Summary

Climate change does and will continue to manifest in significant adverse impacts on both human and natural systems. Concerns around how these impacts should be addressed have typically been raised under the title “loss and damage” in international climate change negotiations, but it was not until the adoption of the Paris Agreement in 2015 that loss and damage made it into international climate change treaty law. Loss and damage is included in the Paris Agreement through its article 8. While the article explicitly recognises the importance of addressing loss and damage, it does not introduce a mechanism to address the adverse impacts of climate change, nor does it extend clear rights or obligations with regard to these impacts. Therefore, following the adoption of the Paris Agreement there are still no mechanisms in place to address the adverse impacts of climate change under international climate change law. At the same time, international human rights institutions have increasingly been pushed to consider how climate change impacts and response measures may adversely affect the full enjoyment of human rights and whether these impacts can constitute rights violations, calling for the provision of remedy. These developments have led to incorporation of climate change into international human rights law and thus the “greening” of human rights. These two bodies of law overlap in subject matter and are developing concurrently, but the relationship between them is considerably underexplored.

If article 8 does not establish a mechanism or obligations to address the adverse impacts of climate change, what are the legal implications of the article? Given the overlapping regulation of the adverse impacts of climate change, to what extent can the application of a human rights perspective to article 8 contribute to the interpretation and development of the legal implications of the article? This thesis answers those questions, aiming to contribute to the literature and debate in international law on responses to the adverse impacts of climate change. The discussion in this thesis is relevant to literature on international climate change law and international human rights law generally, as well as scholarship focused on the interaction between these two bodies of law specifically. Concretely, the thesis approaches the topic by adopting a legal doctrinal methodology in examining three related issues. First, it considers how international human rights law overlaps with loss and damage in international climate change law, analyses whether this overlap calls for the systemic integration of these two sets of norms, and, if so, whether such integration can be legally justified and how it can be
achieved. Second, the thesis considers what obligations or expectations article 8 imposes on states with respect to loss and damage, both seen independently and in light of a human rights perspective. Third and finally, it identifies a need to develop new, responsive measures for loss and damage and explores the conditions under which remedies for loss and damage should operate.

The thesis finds that the legal implications of article 8 are limited without further development by the parties to the Paris Agreement. It finds that article 8 reinforces mitigation and adaptation commitments found elsewhere in the regime, which are further bolstered by reference to the human rights duties of non-retrorgression, to cooperate internationally, and positive human rights obligations. Implementation of mitigation and adaptation commitments may thus constitute implementation of the article 8 calls to “avert” and “minimize” loss and damage. At the same time, article 8 does not impose any new obligations, which leaves a void with respect to the call to “address” loss and damage. Addressing loss and damage requires the adoption of new measures that respond to harm when it manifests. In this connection, the thesis finds that, while it prevents article 8 from being used as a basis for liability and compensation, paragraph 51 of the decision adopting the Paris Agreement does not prevent development of further rules on loss and damage, in particular with respect to remedies. As such, developing remedies for loss and damage remains an open road and so the thesis culminates in a proposal on the conditions under which loss and damage remedies should be provided. It finds that harms should benefit from loss and damage remedies when an individual or state in a developing country experiences an intolerable and unavoidable or unavoided impact that is associated with climate change. The proposal is rooted in loss and damage literature and interpreted in light of the human rights perspective, which is found to be justified on the basis of the international law principle of systemic integration.