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Rethinking environmental rights – climate change, conservation and the European Court of Justice

Professor Philippe Sands QC
Professor of Law, University College London, Barrister Matrix Chambers, London

I met David Hall on a number of occasions and feel privileged and grateful to his family to be able to give this lecture in his memory. The subject is one I know him to have been interested in, because we once had a conversation about the law review article that I will revisit today. May I also express my thanks to the Environmental Law Foundation, whose excellent work has done so much to inspire for so many years, to WWF for their support and for their continued interest in the protection of the environment under rules of international law, and also to the Law Society for hosting this event.

In preparing this lecture I went back to the very first law review article I wrote, published in 1989 in the Harvard International Law Journal. It was entitled 'Environment, Community and International Law', and reflected a first effort on my part to grapple with the challenge that the environment posed for the international legal order.[1]

My thinking was triggered by an editorial in The Economist, earlier that year, in the period before the Rio Summit and at a point where I was just beginning to connect with environmental issues. I had studied law and international law before the environment was a recognised subject. We didn't have an option to study the environment at law school when I was an undergraduate, or even when I was a graduate. In 1988, the year before I wrote this article, a group of us set up the first course on international environmental law at the University of London. The context was that the environment was only beginning to permeate the international legal order.

This editorial in The Economist set out the prevalent view of international cooperation. It said:

> It's for governments on behalf of voters to decide how clean they want the world to be. Markets cannot decide that for them and it's for governments to cooperate in managing those parts of the planet that have no owner – the oceans, the jungles and the atmosphere.[2]

The editorial was premised on three assumptions. First, that international law actually provided a framework which could achieve environmental protection; secondly, that cooperation between governments alone to the exclusion of other international actors could be adequate; and thirdly, that governments act within a sort of legal vacuum in which they, unconstrained, can decide on the limits of their legal obligations. The editorial prompted a question: what is the role of other actors in relation to the development and enforcement of international environmental laws?

Thinking about that question I came to appreciate that I was deeply influenced by an article I had first come across a few years earlier when spending a year at Harvard Law School as a visitor, written by a well-known American academic, Professor Christopher Stone. If there is one law review article that any of you here must read, if you are interested in the environment, it is the article Professor Stone wrote in 1972, with the wonderful title: 'Should Trees Have Standing?'[3]

Professor Stone seems to have been the first person to articulate the jurisprudential and legal difficulty of accommodating the protection of environmental assets and rights and objectives into a legal order which was essentially anthropocentric. How do humans or associations of humans stand up to protect endangered species – species of cod, or of whales – or habitats? How do humans go to court to enforce rules to protect the climate system, to challenge acts of governmental entities that contribute to global warming in violation of international legal norms?

The difficulty is that the law traditionally requires litigants to show some sort of direct injury to their rights. The idea of going to court to protect the environmental rights of others is novel. We do not traditionally have rights to protect assets that are not our own. This is an essential and long-standing problem.

In his article Christopher Stone made a plea to allow human persons to be able to act on behalf of the environment. That function is often ascribed to the state,

1 30 Harv. I.L.J. 393–420 (1989). The theme is taken up in P Sands *Principles of International Environmental Law* (2nd edn Cambridge University Press 2003).

2 Quoted in P Sands 'Environment, Community and International Law' ibid.

3 Available in C D Stone *Should Trees Have Standing? And Other Essays on Law, Morals and the Environment* (Oxford University Press USA 1996).

but he wrote clearly and powerfully about the limits that a state has in acting as an attorney general in the public interest for the protection of non-personal rights. He said of public authorities:

> Their statutory powers are limited and sometimes unclear. As political creatures they must exercise the discretion they have with an eye towards advancing and reconciling a broad variety of important social goals, from preserving morality to increasing their jurisdiction's tax base. The present state of our environment and the history of cautious application and development of environmental protection laws long on the books testify that the burdens of an attorney general's broad responsibility have apparently not left much manpower for the protection of nature.

In other words, frequently the state will not act to protect the environment because the state has other interests. In carrying out a balancing exercise, the state will often choose not to act because other objectives, economic, social or whatever, tend to take priority. This seems particularly to be the case for societies that are built around the notion of a four- or five-year elective democracy.

So the issue which arises is the nature of environmental rights: who should have standing to take proceedings, to enforce environmental obligations, when the state has failed to act? It is important to recall that environmental rights are different from other kinds of rights. For a start, they are in their very essence collective. They are shared by all of us. We all have an interest in protecting the planet from global warming. It is not like protecting your own house from the acts of a next-door neighbour.

There are also difficulties about identifying the precise circumstances in which allegation of violations of such rights may be actionable. There are substantive rights. There are procedural rights.

In the English context we have moved a long way in domestic proceedings in allowing certain non-governmental organisations – and in some cases individuals – to bring proceedings to the English courts to challenge a failure of the state to give effect to its environmental obligations.

Debbie Tripley[4] and I were involved in a case that is still among my favourites, when we went to court on behalf of Greenpeace to protect from oil exploration activities a rather unknown (I hope I'm not being unfair) species of coral – *lophelia pertusa* – that was to be found at the bottom of the North Sea.[5] It was not a problem before the English courts for Greenpeace to assert a right of standing. As a reputable organisation, with a legal interest in the protection of the environment, to the best of my recollection no one seriously challenged Greenpeace's ability to go to court in order to protect rights which were, if you like, in the public domain but which did not belong to Greenpeace as such.

In other contexts it has been much more difficult to assert a right of standing to protect environmental assets, or to enforce environmental obligations. I want to focus on the European Court of Justice, because it is important in two aspects: first, in demonstrating the effectiveness of the system of law for protecting environmental obligations, and secondly, and more significantly, in what it says about the nature of the relationship between the state, public authorities and the individual citizen or associations of citizens.

You will understand immediately that what I am talking about raises issues of legitimacy, democracy and accountability. In what circumstances can individuals or associations of individuals go to court to challenge acts of the European Community which do not meet Community obligations or international obligations in relation to the environment? In what circumstances, to be more specific, can a non-governmental organisation or an individual go to the European Court of Justice to challenge a failure by, say, the European Commission or the European Council to give proper effect to the obligations that the European Community has to protect the environment?

The context for this is that traditionally citizens' suits – as they are sometimes called – have not been recognised in the European Community legal order, a legal order which is distinct from the national legal order. If the European Community carries out an activity, for example lends on a construction project, which an individual citizen or which a non-governmental organisation believes to be environmentally harmful or inconsistent with the environmental obligation of the Community, that citizen, that organisation, that NGO cannot go to the national courts to challenge the act of the European Commission or of the European Council. It has to go, if anywhere, to the European Court of Justice. So the question arises, is there a right of access to the European Court of Justice in those circumstances?

Let us put this in context, go back to the early 1990s and the UN's Rio Conference on Environment and Development. The Rio Conference underscored the vital importance of national remedies to challenge acts which damage the environment or which violate environmental obligations. Principle 10 of the Rio Declaration states, 'Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided'.[6] Of course a question immediately arises – do 'national remedies' include European Community remedies?

In 1992, in its Fifth Environmental Action Programme,[7] the European Commission recognised that individuals and

4 Chief Executive, Environmental Law Foundation; Barrister, Fenners Chambers, Cambridge.

5 *R v Secretary of State for Trade and Industry, ex parte Greenpeace Ltd* Maurice Kay J, QBD, 5 November 1999, *The Times* 19 January 2000 (transcript available from Smith Bernal, CO/1336/99, or on Lexis).

6 http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=78&ArticleID=1163.

7 http://ec.europa.eu/environment/actionpr.htm.

public interest groups should have 'practicable access to the courts in order to ensure that their legitimate interests are protected and that proscribed environmental measures are effectively enforced and illegal practices stopped'. So there's a policy direction by the European Commission itself to recognise that, when it comes to the national level, effective judicial access is needed in order to protect environmental rights.

Despite this political support, in the mid-1990s – the period after I had written the article in the Harvard International Law Journal and before the subject was really on the agenda – the European Court of Justice began for the first time to receive cases which raised the question of whether or not it would move from its traditional and narrow approach to *locus standi* and recognise access to the European Court of Justice to protect environmental rights.

The leading case before the ECJ is *Greenpeace and Others v the European Commission*.[8] It is a case in which I was involved as counsel, one among several, and it is a case about which today I still feel a considerable degree of unhappiness. Coming to this lecture as one who has been always rather supportive of the European Community legal order, I recognise that my scepticism about the Community legal order coincided with the outcome of this case, and the judgment of the Court of First Instance 1995. That went on appeal to the European Court of Justice, which handed down a final judgment in 1998.

What was the case about? I will paraphrase, as the facts are somewhat complicated. The Spanish authorities wanted to support the construction of two coal-fired power plants on the Canary Islands. Greenpeace and a couple of local NGOs, together with a larger number of local citizens, objected to the power plants on the grounds that at that point, 1993/1994, it was not a sensible use of public resources to be investing in new coal-fired power plants. Some of the individual applicants lived just metres away from the site. The objection was based on the existence of alternative technologies available, which would enable the challenge of climate change to be addressed through less environmentally harmful means, including in respect of the climate.

The Spanish Government made an application to the European Commission for funds and was successful in obtaining a disbursement of €128 million, (or the equivalent in ecus as they then were), under the EC Structural Funds programme. The money was to be transferred from the Community to Spain, and Spain would then pass it on to the developers. Against this background, it was alleged that there were problems with the environmental impact assessment, a process undertaken by the developer which was being challenged separately in the Spanish courts. The issue arose: could the objectors bring proceedings not just against the developer (or Spain) in the Spanish courts, but also against the European Community on the grounds that the Community was proposing to disburse funds in circumstances in which EIA requirements had not been met? Putting it another way, to what extent had the European Community, in the form of the European Commission, violated its obligations to protect the environment by funding a project on the Canary Islands which, it was argued, did not meet the Community's own environmental impact assessment laws and requirements?

In preparing the case the objectors were restricted by the language of the Treaty of Rome adopted in 1957 and which had a very narrow approach to the question of *locus standi*. Any treaty drafted in 1957 would not have envisaged the environment as comprising rights and obligations which may be qualitatively different from other rights and obligations. Many of you here this evening may not be lawyers, and understandably you won't want to get involved in the minutiae of particular rules. In short, the key legal provision is that part of the Treaty of Rome which deals with cases brought by 'non-privileged actors', that is to say legal and natural persons other than the Member States themselves or Community legal institutions.

Old Article 173 of the EC Treaty provided that such applicants had to show that they were 'individually and directly concerned' by the measure. The Court of First Instance threw the case out. It ruled that none of the objectors – the elderly ladies who lived right by the site where the power plants were going to be, the tomato growers who complained that their tomatoes would be subject to sulphur pollution, the local NGOs – nor Greenpeace had *locus standi*. They were not directly and individually concerned by the measure. The case went on to appeal.

The ECJ ruled that adoption of the act which concerned them touched them only in a 'general and abstract fashion'. They were like any other person in the same situation, part of a general class, so not individually concerned by the act.[9] Let us pause here. This category of applicants is no different from any other individuals or associations, said the ECJ. They are not able to show that they are different in any way such as to be individually concerned by the measure. It is readily apparent that this approach effectively excludes all environmental challenges to the European Court of Justice by non-privileged applicants, because where the environment is concerned there will not be circumstances in which one group of individuals or NGOs could be said to be more individually affected by the construction of a power plant than another group.

The ECJ also ruled that there was no 'direct concern'. The court ruled:

> In appraising the appellants' arguments purporting to demonstrate that the case-law of the Court of Justice, as applied by the Court of First Instance, takes no account of the nature and specific characteristics of the environmental interests underpinning their

8 Case C–321/95 P *Greenpeace and others v EC Commission* 1998 ECR I 6151 (first instance judgment is at 1995 ECR II-2205).

9 ibid.

> action, it should be emphasised that it is the decision to build the two power stations in question which is liable to affect the environmental rights arising under Directive 85/337 that the appellants seek to invoke.[10]

In other words, as the court put it, it is not the act of dispersing €128 million that will give rise to the environmental issue, it is the building of the power plants. Therefore, says the court, the applicants are not directly concerned by the act of financial disbursement. There is an intervening act between the disbursement of the funds and the environmental harm that they may suffer.

It can immediately be seen that this has the consequence of excluding the Community from legal review at the instance of citizens, unless the Community is directly involved in the act of construction (which it rarely, if ever, is).

The consequence of the judgment in the *Greenpeace* case is, in effect, to exclude environmental citizens' suits before the European Court of Justice. That has very serious consequences because it essentially means that, coming back to Christopher Stone's view, actions of European Community institutions are unlikely ever to be subject to review by the European court. Why? Because it is unlikely that one Member State will ever bring proceedings against a European Community institution for disbursing funds to another Member State, since the Member States essentially have a community of interests in not upsetting the apple cart. There is self-interest in non-action.

Let us come back to Christopher Stone's analogy. To the extent that another Member State in the *Greenpeace* case would have been able to act as an attorney general to protect the environment, internally the question would have been asked: what is our interest in seeking to challenge a measure of the European Community which funds two power plants in Spain? What is our legal or political interest in doing that? On a balancing test it is difficult to see why any state would act.

The approach in *Greenpeace* has been followed ever since. There have been instances in which it has been challenged, for example in 2002 in a case called *Unión de Pequeños Agricultores v the Council*. The British Advocate General at the court, Francis Jacobs, gave an opinion inviting the court to overturn the *Greenpeace* judgment.[11] That was in a sense the high water mark for the argument that there is something in the nature of environmental rights that requires the court to take a different approach.

Advocate General Jacobs said that the approach taken by the court in *Greenpeace* was 'incompatible with the principle of effective judicial protection'.[12] In other words, the case law on standing – excluding claims by individuals or associations – will mean there will be no circumstances in which the Community can be held to account in any practical way. He rejected in particular the argument that is classically made, namely that the floodgates would open to allow in all sorts of spurious or unmeritorious claims.

Another way of looking at this is to proceed on the basis that you are balancing two objectives. On the one hand, if you allow review by individuals and by associations you open the floodgates. On the other hand, if you close the door altogether, you exclude any judicial challenge even where there is a most blatant violation by a Community institution of its own environmental standards. The middle ground is surely what ought to be followed. But the European Court of Justice rejected that approach, including Advocate General Jacobs' view that it was not right in interpreting the Community treaty to freeze it as it was in 1957, in out-dated notions of the relationship between the individual or the association and the environment.[13]

In the meantime, there had been other developments. In 1998 a new international Convention was adopted, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters,[14] which is intended to put in place rules on access to environmental justice. It is intended to create new rules giving citizens the right of access to information on the environment, the right to participate in decision-making on the environment, and the right to have access to the courts to protect environmental rights. Most EU Member States are parties to it, as is the European Community. In short, the Aarhus Convention gives concrete expression to Principle 10 of the Rio Convention to which I referred at the beginning of this lecture.

Article 6 of the Aarhus Convention provides for the public concerned to have access to information. The 'public concerned' includes individuals, organisations, and NGOs who are affected by decision-making. Article 9 of the Convention establishes an obligation on each party, including the European Community, to ensure that members of the public which have a sufficient interest, or which claim an impairment of a right, shall 'have access to a review procedure before a court of law and/or another independent an impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission' which is subject to the Convention's obligations on access to information. The Aarhus Convention is intended to make sure there is effective judicial remedy. At the time of its adoption there was a broad belief that Aarhus could open the door to a different approach in the ECJ.

Has the Convention changed the situation? We are still in the early days, and it needs to be noted that although the European Community is a party, its implementing legislation is not yet in force.[15] The effect

10 ibid para 30.
11 Case C–50/00P *Union de Peguenos Agricultores v Council* (25 July 2002) Opinion of A-G Jacobs (21 March 2002) 2002 ECR I-6677.
12 ibid para 42.
13 ibid para 77.
14 http://www.unece.org/env/pp/documents/cep43e.pdf.
15 European Parliament and Council Regulation No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community Institutions and Bodies [2006] OJ L264 p 13.

of the Aarhus Convention is being tested right now in a case brought to the European courts by WWF, concerning the allocation of quotas for cod fishing in the North Sea. The great majority of scientists who have knowledge on the subject have advised that cod fishing in the North Sea has to be halted totally in order to protect the stock and allow it time to recover. In effect, that would mean a fishing quota of zero. There should be no fishing of cod at all – last year, this year, next year, probably for several years to come – in order to allow the species to recover.

In the face of such advice what does the European Council do? It ignores the scientific advice and, taking account of the political realities in the annual deal-making between all the Member States, decides to fix a quota which will allow continued fishing of cod in amounts significantly above zero. This flies in the face of the precautionary approach that Community law requires to be adopted to protect the cod.

For the reasons referred to by Professor Stone, no EU Member State will challenge that decision. They have engaged in weeks of lengthy negotiations, in which all of them are involved in the decision-making process. They stay up night after night, and finally they broker a political deal which is connected to other deals in relation to other issues. The new regulation is adopted by the Council unanimously.[16] No Member State will challenge the regulation on the grounds that the conservation of cod is likely to be endangered. Can anyone else do so?

The only people who are likely to challenge the Council's apparent failure to protect stocks of cod in the North Sea, to call on the Community to give effect to the strong scientific advice it received, are individuals or associations. Might they have standing to challenge?

Addressing that question in the light of the consistent jurisprudence of the European Court of Justice, the answer would be a clear 'no'. The new development is the Aarhus Convention, which was in force for the European Community when the decision on cod was taken, even if the implementing regulations were not. WWF went off to the Court of First Instance (I must declare an interest, as I am one of the counsel) to argue that it had standing to challenge the decision, to ensure that there were effective traditional remedies available within the European Community legal order to hold the European Council to account.

This may not be the easiest of cases. Some will say that WWF – like Greenpeace in relation to the climate system or the construction of the two power plants in the Canary Islands – has no legal interest in the protection of cod, it is just some NGO with no particular relationship to the cod that is remaining within the North Sea that would allow it to be said that it has 'individual concern'. A more modern approach, having regard to the case law at the domestic level in the United Kingdom and in many countries around the world, would build on the arguments put forward by Christopher Stone, and for which I argued as long ago as 1989, based on the notion that there is something qualitatively different about the nature of legal interests in the protection of the environment. No person can claim a traditional proprietary interest in the cod of the North Sea. A change in approach requires a change of consciousness in terms of the nature of rights and the nature of the consequences to the environment for the implementation of rights. A court has to interpret the rules with a different mindset.

Speaking personally, I must confess that I found the response of the Community institutions to the written pleadings of WWF to have been most unsatisfactory. The European Council wrote on 30 July 2007:

> The WWF has no interest to act. It is merely an association which represents collective, general and diffuse interests. It has no specific and personal interest and to accept its interest will open the door to the acceptance of the so-called class action or *actio popularis*. Again the Council, supported by the Commission, argues that there is no individual concern and there is no direct concern.

Today we received the Order of the Court of First Instance in that case. The application was ruled inadmissible.[17] The applicant had no standing, because it is not individually concerned by the decision, and the Aarhus Convention does not change the situation (even assuming it to be applicable) because 'any entitlements which [WWF] may derive from the Aarhus Convention and [the implementing Regulation] are granted to it as a member of the public', and 'such entitlements cannot therefore be such as to differentiate the applicant from all other persons …'.[18] An appeal to the ECJ is possible, and may yet be brought.

The practical reality is that under the approach taken by the Court of First Instance, no person having a political interest and ability in doing so will actually have a right to challenge a Community act. This notwithstanding the fact that the scientific and technical advice on the merits of the approach taken by the Community is clear.

This is a deplorable situation. It raises fundamental questions about the ability of the Community legal order to ensure the protection of the environment in accordance with the law. It also raises fundamental concerns about the nature of environmental rights in the Community legal order. In circumstances in which so many decisions are now being taken at the Community level, rather than at the level of the Member States, the lack of access to effective legal review may be seen as a profound failure for accountability and, ultimately, democracy.

Which brings me back to the reaction in 1995 when I first received the *Greenpeace* judgment. It profoundly affected my feelings about the European Community legal order. Can we accept a Community legal order which, at a time of such severe environmental challenge, precludes

16 Council Regulation (EC) No 41/2007 of 21 December 2007 [2007] OJ L15 p 1.

17 Case T–91/07 *WWF-UK Ltd v Council of the European Union* supported by Commission of the European Communities (2 June 1998).

18 ibid para 82.

all practical possibility of holding Community institutions to account? There seems to be little scope for optimism. In the European Community legal order there has been no real progress in 20 years, since that article in the Harvard International Law Journal. Twenty-seven states are part of a quasi-federal legal order in which there is no possibility of any person or any organisation challenging an act which is – on the face of it – inconsistent with environmental science and advice. In this unhappy situation the vital connection between the citizens of the Community order and its institutions is broken.

By way of comparison, it may be useful to look at another recent decision, this time from the United States Supreme Court, in *Massachusetts and Others v the United States Environmental Protection Agency*.[19] The judgment was handed down on 2 April 2007. A number of states, led by Massachusetts, together with a number of local governments, including the District of Columbia, New York City and others, and a large number of NGOs, challenged the decision by the United States Environmental Protection Agency not to designate carbon dioxide as a pollutant. They went to the federal courts and eventually the case reached the United States Supreme Court. The issue of standing came up.

By a narrow majority (5–4), the Supreme Court ruled the applicants did have standing to challenge the failure to designate carbon dioxide as a pollutant. The lead majority judgment is written by Justice Stevens. He focused on the situation of Massachusetts, one of the 50 states of the United States, and concluded that a state within the Union had a particular interest in challenging an act such as this because it was likely to suffer direct harm. In his view, Massachusetts had a responsibility to protect its coastal environment, and one of the consequences of climate change is that the sea level will rise, with implications for the state of Massachusetts. The majority ruled that Massachusetts could show that it would suffer an injury in fact, that the harm was not purely hypothetical. Since Massachusetts had standing, the majority found that it didn't need to decide the standing of everyone else. None of the other applicants was struck out, including the non-governmental organisations.

Against that must be read the powerful dissent by the new Chief Justice John Roberts, who strongly disagreed with the majority's approach. His view was not that these applicants were not individually or particularly personally affected by the act, but that they couldn't pass an 'injury in fact' test. Essentially what he says is, when the court applies the test it focuses on the state's asserted loss of coastal land as the injury in fact. He then goes through the test that is set out:

> That alleged injury must be 'concrete and particularised'. Central to this concept of particularised injury is the requirement that a plaintiff be affected in a 'personal and individual way' and seek relief that 'directly and tangibly benefits him' in a manner distinct from its impact on the public at large.

You will see straight away the similarity with the approach taken by the European courts. As Roberts CJ put it:

> Without particularised injury, there can be no confidence of a real need to exercise the power of judicial review.

He then takes us to the very heart of the issue:

> The very concept of global warming seems inconsistent with this particularisation requirement. Global warming is a phenomenon 'harmful to humanity at large' and the redress petitioners seek is focused no more on them than on the public generally – it is literally to change the atmosphere around the world. If petitioners' particularised injury is loss of coastal land, it is also that injury that must be actual or imminent, not conjectural or hypothetical.

What Chief Justice Roberts seems to be saying is that in circumstances in which the injury is to a global environmental asset – the climate system – an applicant will not be able to meet the test of particularised injury, another formulation perhaps for 'individual concern' in EU parlance. This seems similar to the approach of the European courts, but of course is rejected by the majority (although one cannot ignore the fact that the State of Massachusetts is more akin to a privileged applicant in the European Community legal order). The view adopted by Chief Justice Roberts articulates the approach of the European Court of Justice, but he is in a minority. The majority rejects that notion and recognises that the state of Massachusetts has a particular interest in the protection of its coastal area which it found on the fact that it could be affected by sea level rise consequent to climate change.

The majority is careful not to go as far as opening the door all the way to recognise the standing of the NGOs, although that is not excluded as such. But it adopts a more liberal view than the European courts have done so far, and it also takes a more open view on the issue of direct concern: standing is not precluded because of the gap between the decision (or not) to designate carbon dioxide as a pollutant and the long-term consequences to Massachusetts's coastline.

These differences of approach reflect competing visions about the function of judicial review, the nature of interests in the environment, and the role of different actors. The majority in the United States Supreme Court has found a way to ensure that an issue of general interest may be addressed by the courts. The European courts seem unable to budge.

Ironically, today, 11 June 2008 is the start of the third meeting of the parties to the Aarhus Convention, and also the tenth anniversary of the adoption of the Aarhus Convention in 1998. The failure of the European courts to do justice on this issue, to recognise any qualitative differences in the nature of legal interests in the

19 *Massachusetts et al. v EPA et al.* – U.S.–, 127 S. Ct. 1438 (2007). See also A Kimbrell ELM 20 (2008) 64–70.

environment, is a matter of profound concern. Its approach can only serve to galvanise those who believe there is something inherently undemocratic about the Community legal order and its institutions, premised on fundamental lack of legal accountability. That type of concern drives people in a particular direction.

There is a strong connection between our conceptions of a democratic order and the protection of the environment. There is a great need for institutions like the European Court of Justice to revisit the notion of environmental rights, and to ensure that there is proper enforcement of environmental rights.