 (Ch); in Canada: *Trans Mountain Pipeline ULC v. Mivasair* [2020] BCCA 255. See also the US case of *State v. Brockway* where the court held that the legal alternative open to the defendants was ‘using the democratic process to effect change’: Court of Appeals of the State of Oregon, *State v. Brockway*, judgment of 14 February 2024, Docket Number: A176595.

⁵² See e.g. Tom Ginsburg, Daniel Lansberg-Rodriguez and Mila Versteeg, ‘When to Overthrow Your Government: The Right to Resist in the World’s Constitutions’, *UCLA L. Rev.* 60 (2013), 1184–1260; Gwilym David Blunt, *Global Poverty, Injustice, and Resistance* (Cambridge University Press 2019), 41–70.

below'.⁵³ This is so, because as Rajagopal has observed, international law has not tended to engage with the literature on social movements or analysed mass movements. As he notes, '[i]nternational and domestic lawyers are traditionally interested in governance, not resistance'.⁵⁴

1. Climate Change and Global Injustice

In advocating for the recognition of a right to resistance under international law for climate protest, I conceptualise climate change as an aspect of global injustice⁵⁵ and highlight that the right to resistance against climate change must be understood in light of historical and contemporary socio-economic harms, particularly the ongoing structural violence perpetuated by the impacts of colonialism and the racialised nature of climate inaction.⁵⁶

The role of global inequalities, marginalisation and colonialism as vital elements of climate change harms was recognised by the IPCC in its Sixth Assessment Report:

'Vulnerability of ecosystems and people to climate change differs substantially among and within regions (very high confidence), driven by patterns of intersecting socio-economic development, unsustainable ocean and land use, inequity, marginalisation, historical and ongoing patterns of inequity such as colonialism, and governance (high confidence).'⁵⁷

⁵³ See Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*, (Cambridge University Press 2009). On the issue of the ability of social movements to shape international law, see Blunt (n. 52), 154.

⁵⁴ Balakrishnan Rajagopal, 'International Law and Social Movements: Challenges of Theorizing Resistance', *Colum. J. Transnat'l L.* 41 (2003), 397-433 (401).

⁵⁵ This has also been recognised by Simon Caney, 'Responding to Global Injustice: On the Right of Resistance', *Social Philosophy and Policy* 32 (2015), 51-73 (52); Daniela Bifulco and Angela Golia, 'The Right of Resistance as a State Law Basis for Transnational Regimes' *Self-Contestation*, *J. L. & Soc.* 45 (2018), 94-113 (106) (citing the work of Simon Caney). See also, more generally, Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press 2013).

⁵⁶ See e.g. Naomi Klein, 'Let Them Drown: The Violence of Othering in a Warming World', *London Review of Books* 38 (11), 2 June 2016, <www.lrb.co.uk/the-paper/v38/n11/naomi-klein/let-them-drown>, last access 19 March 2026. On the issue of the racialised aspect of climate change, see Olúfemi Táíwò who notes that 'climate crisis arises from the same political history as racial injustice and presents a challenge of the same scale and scope': Wen Stevenson, 'Thinking Like an Ancestor on a Burning Planet: A Conversation with Olúfemi Táíwò About the Struggle for Racial and Climate Justice in the Face of Catastrophe', *The Nation*, 5 May 2025 <www.thenation.com/article/environment/olufemi-taiwo-reparations-climate-justice/>, last access 19 March 2026.

⁵⁷ IPCC, 'Summary for Policymakers', *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, 3-33 (12), <www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf>, last access 19 March 2026.

This is an important point because the effects of climate change tend to exacerbate existing national and global inequalities. For instance, there is evidence that climate change disproportionately affects individuals in Global Majority countries who may not have the resources to engage in climate adaptation and where climate change may deepen existing levels of poverty.⁵⁸ Additionally, these global inequalities affect the ability of many countries in the Global South to participate in climate negotiations.⁵⁹ It is thus important that this perspective can be voiced via protest.

Against this context, I would emphasise that social movements relating to climate change do not simply represent resistance against specific environmental damage (for instance, droughts, extinction of species and so on). Rather, they should be seen in socio-economic context as speaking to more holistic and systemic aspects of global injustice, oppression and structural violence. These include the continuing effects of colonialism, the structural inequalities caused by capitalism, racial injustice and oppression of Indigenous peoples – all of which relate directly to climate change and which I would argue constitute tyranny and oppression for the purpose of the exercise of a right to resistance.⁶⁰ As climate knowledge historian Harriet Mercer notes, '[c]onnecting climate change to such acts of colonization involves recognizing that historic injustices are not consigned to history: their legacies are alive in the present.'⁶¹

In light of this, I will first commence my discussion of the right to resistance with an examination of how protest is linked to 'disobedience' of the law, before then moving to an analysis of its classification as an act of 'resistance'.

2. Climate Protest as Civil Disobedience

This paper seeks to interrogate the status of climate protest as an act of resistance. However, it is important to note that the act of protest is often

⁵⁸ IPCC (n. 6). See also Bethuel Sibongiseni Ngcamu, 'Climate Change Effects on Vulnerable Populations in the Global South: a Systematic Review', *Natural Hazards* 118 (2023), 977-991.

⁵⁹ On this, see Stephen Humphreys: 'Climate change negotiations have long suffered from complications of process and participation, rooted in systemic inequalities. Resource-poor countries in need of adaptation funding often can afford only a few delegates at climate negotiations, where wealthy countries can field hundreds': Stephen Humphreys Chapter 11: 'Conceiving justice: articulating common causes in distinct regimes' in Humphreys (n. 14), 310.

⁶⁰ See Section III. 4. for a further discussion of this point.

⁶¹ Harriet Mercer, 'Colonialism: Why Leading Climate Scientists Have Finally Acknowledged Its Link with Climate Change', *The Conversation*, 22 April 2022, <<https://theconversation.com/colonialism-why-leading-climate-scientists-have-finally-acknowledged-its-link-with-climate-change-181642>>, last access 19 March 2026.

conceptualised as an act of civil disobedience. In order to discuss what a right to resistance may contribute to this debate, it is therefore important to first canvass the remit of civil disobedience, particularly in relation to acts of property damage and violence.

a) The Definition of Civil Disobedience – The Element of Violence

The accepted parameters of civil disobedience are somewhat disputed but most scholars appear to agree that the act concerned must be non-violent and the person carrying out the act of disobedience must accept the legal consequences of their actions.⁶² The latter principle is set out in the values of some climate protest groups. For instance, the Protest Consensus document of Germany's Last Generation group states that: 'We are ready to take all consequences imposed upon us by the state.'⁶³

The notion of civil disobedience has been well-analysed in academic literature and an extensive analysis and problematisation of this concept goes beyond the possibilities of the present paper. However, it is worth noting for the purposes of this paper that there is some disagreement amongst legal and political philosophers about the legitimacy of breaching the law or engaging in resistance or rebellion as an act of 'disobedience'. On one hand, Kant seems to suggest that people have an absolute obligation to obey the laws, noting that if a ruler proceeds contrary to law, subjects may oppose this injustice by complaints and objections 'but not active resistance'.⁶⁴ On the other hand, some scholars support disobedience of the law in certain circumstances. For instance, Gustav Radbruch states that if laws 'deliberately betray the will to justice – by, for example, arbitrarily granting and withholding human rights – then these laws lack validity, the people owe them no obedience [...]'⁶⁵ John Rawls also takes the position that civil disobedience is

⁶² See e.g. John Rawls who defines civil disobedience as a 'public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government': John Rawls, *A Theory of Justice* (Harvard University Press 1971), 320, citing the work of H. A. Bedeau. See also Ned Hettinger, 'Environmental Disobedience' in: Dale Jamieson (ed.), *A Companion to Environmental Philosophy* (Blackwell Publishers 2001), 498-509 (501): 'The civil disobedient, it is said, acts non-violently and accepts punishment. On this view, those who employ violence against persons or property, or evade arrest and punishment, are not engaged in "civil disobedience".'

⁶³ Last Generation, 'Values and Protest Consensus', Protest Consensus 9, <<https://letztegeneration.org/en/mitmachen/werte-protestkonsens/>>, last access 19 March 2026.

⁶⁴ Immanuel Kant, *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right* (transl. W. Hastie) (1887), 175.

⁶⁵ Gustav Radbruch, 'Five Minutes of Legal Philosophy (1945)' (transl. Bonnie Litschewski Paulson and Stanley J. Paulson), *Oxford J. Legal Stud.* 26 (2006), 13-15.

justified, but only if it is nonviolent, emphasising that civil disobedience 'is far removed from organized forcible resistance'.⁶⁶ Joseph Raz goes somewhat further by arguing that there is no obligation to obey the law⁶⁷ and suggesting that a total proscription of violence as a way to achieve political aims may not be justified. He argues that:

'The evil the disobedience is designed to rectify may be so great, may indeed involve violence against innocent persons (such as the imprisonment of dissidents in labour camps in the Soviet Union), that it may be right to use violence to bring it to an end.'⁶⁸

This goes to the point raised in Part II. about the acceptability of property damage caused by climate protest where such protest is directed towards structural violence and global injustice – a matter discussed in greater detail in Part III. below.

The work of Hannah Arendt is also particularly relevant to climate protest as she situates civil disobedience against the broader framework of judicial review, stating that '[t]he establishment of civil disobedience among our political institutions might be the best possible remedy for [the] ultimate failure of judicial review'.⁶⁹ Arendt notes:

'Civil disobedience arising when a significant number of citizens have become convinced either that the normal channels of change no longer function, and grievances will not be heard or acted upon, or that, on the contrary, the government is about to change and has embarked upon and persists in modes of action whose legality and constitutionality are open to grave doubt.'⁷⁰

This is relevant to the context of climate change protest where attempts to utilise litigation, particularly the climate necessity doctrine, have largely been futile.⁷¹

⁶⁶ Rawls (n. 62), 367.

⁶⁷ Joseph Raz, *The Authority of Law: Essays on Law and Morality* (2nd edn, Oxford University Press 2009), 233.

⁶⁸ Raz (n. 67), 267.

⁶⁹ Hannah Arendt, 'Civil Disobedience' in: Arendt, *Crisis of the Republic* (Harvest 1972), 101, <<https://blogs.law.columbia.edu/uprising1313/files/2017/10/Arendt-Disobedience.pdf>>, last access 19 March 2026. Arendt made these comments in the context of the Vietnam war movement where recourse to the courts were ineffective. She makes a number of definitional distinctions, distinguishing between civil and criminal disobedience; and civil disobedience and revolution.

⁷⁰ Arendt (n. 69), 74.

⁷¹ See discussion in Section II. above.

b) Civil Disobedience and Climate Change

In addition to the above philosophical works on civil disobedience, some scholars have discussed the concept of civil disobedience specifically in the context of climate protest. Once again, there is a level of disagreement on this issue, with some scholars taking the position that there is an arguable case for civil disobedience in addressing climate change⁷² whilst others have raised concerns about such a position.⁷³ Of particular interest is a paper by Charles R. DiSalvo which discusses the possible goals of civil disobedience.⁷⁴ He notes that climate activists face a hurdle because they are engaging in ‘indirect’ civil disobedience:

‘They are not violating laws with which they disagree. They are violating other laws with which they do not disagree to express their opposition to laws with which they do disagree. Indirect civil disobedience is the violation of a law with which the disobedient has no quarrel to protest a wrong in relation to the law being violated.’⁷⁵

Whilst I agree with this framing, I see this conceptualisation as going to the *effectiveness* of climate protest as a civil disobedience tool. It therefore does not affect the *validity* of civil disobedience in the environmental space. Such a position is supported by the work of Rawls who has clarified that civil disobedience allows for ‘indirect as well as direct civil disobedience’.⁷⁶

Ned Hettinger has also written on what he calls ‘environmental disobedience’ and raises some concerns about the effect of lawbreaking on the rule of law:

‘Lawbreaking can damage democratic institutions by engendering disrespect for law and further lawbreaking. Unless they favor the overthrow of the democratic rule of law, environmental disobedients must be concerned with the effects of their actions on respect for and the rule of law.’⁷⁷

Whilst I agree that the implications of law-breaking must be borne in mind by civil disobedients, including protestors, the particular claims of current

⁷² See e.g. Douglas Bamford, ‘Can Climate Civil Disobedience be Justified?’, *Think* 22 (2023), 65–70.

⁷³ See e.g. William E. Scheuerman, ‘Political Disobedience and the Climate Emergency’, *Philosophy and Social Criticism* 48 (2022), 791–812.

⁷⁴ Charles R. DiSalvo, ‘Climate Change Disobedience’, *University of Florida Journal of Law and Public Policy* 30 (2019), 14–17.

⁷⁵ DiSalvo (n. 74), 32.

⁷⁶ Rawls (n. 62), 320. As Rawls noted, ‘there are sometimes strong reasons for not infringing on the law or policy held to be unjust. Instead, one may disobey traffic ordinances or laws of trespass as a way of presenting one’s case’ (320).

⁷⁷ Hettinger (n. 62), 500.

climate protestors are not simply that certain laws are deficient. As noted in Section I. of this paper, the claims of climate protestors are far greater in seriousness than this as they are justifying their actions by reference to a situation of emergency and a threat to humanity. It may be, therefore, that there is greater justification for acts of disobedience and resistance in the context of climate inaction than there is in response to other aspects of environmental issues (such as the use of pesticides or water licencing issues which relate to a more specific environmental concern).

This discussion of civil disobedience demonstrates that there is some uncertainty as to the boundaries of 'civil' and 'uncivil' civil disobedience and the place of violent resistance⁷⁸ within human rights law. This leads into an examination of whether there is a broader and stronger notion of resistance that can be used at the international level to constrain the restrictions and criminalisation of climate protest by some states and which recognise the legitimacy of protest which results in disruption and property damage.

3. The Right to Resistance Under International Law

The current legal position in relation to the right to resistance under international law is that there is no explicit right to resistance set out in binding international treaty documents and no established right of resistance under customary international law.⁷⁹ However, I argue in this section that the right to resistance can be derived from the Universal Declaration of Human Rights (UDHR) and by implication from the right to self-determination and right to remedy in the ICCPR.⁸⁰ In adopting this position, I argue that,

⁷⁸ Specifically, in this paper, the use of violence against property.

⁷⁹ On the issue of custom, Shannonbrooke Murphy has argued, that subject to some qualifications, '[...] it is not unreasonable to conclude that under certain conditions there is a limited right to resist recognized as a general principle of international law, grounded in the obligation of respect for human rights including, but not necessarily limited to, the right to self-determination': Shannonbrooke Murphy, *The Human Right to Resist in International and Constitutional Law* (Cambridge University Press 2025), 228. However, this position is not widely accepted in the legal literature on resistance.

⁸⁰ ICCPR (n. 26). The focus of my analysis will be on international law instruments, but in terms of treaty provisions reflecting an explicit right to resistance, I also note that some regional treaties provide for a right of rebellion or resistance, see Article 20(2) of the African Charter of Human and People's Rights provides that 'Colonized and oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to *any means* recognized by the international community': Organization of African Unity, African Charter of Human and People's Rights of 27 June 1981, CAB/LEG/67/3, Art. 20, Nr.2; Article 2(4) of the Arab Charter on Human Rights provides that 'All peoples have the right to resist foreign occupation': Arab Charter on Human Rights of 22 May 2004, reprinted in 12 IHPR 893 (2005).

conceptually, the right to resistance should be seen as a key enforcement mechanism for the implementation and protection of fundamental human rights.

Alternatively, if such a right cannot yet be established under international law, I argue that such a right should be so recognised, particularly in the context of climate change. This is due to the severity of the harms which climate change has produced and is likely to continue to produce in the future, which are of a revolutionary nature (including an increase in conflict and the exacerbation of poverty and famine).

In advocating this position, I conceptualise the right of resistance as a self-standing right under international law but one which is conceptually linked to enforcement of fundamental human rights violations. Whilst related to protest, the right to resistance is not 'derivative' of the right to freedom of expression and assembly but much broader in scope.

I will now turn to discuss in greater depth the legal basis for developing a right to resistance at international law. Whilst this section of my paper analyses the *legal* content of the right to resistance, such a right should be viewed in light of the rich literature which exists on the philosophical underpinnings of a right to rebel and/or right to resistance.⁸¹

a) Rebellion – the Preamble of the Universal Declaration of Human Rights

A starting point for my analysis of the right to resistance for climate protest is the preamble of the UDHR which refers to a link between human rights and the right of rebellion by providing that:

[...] it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.⁸²

In Section III. 4. below, I apply this concept to climate change. However, as a preliminary point, I acknowledge that there are a number of weaknesses in grounding a right to resistance to the UDHR. First, the UDHR is a declaration and therefore a non-binding document. Furthermore, the reference to rebellion in the UDHR is in a preambular paragraph and not in the

⁸¹ See e. g. Hans Siegbert Reiss, 'Kant and the Right of Rebellion', *Journal of the History of Ideas* 17 (1956), 179-192; Harvey C. Mansfield Jr., 'The Right of Revolution', *Daedalus* 105 (1976), 151-162; Tony Honoré, 'The Right to Rebel', *Oxford J. Legal Stud.* 8 (1988), 34-54.

⁸² Universal Declaration of Human Rights of 10 December 1948, A/RES/217(III)(A), Preamble.

substantive part of the declaration. However, I would argue that these are not necessarily reasons for discounting the validity of the preamble of the UDHR. First, despite the fact that the UDHR is non-binding, it is considered by some scholars to be customary international law.⁸³ In any event, the UDHR is a highly influential instrument in the interpretation of international law norms.⁸⁴ Second, the placement of this rebellion principle in the preamble does not mean that it is merely decorative. On this, see leading international law jurist Lauterpacht who points to the Preamble as ‘formulating the juridical, philosophical and political bases [...] of a fundamental international enactment of this nature.’⁸⁵ Similarly, Hulme, writing about treaties, emphasises that preambles have significance as an interpretative tool.⁸⁶

Grounding a right to resistance in the UDHR is also not universally accepted in academic literature, with some scholars stating that the UDHR *does* support such a right,⁸⁷ whilst others argue that there is significant ambiguity and no such right has been established under international law.⁸⁸

Given that there is no clear agreement about the status of the right to resistance sourced in the preamble of the UDHR, it is also necessary to examine other international law instruments.

⁸³ See sources cited in Bruno Simma and Philip Alston, ‘The Sources of Human Rights Law: Custom, Jus Cogens and General Principles’, *Austr. Yb. Int’l L.* 12 (1992), 82-108 (84). I note that a resolution adopted by an international organisation cannot, *of itself*, create a rule of customary international law but ‘may provide evidence for determining the existence and content of a rule of customary international law, or contribute to its development’: see Conclusion 12 in the International Law Commission’s Draft Conclusions on the Identification of Customary International Law, 2018, UN Doc. A/73/10, 147.

⁸⁴ As Hurst Hannum points out: ‘Given the central importance of the Universal Declaration in the international human rights firmament, it is the first instrument that should be consulted when attempting to identify the contemporary content of international human rights law’: Hurst Hannum, ‘The Status of the Universal Declaration of Human Rights in National and International Law’, *Ga. J. Int’l & Comp. L.* 25 (1996), 287-397 (353).

⁸⁵ Hersch Lauterpacht, *Preliminary Report*, Commission on Human Rights, Third Session, International Law Association Brussels Conference, Human Rights Committee, The Charter of the United Nations and the International Bill of Rights of Man of 12 May 1948, E/CN.4/89, para. 50.

⁸⁶ On the issue of interpreting preambles in treaties, see Max Hulme, ‘Preambles in Treaty Interpretation’, *U. Pa. L. Rev.* 164 (2016), 1281-1343.

⁸⁷ See e.g. Murphy (n. 79), 209.

⁸⁸ See e.g. Keenan: ‘[...] the isolated reference to the right of revolution in the UDHR Preamble by itself holds little legal weight. The fact that a right to rebel is nowhere referenced in any other major international instrument indicates a lack of clear acceptance for the right within international law’: Thomas Keenan, ‘The Libyan Uprising and the Right of Revolution in International Law’, *International and Comparative Law Review* 11 (2011), 7-32 (24). See also Pacifique Manirakiza, ‘Towards a Right to Resist Gross Undemocratic Practices in Africa’, *J. A. L.* 63 (2019), 81-105 (89).

b) Self-Determination and the Right to a Remedy: The International Covenant on Civil and Political Rights

There are two operative provisions of the ICCPR which could ground the right to resistance under international law by way of implication: the right to self-determination under Article 1 and the right to an effective remedy under Article 2 (3)(a). Indeed, such an interpretation has been adopted by Shannonbrooke Murphy in a recent monograph on the right to resist under international law.⁸⁹

Taking the right to self-determination first, one could argue that a right to resistance can be implied into Article 1 ICCPR as a means of enforcing human rights. As leading international law scholar Manfred Nowak states, the internal dimension of article 1 ‘contains the seeds of a right of revolution against dictatorships that systematically and grossly violate human rights’.⁹⁰ Such a right would be exercised in a collective way (by groups rather than individuals) and would be engaged here given the systematic and serious human rights violations caused by climate change.

Second, the right to an effective remedy under Article 2(3)(a) of the ICCPR could be viewed as implicitly including a right to resistance. In this context, the right to resistance would be a means for individuals and groups to assert their human rights under the ICCPR. The use of resistance to protect human rights has been recognised by leading international scholars such as Lauterpacht who describes the right to resistance as ‘a right which, in the absence of effective protection by the society of States, is the supreme assertion of the inalienable rights of man’.⁹¹ A number of other scholars have also conceptualised resistance as a human rights enforcement or protective mechanism. For instance, Gwilym Blunt in his work on global poverty and resistance, points out that:

‘If there is no right to resistance, then human rights are reduced to appeals to the goodwill of powerful agents and institutions rather than demands for respect [...] the right to resistance also illuminates how states cannot participate in human rights violations. If states or other institutions fail in this obligation, then they may be subject to legitimate resistance.’⁹²

More recently, Shannonbrooke Murphy’s commentary on the right to resistance argues that an implication of such a right from the right to effective

⁸⁹ Murphy (n. 79).

⁹⁰ Manfred Nowak, *UN Covenant on Civil and Political Rights – CCPR Commentary* (2nd edn, NP Engel 2005) 24, para. 34. See also Thomas Keenan: ‘conceivably a right of revolution does exist in international law as a mechanism for enforcing the right of self-determination’: Thomas Keenan (n. 88), 20.

⁹¹ Hersch Lauterpacht, *International Law and Human Rights* (Frederick A. Praeger 1950), 116.

⁹² Blunt (n. 52), 58. See also Matthew Lippman, ‘The Right of Civil Resistance Under International Law and the Domestic Necessity Defense’, *Penn State International Law Review* 8 (1990), 349-373 (359).

remedy in the ICCPR is possible because Article 2(3)(a) is 'not limited to legal, judicial, or administrative remedies and therefore does not rule out self-help'.⁹³ She argues that, taken in the context of the UN Charter and customary international law, an 'unenumerated right to resist' could be indicated 'as an implied secondary enforcement right and effective remedy for human rights violations, deriving from the three documents that constitute the "International Bill of Human Rights"'.⁹⁴

The above discussion establishes that there is some legal support for implying a right to resistance from key international documents. However, if such an implication cannot be made, I argue that such a right needs to be developed, particularly in the light of the increasing use of protest globally. In the next section, I will analyse how such a right would be applied in the context of climate protest. In doing so, I will utilise the UDHR rather than the ICCPR as a foundational reference document as it is the instrument which explicitly refers to the concept of rebellion (the ICCPR being of secondary support in establishing the right to resistance).

4. The Right to Resistance as Applied to Climate Protest

As demonstrated above in Parts I. and II., there is clear evidence that climate change is currently impinging on several human rights, including the right to life, the right to health and the right to a healthy environment. Additionally, without adequate action (that is, net zero CO₂ emissions), climate change will result in species extinction. This will affect the right to life of future generations and therefore the rights of children as a contemporary rights issue. Thus, there is clear justification for a right to resistance if we base this on the existence of serious human rights violations. However, the UDHR also refers to compulsion to rebellion against 'tyranny and oppression' and the nature of rebellion as a 'last resort'. We must therefore consider whether climate protest actions meet these two thresholds.

a) Resistance Against 'Tyranny and Oppression'

The reference to 'tyranny and oppression' in the UDHR preamble has typically been attached to extreme situations such as colonialism, genocide, and apartheid.⁹⁵ As leading human rights scholar, Tomuschat, notes:

⁹³ Murphy (n. 79), 234.

⁹⁴ Murphy (n. 79), 234.

⁹⁵ See Christian Tomuschat, 'The Right of Resistance and Human Rights' in: United Nations Educational, Science and Cultural Organization, *Violations Of Human Rights Possible Rights of Recourse and Forms of Resistance* (1984), 13-33, <<https://unesdoc.unesco.org/ark:/48223/pf00000058052>>, last access 19 March 2026.

‘A right of resistance of groups and/or individuals is, however, recognized only in a few instances of extreme gravity in which the highest commonly shared values of mankind are assailed by an oppressive regime. Such instances are the right of resistance of a people under foreign domination and the right of resistance of a group of human beings threatened with genocide. Where a government practises genocidal policies on a mass scale, the right of resistance of the potential victims comes down to a right of self-defence.’⁹⁶

Climate change may not be perceived at first instance as meeting the threshold of extremity that is concomitant with the severe repression represented by genocide or apartheid. However, I argue that there is a compelling argument for applying a right to resistance to large scale, sustained violations of core human rights. This has also been posited by Honoré who states that sustained, large scale violations of basic human rights such as freedom from arbitrary arrest ‘may amount to such oppression or exploitation as justifies rebellion’.⁹⁷ Accordingly, I would argue that the threat of extinction posed by climate change and the large scale, sustained human rights violations now occurring (such as violation of the right to health) and also those which will occur in the *future* (the violation of the right to life) would meet the necessary threshold of harm.

This conceptualisation of climate change as involving mass scale, fundamental human rights violations (and a form of tyranny or oppression) is supported by the recognition by some that a crime of ecocide should be added as a new crime to the Rome Statute⁹⁸ and that deforestation constitutes a crime against humanity.⁹⁹ The issue of ecocide and deforestation is relevant as it supports the conceptualisation of climate change as akin to a crime against humanity and therefore of sufficient severity to ground a right to resistance. In addition, climate change must be understood as an aspect structural violence and be viewed in the light of the history and continuing

⁹⁶ Tomuschat (n. 95), 29.

⁹⁷ Honoré (n. 81), 38.

⁹⁸ See The Independent Expert Panel for the Legal Definition of Ecocide convened by the Stop Ecocide Foundation which issued its Commentary and Core Text on Ecocide in June 2021. This proposes to add ecocide as a new crime to the Rome Statute, see: The Independent Expert Panel for the Legal Definition of Ecocide, June 2021, <www.law.berkeley.edu/wp-content/uploads/2022/03/SE-Foundation-Commentary-and-core-text-rev-6.pdf>, last access 19 March 2026.

⁹⁹ Maud Sarliève, Pauline Martini, Joe Holt and Nigel Povoas, ‘Communication Under Article 15 of the Rome Statute of the International Criminal Court Regarding the Commission of Crimes Against Humanity Against Environmental Dependents and Defenders in the Brazilian Legal Amazon from January 2019 to Present’, Legal Experts Report to the Office of the Prosecutor of the International Criminal Court (October 2021), <www.researchgate.net/publication/365201912_Legal_Experts_Report_to_the_Office_of_the_Prosecutor_of_the_International_Criminal_Court>, last access 19 March 2026.

effects of both colonialism and capitalism (as discussed in Section III. 2. above). Here I draw on the work of Cara Daggett and Andreas Malm who utilise the concept of 'fossil fascism'.¹⁰⁰ This is a term which I would argue accurately encapsulates the status of climate change denialism and inaction by states as 'tyranny' as that is understood in the UDHR. This is important as in Part II. of this paper, I underlined the need for international law to be informed by social movements and the socio-economic context within which international law operates which is one of global injustice. As Naomi Klein quite rightly observes:

[...] the thing about fossil fuels is that they are so inherently dirty and toxic that they require sacrificial people and places: people whose lungs and bodies can be sacrificed to work in the coal mines, people whose lands and water can be sacrificed to open-pit mining and oil spills.¹⁰¹

Thus, in the context of climate change, the 'tyranny and oppression' is not coming from a dictator but from an extractive system which is structurally violent and oppressive.

b) Resistance as a 'Last Resort'

The wording of the UDHR and much of the academic literature on a right to resistance also emphasises that resistance is typically conceptualised as a right which can only be relied upon as a last resort after alternative means of resistance have been exhausted.¹⁰² For instance, Lipmann emphasises that the right to defend human rights should only be resorted to after other legal avenues of redress have been exhausted, unless such efforts would be futile.¹⁰³

Thus, is a right to resistance justifiable in relation to climate protest given that there are alternative avenues for redress such as litigation and advocacy? This is a difficult and complex issue to analyse as current legal avenues of redress, such as litigation on behalf of children for intergenerational harm,

¹⁰⁰ Cara Daggett, 'Petro-Masculinity: Fossil Fuels and Authoritarian Desire', *Millennium* 47 (2018), 25-44; Wen Stephenson, 'What's Worse Than Climate Catastrophe? Climate Catastrophe Plus Fascism', *The Nation*, 25 May 2021, <www.thenation.com/article/environment/andreas-malm-interview/>, last access 19 March 2026.

¹⁰¹ Klein (n. 56).

¹⁰² See e. g. Ginsburg, Lansberg-Rodriguez and Versteeg (n. 52) who note that 'the right to resist is commonly perceived as a right of last resort, triggered only in the most extraordinary circumstances of illegitimate government action', 1190. See also Lippman (n. 92), 361.

¹⁰³ Lippman (n. 92.), 361.

have been difficult to mount and face a number of legal obstacles.¹⁰⁴ However, I would not class these avenues as ‘futile’. Thus, this may be a problem in conceptualising a right to resistance for climate protestors. However, I would also argue that the attempts by climate activists to compel states and corporations to cease the practices which contribute to climate change may be legitimately seen as futile (e.g. the refusal by most states to end fossil fuel extraction and to commit adequately to renewable energy) due to structural impediments caused by capitalism and the power of fossil fuel industries over governments. As Extinction Rebellion has quite rightly pointed out, ‘[c]onventional approaches of voting, lobbying, petitions and protest have failed because powerful political and economic interests prevent change’.¹⁰⁵ Thus, there is a case to be made for conceptualising resistance against climate change as a ‘last resort’.

c) The Content of a Right to Resistance in the Context of Climate Change

In light of the above, what is the content of a right to resistance against climate change? First, I acknowledge that there is some difficulty in identifying the source of harms caused by climate change and therefore to identify the body against which to exercise a right of resistance. Thus, I conceptualise the act of resistance in the context of climate change as an act directed to state *inaction*. Here I note that the acts I consider as being justified as resistance are not acts aiming at overthrowing the government as such, but at fossil fuel infrastructure protected by the state.¹⁰⁶ This fossil fuel industry infrastructure may, in some cases, be assets of private actors such as corporations but the climate action taken by the protestors is aimed at the lack of *regulation* of such corporations. Further, if the state punishes the members of the climate justice movement for protesting in a way which is disproportionate and thus impinges on the right of resistance, it would commit an internationally wrongful act.

¹⁰⁴ See for instance, recent decisions of the European Court of Human Rights which have held climate change-based challenges to be inadmissible for various reasons: ECtHR, *Duarte Agostinho and Others v. Portugal and 32 Others*, judgment of 9 April 2024, (application no. 39371/20); ECtHR, *Carême v. France*, judgment of 9 April 2024, (application no. 7189/21).

¹⁰⁵ Extinction Rebellion UK, ‘Part 7: Act Now ... So What Do We Do?’, <<https://extinctionrebellion.uk/the-truth/the-emergency/part-7/>>, last access 19 March 2026.

¹⁰⁶ See for instance, legislation enacted in a number of states which criminalises protest undertaken at mining sites and other areas in which fossil fuel companies are operating (see Section II. above).

Second, I interpret the right of resistance as both a communal and individually-based right. It could be exercised as a communal right if the climate change protestors seek to act on behalf of the world's population (in solidarity with others, including future generations). In this context, the protestors would be resisting state inaction on climate change as part of a right to self-determination. Alternatively, the right to resistance could be exercised individually – for instance, an individual who attempted to disengage a fossil fuel-producing entity by tunnelling or turning off a valve.

Under this framework, I argue that it would be permissible for climate protestors to engage some acts of disruption and property damage to attempt to prevent states' continued violation of the various human rights which are impacted by climate change, including the right to health and the right to a clean, healthy, and sustainable environment (and arguably, to prevent the future violation of the right to life as intergenerational harm). However, I would argue that exercise of such a right to resistance must be consistent with the requirements of human rights law. That is, that climate protest must be necessary and proportionate to gravity of human rights violations occasioned by climate change.¹⁰⁷ This is difficult to assess in the context of climate change as the most significant human rights harms, such as violations of the right to life, will be in the future (which raises issues of intergenerational harm). I would argue that if we include all rights which are violated now and those which will be in the future, then disruptive protests and those which result in serious property damage (such as the turning off or damage to pipelines) may be proportionate to the significant human rights violations posed by climate change. In making this argument, I acknowledge that the legal situation here is different to the situations in which proportionality is normally applied (e.g. the conditions under which states can limit human rights as the bearers of human rights obligations). Rather, this paper is discussing the conditions under which the holders of the right of resistance (which I conceive as a human right in turn) can exercise that right. I would seek to apply proportionality to the right to resistance as it is an ancillary right being used as a means of enforcing other fundamental human rights. Thus, like other human rights, it must also be subject to proportionality principles.

¹⁰⁷ On this, see Lippman (n. 92), at 354 who states that the 'means of resistance must be proportionate to the gravity of the human rights which are being violated'. See also Murphy: 'There is general agreement that this right [to resist] is both limited and conditional as to means, insofar as it must be exercised in a manner consistent with the relevant legal regimes: international human rights law and international criminal law, and the international prohibitions on aggression and intervention, at a minimum. Conformity with the doctrine of proportionality is generally accepted as an additional requirement': Murphy (n. 79), 285.

Under this approach, it is arguable that climate protest action which seriously damages critical infrastructure or other property (e.g. sabotage of pipelines) may be justified on the basis that this illegal activity will prevent the commission of greater violence to humanity via the harms caused by climate change. However, this type of argument must be approached with some care as the damage of critical infrastructure may have flow-on effects for the human rights of others. For instance, there are some safety risks associated with turning-off pipelines and tunnelling and it may cause disruption to electricity supplies. Thus, a balancing test should be utilised in this context. In balancing these competing interests, it may be that acts of property damage which are *specifically directed* against the sources of climate change (e.g. fossil fuel activities) may be considered necessary and proportionate to the human rights threats posed by climate change.

IV. Conclusions

This paper has demonstrated that the current evidence on climate change indicates that there is, indeed, a state of climate emergency necessitating urgent action to avoid species extinction. It has also demonstrated that climate change raises violations of a number of human rights, including the right to life, right to health, and the right to a healthy environment. The discussion above has shown that there is increasing criminalisation of climate protestors who are taking action to compel states to take action to avoid climate change. Despite climate groups taking legal and other political actions to attempt to compel states and corporations to adequately address climate change, those avenues have not been successful.

Currently it is accepted under international human rights law that individuals have a right to *peaceful* protest. However, the question which needs to be answered is whether the harms posed by climate change justify a 'right to resistance' under international law which would encompass disruptive protests and those involving serious property damage (such as the sabotage or other damage to fossil fuel pipelines or other mining projects). As discussed in this paper, it is generally agreed that certain acts of civil disobedience may be seen as morally justifiable in working democracies. However, a core aspect of civil disobedience is that the actions in question are *non-violent*. Certain climate protest acts which are currently being carried out can be accurately conceptualised as disruptive or implementing serious property damage (and therefore involving an element of violence, such as sabotage of oil/gas pipelines). As such, the principles of civil disobedience do not apply to them.

Therefore, it is necessary to examine the right to resistance as a distinct concept under international law. That is, in order to bring in factors of 'resistance' and 'revolution', we must therefore develop a right of resistance at international law that applies to certain acts of climate protest.

I would argue that those acts of climate protest which are disruptive or cause serious property damage can be justified if they are directed against the sources of climate change (e. g. fossil fuel activities). This is on the basis that such acts are protective of human rights (such as the right to life, right to health, and right to a clean, healthy and sustainable environment). However, those protest actions must be proportionate to the severity of human rights violations posed by climate change. Thus a right of resistance for climate protest must be limited to only those acts which are directly targeted to the sources of climate change such as pipelines, mining sites etc. (and therefore may not extend to activities such as the damaging of art works) and cannot involve violence against persons. That is, such a right of resistance should be constrained by human rights principles of necessity and proportionality.

This paper has set out some of the core debates in relation to a right to resistance in the context of climate protest. In addition to this, further consideration should be given to the fact that climate protest encapsulates the protection of *non-humans* (particularly animals). The right to resistance could therefore also be tied to the need to protect nature itself.¹⁰⁸ More broadly, further work should be done to deconstruct and analyse the legal conception of violence in the context of resistance and protest. Specifically, whether significant property damage should be seen as an act of violence even if it is not directly aimed at humans, and whether there may be cases where certain acts of property damage may lead to harm to individuals (such as acts of sabotage which may have unintended consequences for humans).

¹⁰⁸ Here I note that many jurisdictions around the world are now recognising that aspects of the environment have rights *themselves* e. g. rights given to rivers.