

CLIMATE CHANGE AND HUMAN RIGHTS: AN OVERVIEW OF INTERNATIONAL CASE LAW*

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ABSTRACT

Climate change in recent decades has increasingly affected various aspects of human life. Rising sea levels, extreme weather conditions such as heat waves and heavy rains, resulting in drought, forest fires and floods, lead to complex socioeconomic consequences and threats to fundamental human rights. Sea level rise due to climate change directly affects coastal and island states and indirectly almost all states in the world. Climate change affects human health, the availability of resources (especially drinking water and food) and, consequently, migration. These changes particularly affect poor and vulnerable groups due to their reduced ability to adapt to new circumstances. Climate change threatens the right to life, the right to adequate food and water, the right to the highest attainable standard of physical and mental health, the right to adequate housing, the right to cultural identity, etc.

The problems and challenges caused by climate change have led to the adoption of international treaties that regulate this matter, such as the 1992 UN Framework Convention on Climate Change, the 1997 Kyoto Protocol and the 2015 Paris Agreement. Due to the significant impact of climate change on the respect for human rights, but also due to the lack of effective

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international legal mechanisms of international treaties relating to climate change, individual complaints are increasingly being filed before international human rights treaty bodies. This includes UN human rights treaty bodies such as the Committee on Human Rights, as well as regional bodies such as the European Court of Human Rights and the Inter-American Court of Human Rights. The paper provides an overview of the relevant international legal framework and (quasi)judicial practice in the area of climate change impact on human rights. The authors place a special emphasis on the advisory proceedings before various international courts and relevant case law of the human rights treaty bodies.

Key words: *climate change, human rights, international law, advisory proceedings, individual complaints mechanisms*

1. INTRODUCTION

Climate change in recent decades has increasingly affected various aspects of human life. Rising sea levels, extreme weather conditions such as heat waves and heavy rains, resulting in drought, forest fires and floods, lead to complex socioeconomic consequences and threats to fundamental human rights. Sea level rise due to climate change directly affects coastal and island states (about 70 states) and indirectly almost all states in the world. Climate change affects human health, the availability of resources (especially drinking water and food) and, consequently, migration. Considering that the impacts of climate change intersect with other factors, such as race, gender, age and socioeconomic status,¹ these changes particularly affect poor and vulnerable groups (women and children, persons with disabilities, indigenous peoples and other disadvantaged rights holders) due to their reduced ability to adapt to new circumstances. Numerous rights are associated with environmental changes, for example, the right to life, right to private and family life, right to adequate standard of living, right to health, right to participation in decision-making, right to access to justice, right to property, right to culture, freedom of movement, right to residence on their ancestor's land, right to natural resources, the right to return etc. All environmental factors, natural and/or man-made (climate change, natural disasters, and environmental degradation), are interconnected and interdependent.² In this regard, we should first examine what climate change is, then what is the difference between climate change and natural disasters, and, finally, what is their connection to human rights.

¹ *Promotion and protection of human rights in the context of climate change, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, UN, General Assembly, A/78/255, 28 July 2023, p. 3.

² Borges, I. M., *Environmental Change, Forced Displacement and International Law - From Legal Protection Gaps to Protection Solutions*, Routledge, New York, 2019, p. 21.

The problems and challenges caused by climate change have led to the adoption of several international treaties that regulate this matter. In accordance with them, states are obliged to take measures to avoid and redress these climate impacts, and so, to moderate climate change. In addition to that, they are obliged to ensure that all individuals have the vital capacity to adjust to the climate crisis.³ Climate justice requires that climate activity is steady with existing human rights assertions, commitments, benchmarks and standards.⁴ Experts, who deal with the protection of human rights in the context of climate change, have reached two common conclusions: climate change and its impacts threaten a broad range of human rights, and second, as a result, states and private actors have extensive human rights obligations and responsibilities.⁵

Solving the problems that individuals face due to climate change can be approached from an environmental (climate change law) perspective and from a human rights perspective. Environmental perspective to climate change is aimed at reducing the harmful consequences of climate change by reducing the emission of greenhouse gases and does not provide individuals and groups with legal avenues to protect their rights. In contrast to the rest of international environmental law, a human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual humans rather than on other states or the global environment.⁶ In the lack of effective international legal mechanisms of international treaties relating to climate change, individual complaints are increasingly being filed before international human rights treaty bodies. This includes UN human rights treaty bodies such as the Committee on Human Rights, as well as regional bodies such as the European Court of Human Rights and the Inter-American Court of Human Rights.

After the introduction, chapter 2. assesses the impact of climate change on human rights and distinguishes between the terms environment and climate change and their impact on human rights. Chapter 3. compares climate change related treaties with human rights treaties and determines the position of the individual and his human rights in them. After that, in chapter 4., an overview of the relevant international legal framework and (quasi)judicial practice in the area of climate

³ Modi, R.; Goyal, N., *Analysing the Impact of Climate Change on Human Rights Through the Legislative Framework*, GLS Law Journal, Vol. 5, No. 2, 2023, p. 50.

⁴ *Ibid.*

⁵ *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN, General Assembly, A/74/161, 15 July 2019, pp. 15 – 16.

⁶ Boyle, A., *Climate Change, the Paris Agreement and Human Rights*, International and Comparative Law Quarterly, Vol. 67, No. 4, 2018, p. 765.

change impact on human rights is provided. The authors place a special emphasis on the advisory proceedings on climate change before various international courts and relevant case law of the human rights treaty bodies. At the end of the work, the authors provide some conclusions (5.).

2. THE IMPACT OF CLIMATE CHANGE ON HUMAN RIGHTS

2.1. ON CLIMATE CHANGE IN GENERAL

Climate change has caused substantial damages, and increasingly irreversible losses, in terrestrial, freshwater, cryospheric, and coastal and open ocean ecosystems.⁷ As a result, deserts are spreading, and on the other, massive flooding occurs in some other parts of the world. Water salinization, drought, melting of polar ice, rising tide levels, dying ocean currents, deforestation and forest destruction, strong winds and storms are just a few examples of the consequences of dramatic climate change.⁸ We also witness air pollution, acid rains, famines, ozone depletion, the accumulation of nuclear and solid waste etc., changes which Glantz marks as „creeping environmental problems“.⁹ As a result, plant and animal species are dying out and biodiversity is radically decreasing.¹⁰ Ironically, vulnerable communities and peoples, who have contributed the least to current climate change situation, are disproportionately affected.¹¹ Individual livelihoods have been affected through, for instance, destruction of homes and infrastructure, and loss of income, human health and food security, with dramatic and adverse effects on gender and social equity.¹² Groups such as children, women, the elderly and persons with disabilities are often particularly vulnerable to the adverse effects of climate change on the enjoyment of their human rights.¹³ Climate and weather extremes are increasingly driving displacement in Africa, Asia, North America, and Central and South America, according to the Report of the Intergovernmental Panel on Climate Change, with small island states in the Caribbean and South Pacific that are particularly vulnerable and exposed to the extreme consequences of

⁷ *The Synthesis Report: The Intergovernmental Panel on Climate Change*, IPCC AR6 SYR, 2023, p. 5.

⁸ Lulić, M.; Muhvić, D.; Rešetar Čulo, I., *In Support of the Debate on the Terminology Related to the Terms Climate Refugees, Climate Migrants, Environmentally Displaced Persons and Similar Terms*, EU and Comparative Law Issues and Challenges Series (ECLIC), Vol. 7, 2023, p. 6.

⁹ For more details, see: Glantz, M. H., *Creeping Environmental Problems, Natural Science Essay*, The World and I, 1994b, pp. 218–225.

¹⁰ Lulić; Muhvić; Rešetar Čulo, *op. cit.*, note 8, p. 6.

¹¹ *The Synthesis Report The Intergovernmental Panel on Climate Change*, *loc. cit.*, note 7.

¹² *Ibid.*, p. 6.

¹³ *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN, General Assembly, A/HRC/10/61, 15 January 2009, p. 30.

climate change.¹⁴ However, in addition to climate change itself, it is worrying that measures adopted to deliver climate change mitigation and adaptation may themselves negatively affect the enjoyment of human rights.¹⁵ For example, measures constraining access to, and use of, natural resources (land, water, forests, etc.) can lead to jeopardizing the enjoyment of rights such as those to culture, food, water, and respect for private and family life.¹⁶

The concept of “climate change”, as is known, has similarities, but also significant differences, in relation to the phenomena we call “natural disasters”. Climate change is long-term, has been monitored for decades and is caused, as a rule, by human activity (greenhouse gas emissions), and the consequences are global warming, melting glaciers, rising ocean and sea levels, severe storms and bad weather, etc. “Natural disasters” are sudden and individual events in the environment that are not caused by humans, but which cause major human casualties and damage to property and the environment (e.g. earthquakes, volcanic eruptions, floods, droughts, hurricanes, etc.). Both climate change and natural disasters threaten the lives, health, safety, right to water and food of millions of people, they are related to the environment, and they hit the most vulnerable and the poorest the hardest. The key differences between these two concepts are that humans can influence climate change (by reducing harmful activities), climate change is long-term, unlike natural disasters, which are short-term and, in principle, cannot be influenced by humans. Climate change gradually changes the world around us, unlike natural disasters that are of shorter duration, although the consequences of both on living beings and nature are enormous. Climate change affects the occurrence of natural disasters, but changes in the patterns of natural disasters (e.g. rainfall, hurricanes, droughts, heat waves, floods, etc.) also affect the development of climate change. Therefore, we cannot observe them separately, because they are intertwined and connected. As Borges notes, such problems are interconnected, cross-disciplinary, and cross-boundary.¹⁷

¹⁴ *The Synthesis Report The Intergovernmental Panel on Climate Change*, loc. cit., note 7. See also McNevin, A., *Forced Migration in Australia, New Zealand, and the Pacific*, in: Fiddian-Qasmiyeh, E.; Loescher, G.; Long, K.; Sigona, N. (eds.): *The Oxford Handbook of Refugee and Forced Migration Studies*, Oxford University Press, 2014, p. 6.

¹⁵ Savaresi, A., *UN Human Rights Bodies and the UN Special Rapporteur on Human Rights and Climate Change: All Hands on Deck*, Yearbook of International Disaster Law Online, Vol. 4, No. 1, 2023, p. 396.

¹⁶ *Ibid.*

¹⁷ Borges, *op. cit.*, note 2, p. 19.-20.

2.2. ENVIRONMENT, CLIMATE CHANGE AND HUMAN RIGHTS

We need to distinguish between “the connection between human rights and the environment” and “the connection between human rights and climate change”, which are not the same problems and issues. Although both issues are extremely important and delicate for our understanding of the survival of living beings in the modern world and both require urgent legal and political interventions, there are important differences between them.

“Human rights and the environment” is a broader concept, within which we answer the question of how the environment affects human rights. This includes issues such as the right of every person to health, to a healthy environment, clean air, drinking water, food free from pesticides, to information and participation of the local community on projects that damage the environment, to agricultural land and property. For example, pollution of drinking rivers and groundwater from waste, construction of mines which potentially endangers local communities, air pollution from industry, deforestation of the Amazon rainforest which threatens the traditional way of life and land rights of indigenous peoples, increased traffic which causes respiratory diseases, pesticides contaminate soil and agricultural products etc. These issues may or may not be related to climate change.

On the other hand, the issue of “human rights and climate change”, which is a more specific and narrow area, provides an answer to the question of how today’s climate change affects the realization of human rights of individuals, communities and peoples and what are the negative consequences of extreme weather conditions. Climate change is about suffering those results directly from the damage we are doing to nature.¹⁸ For example, due to climate change, the sea level, storms, floods and strong winds are rising, so even now islands, but also coastal countries and cities that are low-laying are threatened by landslides and submergence, and in some parts (e.g. Pacific islands) the complete loss of territory in the coming decades (e.g. Tuvalu, Kiribati, Nauru, Marshal Islands, Maldives, etc.). In addition to losing homes, droughts prevent crops from being harvested, diseases spread, people are often forced to leave their homes because the changes are so severe and the consequences are almost impossible to repair, children cannot be educated in such environments, etc. Violence and physical conflicts occur over control of natural resources. Lack of water and food, because of droughts caused by climate change, makes basic human survival impossible. The responsibility for climate

¹⁸ *Climate Change and Human Rights: A Rough Guide*, International Council on Human Rights Policy, Versoix, 2008, p. 3.

change lies with states that are major polluters, but also with the inability of international organizations to effectively stop further climate change.

2.2.1. Environment and Human rights

The first connections between human rights and the environment have been discussed since the 1970s.¹⁹ The documents that linked these two concepts were, for the most part, non-binding declarations and resolutions. Let us recall the historically most important documents in the context of human rights and the environment. The UN Declaration on the Human Environment, adopted in Stockholm in 1972, declares: “Man is both creature and moulder of his environment, which gives him physical substance and affords him the opportunity for intellectual, moral, social and spiritual growth” (Art. I, para. 1).²⁰ Two decades later, the UN Conference on Environment and Development (Rio De Janeiro, 1992) states similar formulations: „Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.“ (Principle 1).²¹ However, there is still no direct reference to human rights here. Not until 2022, when the UN welcomed the recognition by the General Assembly that “a clean, healthy and sustainable environment is a human right”.²²

We should also mention a few regional instruments here that explicitly recognize „the right to environment“. For example, the 1981 African Charter on Human and Peoples’ Rights in Art. 24 states that „[a]ll peoples shall have the right to a general satisfactory environment favourable to their development“. ²³ It is also important to mention the Protocol of San Salvador, as a key legal document for human rights protection within the framework of the Organization of American States, which states in Art. 11 that „[e]veryone shall have the right to live in a healthy environment and to have access to basic public services“ and that „[t]he States Parties shall

¹⁹ Koivurova, T; Duyck, S.; Heinämäki, L., *Climate Change and Human Rights*, in: Hollo, E. J.; Kulovesi, K.; Mehling, M. (eds.), *Ius Gentium: Comparative Perspectives on Law and Justice*, Vol. 21, 2013, p. 290.

²⁰ Declaration of the UN Conference on the Human Environment, Stockholm, 5-16 June 1972, Report of the UN Conference on the Human Environment, UN Doc. A./CONF.48/14, 1972.

²¹ United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992, Report of the UN Conference on Environment and Development, Volume I, UN Doc. A./CONF.151/26/Rev1 (Vol.1), 1993.

²² *What is the Right to a Healthy Environment, Information note*, United Nations Human Rights Office of the High commissioner, UN Environment Programme, UNDP, 2023, p. 4. See also: *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN, General Assembly, A/73/188, 19 July 2018.

²³ African Charter on Human and Peoples’ Rights, Organization of African Unity, Adopted by the Assembly of Heads of State and Government, June 1981, OAU Doc. CAB/LEG/67/3.

promote the protection, preservation, and improvement of the environment“.²⁴ It should also be mentioned the 1998 Aarhus Convention on Access to Information²⁵ which does not define „the right to environment“ as a „human right“, but gives citizens the right to access environmental information as well as participation in decision-making and access to justice in environmental matters. The last in line regional document that indirectly mentions the environment is the 1996 revised European Social Charter, which in Art. 11 states “the right to health“, but not the right to a healthy environment.²⁶ Finally, the European Court of Human Rights linked human rights and environmental problems in a series of judgments (e.g. *Lopez Ostra v. Spain*,²⁷ *Fadeyeva v. Russia*²⁸ and *Cordella and others v. Italy*²⁹).³⁰ In addition to international instruments, many national constitutions have also explicitly recognized “environmental human rights”.³¹ Maybe not all have the same formulation, but these emerging statements of rights have stirred heated debate about their definition, scope, nature and enforcement.³²

2.2.2. Climate Change and Human Rights

Climate change is deeply connected and intertwined with a range of human rights. This connection is strong, complex, inherent and inextricable. It should also be noted that this connection is “relatively a recent phenomenon” in the theory and practice of international organizations and policy makers.³³ It was only at the beginning of the 21st century that states and international organizations began to link human rights and climate change and to introduce some kind of legal framework for the protection of human rights from climate change. In parallel, the concept of “climate justice” has been developing.

²⁴ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Protocol of San Salvador, Organization of American States, A-52, November 16, 1988.

²⁵ Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 1998, *United Nations Treaty Series*, Vol. 2161, p. 447.

²⁶ *European Treaty Series*, No. 163.

²⁷ *Lopez Ostra v. Spain*, ECtHR, Application no. 16798/90, Judgment, 9 December 1994.

²⁸ *Fadeyeva v. Russia*, ECtHR, Application no. 55723/00, Judgment, 9 June 2005.

²⁹ *Cordella and others v. Italy*, ECtHR, Application nos. 54414/13 and 54264/15, 24 June 2019.

³⁰ European Court of Human Rights, Guide to the case-law of the European Court of Human Rights – Environment, Updated 31 August 2024.

³¹ Hajjar Leib, L., *Human Rights and the Environment Philosophical, Theoretical and Legal Perspectives*, Martinus Nijhoff Publishers, 2011, p. 2.

³² *Ibid.*

³³ Jolly, S.; Ahmad, N., *Climate Refugees in South Asia - Protection Under International Legal Standards and State Practices in South Asia*, Springer, Singapore, 2019, p. 64.

In this context, we must first start from the famous petition of the indigenous Inuit people against the USA in 2005 (*Sheila Watt-Cloutier et al. v. U.S.*), which is considered the first case of linking climate change and human rights violations. It is a petition in which the Inuit claimed before the Inter-American Commission on Human Rights that greenhouse gas emissions by the USA threatened their traditional way of life.³⁴ Inuit argued that the USA was violating the human rights of the Inuit through its contribution to global warming. Commission has rejected the petition for lack of admissibility.³⁵ While the Commission refused to hear the petition, this marked the beginning of a movement who linked climate change with the concept of human rights.³⁶

The UN Human Rights Council (UNHRC) recognized the link between climate change and human rights at the 13th UN Climate Change Conference in Bali in 2007.³⁷ In 2008 the UNHRC expressed concern that climate change „poses an immediate and far-reaching threat to people and communities around the world“ and requested the Office of the High Commissioner for Human Rights (OHCHR) to prepare a study on the relationship between climate change and human rights.³⁸ It was in 2008 that the UNHRC began a series of resolutions and initiatives on the connection between human rights and climate change.³⁹ Thus, already in 2009, the UNHRC adopted the Annual Report of the OHCHR as a first report on the impact of climate change on a whole set of various human rights.⁴⁰ In that Report, it is

³⁴ Inuit Petition Inter-American Commission On Human Rights To Oppose Climate Change Caused By The United States Of America, submitted by Sheila Watt-Cloutier, With the Support of the Unuit Circumpolar Conference, on Behalf of All Inuit of the Artic Regions of the USA and Canada, December 7, 2005. Climate Change Litigation Databases, Columbia Law School, available at: [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2005/20051208_na_petition.pdf], Accessed 17 April 2025.

³⁵ *Sheila Watt-Cloutier et al. v. U.S.*, Petition No. P-1413-05, Letter of the Inter-American Commission on Human rights, 16 November 2006, available at Climate Change Litigation Databases, [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2006/20061116_na_decision.pdf], Accessed 11 April 2025.

³⁶ For more details, see Harrington, J., *Climate Change, Human Rights, and the Right to Be Cold*, Fordham Environmental Law Review, Vol. 18, 2006, p. 513. *et seq.* and Osofsky, H. M., *The Inuit Petition as a Bridge, Dialectics of Climate Change and Indigenous Peoples' Rights*, American Indian Law Review, Vol. 31, No. 2, 2006/2007, p. 675 *et seq.*

³⁷ Report of the Conference of the Parties on its thirteenth session, held in Bali from 3 to 15 December 2007, United Nations, FCCC/COP/2007/6/Add.1, 14 March 2008.

³⁸ Human Rights and Climate Change, UN Human Rights Council Resolution 7/23, 28 March 2008.

³⁹ For more details see official pages of the OHCHR, [https://www.ohchr.org/en/climate-change/reports-human-rights-and-climate-change], Accessed 11 April 2025.

⁴⁰ Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, *op. cit.*, note 13.

stated, *inter alia*, that climate change-related impacts have a „range of implications for the effective enjoyment of human rights“, and that such effects „will be felt most acutely by those segments of the population who are already in a vulnerable situation“. ⁴¹ Particularly vulnerable are those living on the “front line” of climate change, where „even small climatic changes can have catastrophic consequences for lives“. ⁴² It was also noted that the threat of extreme weather may severely jeopardize the right to life at any given moment, but climate change will generally have “an indirect and gradual effect on human rights”. ⁴³ The 2015 Paris Agreement ⁴⁴ is the first international document related to climate change in which human rights are mentioned in its preamble. It states that the Parties should „when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity“. ⁴⁵

Migration caused by climate change represents a particular problem. Since the 1990s, there has been a significant scientific and conceptual debate as to the introduction of a new category of refugees in existing international treaties or to adopt a completely new treaty that would protect only this category of vulnerable persons. ⁴⁶ Their reasons for leaving their homes are caused by changes in the environment, climate change and/or natural disasters, but are often combined with other difficult living conditions (e.g. ongoing violence and war, political instability, high unemployment, etc.). Therefore, it is often difficult to distinguish which reasons for leaving home dominate, environmental, humanitarian, political, social or economic. ⁴⁷ A major problem is the fact that there is no universally accepted terminology for this vulnerable group, which numbers several million people. ⁴⁸ Despite the fact that different areas of international law, such as international

⁴¹ *Ibid.*, p. 29 and 15.

⁴² *Ibid.*, p. 30.

⁴³ *Ibid.*, p. 29.

⁴⁴ *United Nations Treaty Series*, Vol. 3156, p. 79.

⁴⁵ *Ibid.*

⁴⁶ Renaud, F.; Bogardi, J. J.; Dun, O.; Warner, K., *Control, Adapt or Flee – How to Face Environmental Migration?*, United Nations University, Institute for Environment and Human Security, No. 5, 2007, p. 35.

⁴⁷ Lulić; Muhvić; Rešetar Čulo, *op. cit.*, note 8, p. 8.

⁴⁸ For example, terms such as climate refugees, climate migrants, environmentally displaced persons, ecological migrants or eco-migrants, climate induced migrants, seasonal migrants, low-lying peoples, forced climate migrants, climate change-related migrants, survival refugees, etc. See in more detail *ibid.*, p. 3. *et seq.*

environmental law, international refugee law or international human rights law, touch upon this subject, none of them in their current form and practice provides (adequate and/or sufficient) legal solutions to this problem.⁴⁹

All these impacts of climate change and the violations of human rights that they lead to, create the need to develop adequate instruments and mechanisms to protect the human rights of individuals and groups from these violations. In addition to international organizations, states, and academia becoming active in the area of human rights protection in the context of climate change, case law has also begun to develop. In the last 10 or so years, national and international courts have begun to issue decisions and judgments that directly link climate change, justice, politics, and accountability to human rights, as discussed below. In the following chapters, we will focus exclusively on the issue of the impact of climate change on human rights as a narrower and more specific area compared to the wider area of environment and human rights.

3. CLIMATE CHANGE RELATED TREATIES VS. HUMAN RIGHTS TREATIES: LEGAL REMEDIES FOR INDIVIDUALS AFFECTED BY CLIMATE CHANGE

Taking into account the distinctions clarified in the previous chapter between human rights and the environment and human rights and climate change,⁵⁰ when considering legal remedies for individuals affected by climate change, it should be noted that climate change and the protection of individuals from climate change can be approached from a human rights perspective and from an environmental perspective. Environmental protection and human rights evolved as two separate legal regimes and as such have distinct features.⁵¹ Related to the above is the legal nature of the provisions of climate change related treaties, on one hand, and human rights treaties, on the other hand, and the obligations arising from them, the goals they want to achieve and the mechanisms intended to achieve them.

3.1. CLIMATE CHANGE RELATED TREATIES AND HUMAN RIGHTS

International climate change treaties (“climate change law”) form one part of the overall body of rules known as international environmental law. Climate change

⁴⁹ *Ibid.*, p. 26.

⁵⁰ For more details, see *supra*, p. 5 - 7.

⁵¹ Atapattu, S., *Human Rights Approaches to Climate Change, Challenges and Opportunities*, Routledge, New York, 2016, p. 49.

law, which some authors consider a new legal discipline,⁵² encompasses legal rules, regulations, and policies, which relate to addressing the challenges of climate change. Namely, the previously mentioned problems and challenges caused by climate change⁵³ have led to the adoption of international treaties that regulate this matter, of which the most important are: the 1992 United Nations Framework Convention on Climate Change (UNFCCC),⁵⁴ the 1997 Kyoto Protocol⁵⁵ and the already mentioned 2015 Paris Agreement, which operationalize the UNFCCC. The aforementioned instruments aim at stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. According to these climate change related treaties states have three types of obligations regarding climate change that can collectively be referred to as “climate change response measures”.⁵⁶ Those are: mitigation (mitigating the degree of climate change, in particular by reducing greenhouse gas emissions), adaptation (finding the best ways to adapt to the challenges and threats posed by climate change) and protection (the obligation to secure the rights and addressing the (humanitarian) needs of people affected by negative effects of climate change).⁵⁷ However, the problem of climate change cannot be approached in a one-dimensional manner. Three key concepts have been identified as informing climate change law and policy: climate change is an extremely complex issue, which includes science, law, politics, culture, and economics; law relating to climate change is not just environmental; and it cannot be fully addressed through international negotiations under the UNFCCC framework and requires action at multiple levels by a multitude of actors.⁵⁸ It is precisely the complexity of the problem of climate change and its impact on people that led to the consideration of this problem, not only from an environmental perspective but also from the aspect of human rights.

As we have outlined in the previous chapter, the link between climate change and human rights has been recognised at the UN level, and the linkage between taking action to address climate change and respecting, promoting and considering

⁵² For more detail, see: Peel, J., *Climate Change Law: The Emergence of a New Legal Discipline*, Melbourne University Law Review, Vol. 32, No. 3, 2008, pp. 922 – 978.

⁵³ For more details, see *supra*, p. 3 – 4.

⁵⁴ *United Nations Treaty Series*, Vol. 1771, p. 107.

⁵⁵ *United Nations Treaty Series*, Vol. 2303, p. 162.

⁵⁶ Savaresi, *loc. cit.*, note 15.

⁵⁷ Kälin, W.; Schrepfer, N., *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches*, United Nations High Commissioner for Refugees, Division of International Protection, Geneva, 2012, p. 17.

⁵⁸ Atapattu, *op. cit.*, note 51, p. 18.

human rights obligations is stipulated in the preamble of the Paris Agreement.⁵⁹ Boyle interestingly notes that the Paris Agreement on climate change „is relevant to human rights law, not for what it says about human rights— which is next to nothing—but for what it says about the need to address the risk of climate change taking global temperatures above 1.5 or 2 °C“.⁶⁰ However, Boyle further concludes that despite its transparent weakness, the reference to human rights in the preamble of the Paris Agreement does reinforce their significance in the sense that Paris Agreement may not require states to comply with human rights commitments, but human rights commitments could and should require states to implement Paris Agreement. Their record in doing so can and should be monitored and assessed by UN human rights bodies in the same way that they would monitor and assess any other set of policies that adversely impact on the fulfilment of human rights.⁶¹ Special Rapporteur on the promotion and protection of human rights in the context of climate change notes that from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation.⁶² In its Art. 8, the Paris Agreement states that “Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change”. Paris Agreement does not provide means to compensate the harm to persons, property and the environment associated with climate change, and to hold state and non-state actors accountable for these.⁶³ Instead, Parties to the Paris Agreement excluded compensation from the scope of the treaty.⁶⁴

As early as 2016, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment warned that states have procedural and substantive obligations relating to climate change, as well as duties to protect the rights of the most vulnerable.⁶⁵ In relation to climate change, states are primarily obliged to take action to reduce emissions and to adapt to changes that are foreseeable, such as rising sea levels, or increased

⁵⁹ For more details, see *supra*, p. 7 - 8 and *Promotion and protection of human rights in the context of climate change*, *op. cit.*, note 1, p. 7.

⁶⁰ Boyle, *op. cit.*, note 6, p. 759.

⁶¹ *Ibid.*, p. 770.

⁶² *Promotion and protection of human rights in the context of climate change, Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, UN, General Assembly, A/77/226, 26 July 2022, p. 8.

⁶³ Savaresi, A., *Human Rights and the Impacts of Climate Change: Revisiting the Assumptions*, Onati Socio-Legal Series – Climate Justice in the Anthropocene, Vol. 11, No. 1, 2021, p. 234.

⁶⁴ *Ibid.*

⁶⁵ *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN, General Assembly, A/HRC/31/52, 1 February 2016, p. 1.

floods, wildfires, etc.⁶⁶ However, states must also guarantee effective remedies for human rights violations associated with the impacts of climate change.⁶⁷ They must also take adequate measures to protect all persons from human rights harms caused by business activities and, where such harms do occur, ensure effective remedies.⁶⁸ In accordance with UNFCCC and the Paris Agreement, states around the world have enacted laws and adopted policies that prescribe national and international responses to climate change.⁶⁹ However, even though states are obliged to limit greenhouse gas emissions to prevent the current and future negative human rights impacts of climate change and have enacted laws and adopted policies to deal with climate change, they are still failing in their human rights obligation to mitigate climate change and prevent its negative human rights impacts.⁷⁰ Savaresi notes that the Paris Agreement set the path to net zero emissions, but it does not provide the means to hold state actors to account for failing to deliver on their promised emission reductions.⁷¹ Special Rapporteur on the promotion and protection of human rights in the context of climate change warns that overall, the incorporation of human rights obligations in climate change legislation throughout the world appears to be a relatively recent development.⁷² Therefore, persons and communities whose rights have been violated as a result of climate change do not have an adequate legal recourse within the climate change law to protect their rights.

Some of the reasons for the above can be found in the differences between environmental law (or in our case its specific part - climate change law) and human rights law. Namely, the main focus of the legal regime governing environmental issues is prevention and the regulation of activities that are likely to cause environmental damage, rather than providing remedies for violations.⁷³ On the other hand, while prevention of damage is one of the objectives of the human rights regime, providing remedies in the event of violations is as important as prevention.⁷⁴ Furthermore, the human rights regimes do tend to be more legalistic in

⁶⁶ Savaresi, *Human Rights and the Impacts of Climate Change: Revisiting the Assumptions*, *op. cit.*, note 63, pp. 237 - 238.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Promotion and protection of human rights in the context of climate change*, *loc. cit.*, note 1.

⁷⁰ *Ibid.*, p. 4.

⁷¹ Savaresi, *Human Rights and the Impacts of Climate Change: Revisiting the Assumptions*, *op. cit.*, note 63, p. 239.

⁷² *Promotion and protection of human rights in the context of climate change*, *op. cit.*, note 1, p. 7.

⁷³ Atapattu, *op. cit.*, note 51, p. 49.

⁷⁴ *Ibid.*

nature than international environmental regimes.⁷⁵ Even though climate change treaties are, as same as human rights treaties, the product of negotiation, there is an important difference between them. As Bodansky notes, in human rights treaties, the end point of the negotiations is a common core of human rights to be respected, while the result of international environmental negotiations are often different requirements for different states.⁷⁶ Bodansky also emphasizes that another important difference between international environmental law and human rights law is that the former depends on reciprocity while the latter does not.⁷⁷ In the context of human rights protection states owe obligations not only to one another, but also to individuals and one state's respect for human rights does not depend on, and may not be conditioned on, compliance by other states.⁷⁸ Given that climate change treaties do not provide for the protection of individual rights, we will provide below an overview of human rights treaties relevant to the protection of individuals and groups from the impact of climate change.

3.2. HUMAN RIGHTS TREATIES AND CLIMATE CHANGE

Climate change treaties are therefore aimed at stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system through the introduction of climate change response measures. As such, although they contain certain references to human rights, they are not aimed at protecting the rights of individuals and groups and do not contain mechanisms that would provide individuals or groups with adequate legal recourse for the protection of human rights violated in the context of climate change. Therefore, individuals and groups turn to human rights instruments and mechanisms to protect their rights. As early as 2009, Humphreys noted that human rights law is relevant to climate change for the simple reason that climate change affects and will increasingly impinge upon human rights and that as harms due to climate change are felt, it is likely that those affected will turn to the hard language of human rights enforcement mechanisms for protection.⁷⁹ Due to the significant impact of climate change on the respect for human rights, but also due to the lack of effective international legal mechanisms of international treaties relating to climate change, individual complaints are increasingly being

⁷⁵ Bodansky, D., *Introduction: Climate Change and Human Rights: Unpacking the Issues*, Georgia Journal of International and Comparative Law, Vol. 38, No. 3, 2010, p. 515.

⁷⁶ *Ibid.*, p. 516.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Humphreys, S., *Introduction: Human rights and climate change*, in: Humphreys, Stephen (ed.), *Human Rights and Climate Change*, Cambridge University Press, Cambridge, 2009, p. 7 – 8.

filed before international human rights treaty bodies. This includes UN human rights treaty bodies such as the Committee on Human Rights, as well as regional bodies such as the European Court of Human Rights and the Inter-American Court of Human Rights.

Humphreys states that to speak of basic subsistence needs (water, food, healthcare, shelter, etc.) in terms of rights also implies referral to a body of internationally agreed norms that have raised those needs to the level of entitlements for all.⁸⁰ Nevertheless, these entitlements do not translate unproblematically into corresponding obligations, much less into fulfilled demands.⁸¹ Human rights approach to climate change shifts attention to the individual victims of climate change⁸² and some authors' use of human rights law consider as an interim "gap filler" to redress the harm caused by the impacts of climate change, while other and more specific means are devised. Atapattu states that the main advantage of the human rights machinery is that it contains remedies that victims can avail themselves of.⁸³ Savaresi interestingly notes that far from representing an optimal avenue, human rights are often the last resort to try to provide some redress to the victims and to hold those responsible accountable.⁸⁴

Until the eventual adoption of special instruments and mechanisms for the protection of human rights in the context of climate change, individuals and groups whose rights have been violated by climate change turn for protection to the provisions of fundamental international treaties for the protection of human rights. These include in the first place the 1966 International Covenant on Civil and Political Rights⁸⁵ and the 1966 International Covenant on Economic, Social and Cultural Rights.⁸⁶ In addition to the above, in the context of particularly vulnerable social groups, which are especially susceptible to human rights violations due to climate change, protection is attempted by referring to other UN core human rights treaties that protect, for example, the rights of children⁸⁷ or people with

⁸⁰ *Ibid.*, p. 9 – 10.

⁸¹ *Ibid.*

⁸² Bell, D., *Climate Change and Human Rights*, Wiley Interdisciplinary Reviews: Climate Change, Vol. 4, br. 3, 2013, p. 159.

⁸³ Atapattu, *op. cit.*, note 51, p. 41.

⁸⁴ Savaresi, *Human Rights and the Impacts of Climate Change: Revisiting the Assumptions*, *op. cit.*, note 63, p. 236.

⁸⁵ *United Nations Treaty Series*, Vol. 999, p. 171.

⁸⁶ *United Nations Treaty Series*, Vol. 993, p. 3.

⁸⁷ The 1989 Convention on the Rights of the Child, *United Nations Treaty Series*, Vol. 1577, p. 3.

disabilities.⁸⁸ In addition to these universal human rights instruments for protecting human rights from the impacts of climate change, Charter-based mechanisms are also important: Special Rapporteur on the human right to a clean, healthy and sustainable environment, and Special Rapporteur on the promotion and protection of human rights in the context of climate change.⁸⁹ In the previous chapter, we briefly outlined the development of the human right to a healthy environment at the universal level and the UN General Assembly landmark Resolution recognizing the human right to a healthy environment adopted in 2022.⁹⁰ This Resolution was an unprecedented decision, adopted with unparalleled support (161 votes in favor, no votes against, and eight abstentions).⁹¹ Of course, it represents a great step forward, but the mere recognition of rights does not automatically mean an improvement in the situation related to a healthy environment and an improvement in protection against climate change and its impact on human rights.

Considering the large number of different human rights, which may be violated due to climate change, the environmental rights discourse has in many respects blurred the distinction between different generations of human rights, because it relies on all three generations to articulate them.⁹² Individuals referred to first generation rights in the context of climate change protection (e.g. right to life and right to privacy, and participatory rights, such as right to information and right to participate in the decision-making process and access to remedies) and second generation rights (right to health, right to a livelihood, right to water, food and an adequate standard of living). Moreover, some believe that environmental rights are group rights, hence implicating third generation rights, to the extent they are accepted under international law.⁹³ In recent years, human rights bodies have clarified the content of states' obligations in this connection. This interpretative work shows that obligations associated with both substantive human rights (e.g. the right to life, adequate housing, food, and the highest attainable standard of health) and procedural human rights (e.g. the right to access to remedies and to

⁸⁸ The 2006 Convention on the Rights of Persons with Disabilities, *United Nations Treaty Series*, Vol. 2515, p. 3.

⁸⁹ For more details, see official pages of the United Nations, [<https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=en>], Accessed 7 April 2025.

⁹⁰ For more details, see *supra*, p. 5 – 6.

⁹¹ *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Overview of the implementation of the human right to a clean, healthy and sustainable environment*, UN, General Assembly, A/79/270, 2 August 2024, p. 3.

⁹² Atapattu, *op. cit.*, note 51, p. 45 – 46.

⁹³ *Ibid.*

take part in the conduct of public affairs) take on a specific character in relation to climate change.⁹⁴

As far as regional human rights systems are concerned, the right to a healthy environment is expressly recognized and protected in several regional instruments. Some of them were already mentioned earlier. Art. 24 of the African Charter on Human and Peoples' Rights, the first regional instrument to recognize the right to a healthy environment, states that "all peoples shall have the right to a general satisfactory environment favourable to their development". Art. 18 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,⁹⁵ further states that women shall have "the right to live in a healthy and sustainable environment". Since 2001, the African Commission on Human and Peoples' Rights has protected the right to a healthy environment.⁹⁶ In the Inter-American system, Art. 11(1) of the Protocol of San Salvador (Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights)⁹⁷ recognizes everyone's right to "live in a healthy environment". Art. 38 of the Arab Charter on Human Rights⁹⁸ includes the right to a healthy environment, but has no institution for its implementation nor for its enforcement. The Association of Southeast Asian Nations (ASEAN) Declaration on Human Rights (2012)⁹⁹ includes the right to a healthy environment, noting it constitutes an unenforceable political declaration. South-East Asia is developing a regional treaty regarding the right to a safe, clean, healthy and sustainable environment, access to information, public participation and access to justice in environmental matters.¹⁰⁰

Within the framework of the Council of Europe the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (the European Conven-

⁹⁴ Savaresi, *Human Rights and the Impacts of Climate Change: Revisiting the Assumptions*, *op. cit.*, note 63, p. 237. – 238.

⁹⁵ African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Union, Adopted by the 2nd Ordinary Session of the Assembly of the Union, 11 July 2003, available at: [<https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>].

⁹⁶ Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, *op. cit.*, note 91, p. 6.

⁹⁷ See *supra* note 24.

⁹⁸ Arab Charter on Human Rights, 2004, english translation available at: [<https://al-bab.com/documents-reference-section/arab-charter-human-rights-2004>].

⁹⁹ Association of Southeast Asian Nations (ASEAN) Declaration on Human Rights (2012), available at: [<https://asean.org/asean-human-rights-declaration/>].

¹⁰⁰ Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, *op. cit.*, note 91, p. 6.

tion on Human Rights)¹⁰¹ does not contain a specific provision aimed at protecting human rights in relation to climate change and does not include the right to a healthy environment. However, the European Court of Human Rights has given a ruling in over 300 environment-related cases recognizing human rights violations.¹⁰² Specific climate change related case law of the European Court of Human Rights will be discussed in detail in the next chapter.¹⁰³ In 2021, the Parliamentary Assembly of the Council of Europe proposed a new protocol to the European Convention on Human Rights establishing the right to a healthy environment.¹⁰⁴

Given that the human right to a clean, healthy and sustainable environment is a compound right,¹⁰⁵ it remains to be seen how new international law developments, such as pending advisory opinions of the International Court of Justice and Inter-American Court of Human Rights regarding climate change, will affect the realization of climate change related human rights protection. Of course, apart from the international instruments themselves for the development of the protection of climate change related human rights, the case law of international tribunals that will be the subject of the next chapter is of particular importance.

4. AN OVERVIEW OF CLIMATE CHANGE AND HUMAN RIGHTS RELATED CASE LAW BY THE INTERNATIONAL BODIES

Cases before international courts and other bodies in which the question of the impact of climate change on the enjoyment of human rights is raised have appeared only recently. Judgments and other decisions in such cases are still few. However, it is to be expected that the number of such judgments and decisions will increase in the coming period. A good indicator of this is the fact that two proceedings are currently underway before different international courts for the issuance of advisory opinions related to the issue of climate change and its (to a greater or lesser extent) impact on human rights, while the third has already been concluded. Proceedings are ongoing before the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR), and the proceedings before the International Tribunal of the Law of the Sea (ITLOS) have already been com-

¹⁰¹ Convention for the Protection of Human Rights and Fundamental Freedoms (1950), *European Treaty Series*, No. 5.

¹⁰² *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment*, *op. cit.*, note 91, p. 7.

¹⁰³ See *infra*, p. 17 – 20.

¹⁰⁴ *Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment*, *op. cit.*, note 91, p. 7.

¹⁰⁵ *Ibid.*, p. 9.

pleted. After the presentation of the aforementioned advisory procedures, relevant judgments and other types of decisions of the individual complaints mechanisms of the universal and regional human rights treaties will be presented.

4.1. ADVISORY PROCEEDINGS

The request for the advisory opinion from ITLOS was requested by the Commission of Small Island States in 12 December 2022 and after the procedure,¹⁰⁶ the Tribunal has issued its Advisory Opinion on 21 May 2024.¹⁰⁷ Although it is a specialized court in the field of the law of the sea, and although the Request does not explicitly mention the issue of the impact of climate change on human rights, some judges in their declarations attached to the Advisory Opinion objected that the ITLOS could have been somewhat more explicit and progressive in this context. The view was thus expressed that the Tribunal could have gone a little further in this regard than simply noting “that climate change represents an existential threat and raises human rights concerns” (para. 66.) and that it „is mindful of the fact that climate change is recognized internationally as a common concern of humankind“ (para. 122.). Judge Pawlak criticized the majority for ignoring the precedents of the European Court of Human Rights and the Human Rights Committee, which will be discussed below, according to which states can be held responsible „for the lack of adequate protection of persons against diverse impacts of climate change within the framework of international human rights law“. According to him, that could have been an argument which ITLOS could have used „to support its findings in the current Advisory Opinion, but it did not do so“. ¹⁰⁸ ITLOS, therefore, only marginally touched on the issue of the impact of climate

¹⁰⁶ For the details of the proceedings and relevant documents see the official pages of the ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, available at:

[<https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>], Accessed April 2025.

¹⁰⁷ Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, ITLOS, List of Cases No. 21, Advisory Opinion, 21 May 2024, available at official pages of ITLOS, available at:

[<https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>], Accessed 8 April 2025.

¹⁰⁸ Declaration of Judge Pawlak, para. 4. See also Declaration of Judge Infante Caffi. But see the different opinion in Declaration of Judge Kittichaisaree, para. 28. All Declarations of individual Judges attached to the Advisory Opinion are available at official pages of ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, available at:

change on human rights, it is to be expected that the advisory opinions of the ICJ and IACtHR will be much more relevant in this context.

The UN General Assembly submitted to the ICJ a Request for advisory opinion on Obligations of States in respect of Climate Change in April 2023.¹⁰⁹ Although the questions of the General Assembly addressed to the ICJ are broader than the issue of the impact of climate change on human rights alone, since they relate to “the obligations of States under international law” regarding climate change in general, they certainly also cover human rights.¹¹⁰ Namely, in a series of international instruments referred to by the General Assembly, the 1948 Universal Declaration of Human Rights,¹¹¹ the 1966 International Covenant on Civil and Political Rights¹¹² and the 1966 International Covenant on Economic, Social and Cultural Rights were highlighted.¹¹³ Also, one of the questions specifically refers to „legal consequences under these obligations for States“ regarding „[p]eoples and individuals of the present and future generations affected by the adverse effects of climate change“ ((b)(ii)). After the written part of the procedure, public hearings were held 2-13 December 2024 on which 96 states and 11 international organizations presented oral statements.¹¹⁴ The Court is currently in deliberation and the date of the delivering of the advisory opinion is still not known.¹¹⁵ Despite its non-binding nature, because of broad material jurisdiction of the ICJ and its authority as a leading international judicial institution, this advisory opinion has a big potential in that, as Farran noted, „could provide the vehicle to bring human rights and climate change together in a principled way“.¹¹⁶

[<https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>], Accessed 8 April 2025.

¹⁰⁹ Obligation of States in respect of Climate Change, ICJ, Request for Advisory Opinion transmitted to the Court pursuant to General Assembly Resolution 77/276 of 29 March 2023, 14 April 2023.

¹¹⁰ See Farran, S., *Vanuatu Leads Drive to Secure an Opinion from the International Court of Justice on State Responsibilities to Turn Words into Action on Climate Change*, University of Queensland Law Journal, Vol. 42, No. 3, 2023, p. 420.

¹¹¹ UN General Assembly Resolution 217A, 10 December 1948.

¹¹² See *supra* note 85.

¹¹³ See *supra* note 86.

¹¹⁴ Obligation of States in respect of Climate Change (Request for Advisory Opinion), Conclusion of the public hearings held from 1 to 13 December 2024, ICJ Press Release no. 2024/81, 13 December 2024.

¹¹⁵ For the details of the proceedings and relevant documents see the official pages of the ICJ, Obligations of States in respect of Climate Change, available at: [<https://www.icj-cij.org/case/187/>], Accessed 7 April 2025.

¹¹⁶ Farran, *op. cit.*, note 110, p. 430.

The request for an advisory opinion on the Climate Emergency and Human Rights of the IACtHR was brought by Chile and Colombia on 9 January 2023.¹¹⁷ The request is very thoroughly explained and contains as many as 18 questions grouped into six categories (A.-F.). The general purpose of seeking an advisory opinion is „to clarify the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on our planet“ (p. 1; text bolding removed). In the context of this procedure, the Court held public hearings during April and May 2024.¹¹⁸ According to the President of the IACtHR, it is an advisory procedure „with the highest participation in the history of the Court, reflecting the interest that the issue of the climate emergency summons from different actors from various parts of the world“. ¹¹⁹ As many as 265 *amicus curiae* briefs from various actors worldwide were submitted to the Court as part of the proceedings, including states, international organizations, civil society, academia and individual scientists and activists.¹²⁰ The date of the delivering of the advisory opinion is still unknown.¹²¹

Advisory opinions, although legally non-binding in nature, can certainly make a significant contribution to the development of this field. Unlike contentious cases, they have effect that is more general and are formed at a higher level of legal generality. In addition, a larger number of states can participate in such a procedure than is usual in contentious cases.¹²² On the other hand, the parallel conduct of such procedures by several different international courts also has its negative aspects related to the coherent interpretation of the corresponding international legal obligations. Courts may be influenced by various factors when issuing advisory

¹¹⁷ Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, January 9, 2023, available at the official pages of the IACtHR, [https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634], Accessed 8 April 2025.

¹¹⁸ See IACtHR Press Release, I/A Court H.R._PR-34/2023 English, available at: [https://www.corteidh.or.cr/docs/comunicados/cp_34_2024_eng.pdf] and IACtHR Press Release, I/A Court H.R._PR-27/2024 English, available at: [https://www.corteidh.or.cr/docs/comunicados/cp_27_2024_eng.pdf], 8 Accessed April 2025.

¹¹⁹ IACtHR Press Release, I/A Court H.R._PR-27/2024 English, available at: [https://www.corteidh.or.cr/docs/comunicados/cp_27_2024_eng.pdf], Accessed 8 April 2025.

¹²⁰ *Ibid.*

¹²¹ For the details of the proceedings and relevant documents see the official pages of the IACtHR, [https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634], Accessed 9 April 2025.

¹²² Bodansky, D., *The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections*, Arizona State Law Journal, Vol. 49, Special Issue, 2017, p. 711.

opinions, such as „the need to preserve an intra-institutional coherent jurisprudence, or their ambition to be perceived as more progressive“. ¹²³ If we ignore the marginal touch of climate change and human rights link in the Advisory Opinion of ITLOS, each of the remaining two courts has something to offer in this area. The ICJ has broad jurisdiction, universal significance and the greatest authority of all the courts in the international community, while the IACtHR, as a specialized court, has, despite its regional significance, extensive experience in human rights cases.

4.2. INDIVIDUAL COMPLAINTS MECHANISMS' DECISIONS

The number of judgments and other decisions before international judicial and quasi-judicial bodies of the human rights treaties, both at the universal and regional levels, is not numerous. However, it is expected that their number will progressively increase in the coming years. That is why it is important at this time to provide an overview of existing judgments and decisions in order to contribute to the proper development of future practice. Until now, decisions on the merits of the impact of climate change on respect for human rights have been made by the Human Rights Committee on the universal level and the European Court of Human Rights on the European regional level. There were also cases in which applications were declared inadmissible. For example, in the previously mentioned case *Sheila Watt-Cloutier et al. v. U.S.* (Inuit People v. U.S.) before the Inter-American Commission on Human Rights the application was rejected due to lack of required information, ¹²⁴ and in the case *Sacchi et al. v. Argentina et al.* before the Committee on the Rights of the Child because of the non-exhaustion of domestic remedies. ¹²⁵ In addition, in cases *Carême v. France* ¹²⁶ and *Duarte Agostinho and Others v. Portugal and 32 others* ¹²⁷ before the European Court of Human Rights the applications were declared inadmissible due to absence of relevant link of the applicant with affected territory and due to lack of foundation for the extension of extraterritorial jurisdiction and non-exhaustion of domestic remedies. In this

¹²³ Tigre, M. A.; Rocha, A., *Competing Perspectives and Dialogue in Climate Change Advisory Opinions*, AJIL Unbound, Vol. 117, 2023, p. 291.

¹²⁴ *Sheila Watt-Cloutier, S et al. v. U.S.*, Petition No. P-1413-05, *loc. cit.*, note 35.

¹²⁵ See *Sacchi et al. v. Argentina*, Committee on the Rights of the Child, Communication No.104/2019, Decision adopted by the Committee, 22 September 2021, UN Doc. CRC/C/88/D/104/2019, 8 October 2021. There are separate decisions for each of the respondent States which are available in one place here: *Sacchi, et al. v. Argentina, et al.*, Climate Change Litigation Databases, [<https://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/>], Accessed 11 April 2025.

¹²⁶ *Carême v. France*, ECtHR. Application no. 7189/21, Decision (Grand Chamber), 9 April 2024.

¹²⁷ *Duarte Agostinho and Others v. Portugal and 32 Others*, ECtHR. Application no. 39371/20, Decision (Grand Chamber), 9 April 2024.

presentation, we will only focus on the decisions in which the merits of the cases were decided.

We have categorized the decisions of international bodies regarding individual complaints in the context of the impact of climate change on human rights that have been made so far into those before universal international bodies (which are at the same time of the quasi-judicial character) and those before regional international bodies (which are at the same time of the judicial character in the full sense of the word). Specifically, there are two decisions of the Human Rights Committee in the first category and one judgment of the European Court of Human Rights in the second category. This categorization was applied more for the sake of systematicity and clarity than for some analytical differences. Of course, the conclusions of different international bodies regarding individual complaints must be considered in the context of their different scope (universal scope/regional scope) and different nature (binding and non-binding). However, for now we have very few pioneering decisions, which, for the purposes of this paper, we analyze only in the context of their principled positions in the context of the relationship between climate change and human rights and the determination of the biggest potential problems in the context of the further development of this practice. We leave the subtleties of the distinctions in the approach to the problem of climate change and human rights of various international bodies for some future research.

4.2.1. Universal level/quasi-judicial bodies

The Human Rights Committee (as the implementing body of the 1966 International Covenant on Civil and Political Rights¹²⁸) first considered the impact of climate change on human rights in the case *Teitiota v. New Zealand* in 2019.¹²⁹ It was about a complaint of a Kiribati citizen who claimed that “the effects of climate change and sea level rise forced him to migrate from the island of Tarawa in Kiribati to New Zealand” (para. 2.1). According to the claimant, [s]ea level rise in Kiribati has resulted in the scarcity of habitable space, which has in turn caused violent land disputes that endanger the author’s life, and environmental degradation, including saltwater contamination of the freshwater supply” (para. 3). The complainant therefore considered that New Zealand, by refusing him asylum - and thereby forcing him to return to Kiribati, violated his right to life guaranteed by the Art. 6 of the Covenant (paras. 2.2 and 3). Although the Committee in the

¹²⁸ See *supra* note 85.

¹²⁹ *Ioane Teitiota v. New Zealand*, Human Rights Committee, Communication No. 2728/2016, Views adopted by the Committee, 24 October 2019. UN Doc. CCPR/C/127/D/2728/2016, 23 September 2020.

end concluded “that the facts before it do not permit it to conclude that the author’s removal to Kiribati violated his rights under article 6 (1) of the Covenant” (para. 10), it also presented certain considerations that are significant for future similar cases. The Committee concluded, among other things, that „the author has not demonstrated clear arbitrariness or error in the domestic authorities’ assessment as to whether he faced a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of violent acts resulting from overcrowding or private land disputes in Kiribati“ (para. 9.7). It also concluded that „the author has not provided sufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death“ (para. 9.8). Nevertheless, the Committee gave a kind of warning for future similar cases, noting that „given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized“ (para. 9.11). In addition, he emphasized that the conclusions of this case do not affect „the continuing responsibility of the State party to take into account in future deportation cases the situation at the time in Kiribati and new and updated data on the effects of climate change and rising sea levels“ (para. 9.14). Despite the fact that the Committee did not accept the claimant’s allegations, this decision was recognized as a landmark decision because it nevertheless recognized the existence of an obligation on states not to deny asylum to persons whose lives are seriously endangered by circumstances arising from climate change.¹³⁰

The second case decided by the Human Rights Committee was *Billy et al. v. Australia* in 2022 (Torres Strait Islanders case).¹³¹ This is the first case in which one of the UN human rights treaty bodies has established a violation of human rights in the climate change context based on an individual complaint.¹³² It was about a complaint of group of nationals of Australia and indigenous minority group of

¹³⁰ Mile, A., *Emerging Legal Doctrines in Climate Change Law - Seeking an Advisory Opinion from the International Court of Justice*, Texas International Law Journal, Vol. 56, No. 1, 2021, p. 86.

¹³¹ *Daniel Billy and others v. Australia*, Human Rights Committee, Communication No. 3624/2019, Views adopted by the Committee, 21 July 2022. UN Doc. CCPR/C/135/D/3624/2019, 18 September 2023.

¹³² See Loporini, R., *Climate Change Litigation before International Human Rights Bodies: Insights from Daniel Billy et al. v. Australia (Torres Strait Islanders Case)*, Italian Review of International and Comparative Law, Vol. 3, No. 2, 2023, p. 239, Schuijers, L., *Australia’s Inaction on Climate Change Is a Violation of Torres Strait Islanders’ Human Rights: Billy v Australia*, Melbourne Journal of International Law, Vol. 24, No. 1, July 2023, p. 153 and McGaughey, F., Maguire, A., Purcell, S., *Torres Strait Islanders Leading the Charge on the Human Rights Implications of Climate Change: Daniel Billy et al v Australia*, University of Western Australia Law Review, Vol. 51, No. 1, 2023, p. 95.

the Torres Strait islands. The authors „reside in low-lying islands“ and are „among the populations most vulnerable to the impact of climate change“ (paras. 1.1 and 2.1). This is manifested in „flooding and erosion on the authors’ islands, and higher temperature and ocean acidification“ that has, among other things, „produced coral bleaching, reef death and the decline of seagrass beds and other nutritionally and culturally important marine species“ (para. 2.3). According to the claimants, Australia „has failed to adopt adaptation measures (infrastructure to protect the lives of the authors and their way of life, homes and culture against the impacts of climate change, especially sea-level rise)“ (para. 3.1). They referred to violations, among other things, of Art. 6 (right to life), Art. 17 (right to private, family and home life) and Art. 27 (minority rights). Regarding Art. 6 the Committee noted that it „is not in a position to conclude that the adaptation measures taken by the State party would be insufficient and therefore represent a direct threat to the authors’ right to life with dignity“ under Art. 6 (para. 8.7). However, regarding Art. 17 and Art. 27 the Committee concluded that there had been a violation of the rights guaranteed by those provisions. In the context of Art 17 the Committee observed that „the State party has not explained the delay in sea wall construction with respect to the islands where the authors live“ and „has not provided alternative explanations concerning the reduction of marine resources used for food and the loss of crops and fruit trees on the land on which the authors live and grow crops“. Based on this, it concluded that Australia had failed „to discharge its positive obligation to implement adequate adaptation measures to protect the authors’ home, private life and family“ (para. 8.12). In the context of the Art. 27 the Committee has stated that „the State party’s failure to adopt timely adequate adaptation measures to protect the authors’ collective ability to maintain their traditional way of life and to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of the State party’s positive obligation to protect the authors’ right to enjoy their minority culture“ (para. 8.14). With the instruction on the obligation of state party to provide for effective remedy to claimants and continuation of necessary measures for safeguarding the community in question the Committee has also underlined the state party’s „obligation to take steps to prevent similar violations from occurring in the future“ (para. 11).

4.2.2. Regional level/judicial bodies

The European Court of Human Rights (as the implementing body of the 1950 European Convention on Human Rights¹³³) ruled for the first time on individual

¹³³ See *supra* note 101.

cases of the impact of climate change on human rights on 9 April 2024. These cases are *Carême v. France* and *Duarte Agostinho and Others v. Portugal and 32 others*, which were already mentioned, and case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*¹³⁴, all before the Grand Chamber of the Court. The first two applications the Court has, as it was already stated, declared inadmissible, but in the third case the Court has passed the judgment in favour of (part of) the applicants.

In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, it was about the application submitted by a non-profit association registered under Swiss law and four older women, members of that association (para. 1 and 11). This non-governmental organization is engaged in activism in the field of combating climate change, and its members are mostly older women (para. 10). The complainants referred to „the failures by the Swiss authorities to mitigate climate change, and in particular the effects of global warming, including a lack of access to a court in that connection“ in the context of violations of, among others, Art. 6 (right to a fair trial) and Art. 8 (right to respect for private and family life) of the European Convention on Human Rights (para. 291). The Court did not recognise the victim status of four individual applicants because it found that a particularly high threshold which consists of „high intensity of exposure [...] to the adverse effects of climate change“ and „a pressing need to ensure [...] individual protection“ was not met (paras. 527 and 535). On the other hand, the complaint of the association was accepted (para. 526). The Court explained its decision very extensively and set criteria for future cases (para. 502). It emphasized, among other things, that „although in the absence of a measure directly affecting them the Court does not normally grant victim status to associations [...] there may be “special considerations”“ (para. 475). It also stated that „when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively“ (para. 489). According to the Court, in the „context where intergenerational burden-sharing assumes particular importance [...] collective action through associations or other interest groups may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard“ (para. 489).

The Court took the general view that „there are sufficiently reliable indications that anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention“ (para.

¹³⁴ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, ECtHR. Application no. 53600/20, Judgment (Grand Chamber), 9 April 2024.

436). Accordingly, Art. 8 covers also the „right for individuals to enjoy effective protection by the State authorities from serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change“ (para. 544). Considering „the causal relationship between climate change and the enjoyment of Convention rights“, according to the Court „the State’s primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change“ (para. 545). The Court found „some critical lacunae in the Swiss authorities’ process of putting in place the relevant domestic regulatory framework, including a failure by them to quantify, through a carbon budget or otherwise, national GHG emissions limitations“ and on that basis found a violation of Art. 8. Given that „individual applicants/members of the association were not given access to a court, and nor was there any other avenue under domestic law through which they could bring their complaints to a court“, the Court has concluded that there was also a violation of the Art 6(1) of the Convention (para. 637 and 640). Given that the decisions (views) of the UN human rights treaty bodies are of a non-binding nature, this judgment is the first real precedent in the area of the impact of climate change on human rights. It is particularly important because it is the first time that a state was declared responsible before such a body for not fulfilling the mitigation of the climate change obligations in the matter of greenhouse gas emissions.¹³⁵

* * *

Given their international character and strategic importance due to attracting a number of different actors to participate in such proceedings through *amicus curiae* briefs and the like, it can be said that international human rights bodies, despite the fact that they were not originally intended to address environmental issues, are currently “the primary international fora for climate change litigation”.¹³⁶ What could be concluded, given the experiences with individual complaints mechanisms so far, is that the main obstacles to a positive outcome for the complainants are procedural ones: the exhaustion of domestic remedies, jurisdiction and victim requirement.¹³⁷ The aforementioned decisions certainly provided important guidelines for future cases before such bodies. In particular, the judgment in the

¹³⁵ See Heri, C., *The ECtHR’s KlimaSeniorinnen Judgment: A Cautious Model for Climate Litigation*, Spanish Yearbook of International Law (SYbIL), Vol. 28, 2024, p. 311.

¹³⁶ Luporini, *op. cit.*, note 132, p. 240-241, 259.

¹³⁷ Luporini, R., Savaresi, A., *International Human Rights Bodies and Climate Litigation: Don’t Look Up?*, The Review of European, Comparative & International Environmental Law (RECIEL) 2022, p. 9, available at:

SSRN: [<https://ssrn.com/abstract=4230278>], Accessed 11 April 2025.

case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is of the utmost importance because it managed to maneuver a narrow legal path to a judgment of the European Court of Human Rights to specialized non-governmental organizations between the *actio popularis* prohibited by the ECHR and its stringent victim requirements.¹³⁸ Many questions are of course still open and many will only be resolved through new and different cases, but the first foundations for climate change and human rights international litigation have been laid.

5. CONCLUSION

Climate change affects numerous aspects of human life, and thus the enjoyment of human rights guaranteed by international and regional treaties and national constitutions and laws. Climate change threatens various human rights, including the right to life, the right to adequate food and water, the right to the highest attainable standard of physical and mental health, the right to adequate housing, the right to cultural identity, etc. Environmentally displaced persons suffer particular consequences of numerous violations of human rights due to climate change. All this brings into focus the issue of human rights protection in the context of climate change and the existence of an (in)adequate legal avenues for the protection of the rights of individuals and groups.

The issue of climate change in international law is most often approached from an environmental perspective. Therefore, the problems and challenges caused by climate change have led to the adoption of international treaties that regulate this matter, such as the 1992 UN Framework Convention on Climate Change, the 1997 Kyoto Protocol and the 2015 Paris Agreement. However, these international treaties impose three types of obligations on states: mitigation (mitigating the degree of climate change, in particular by reducing greenhouse gas emissions), adaptation (finding the best ways to adapt to the challenges and threats that climate change brings) and protection (the obligation to secure the rights and addressing the (humanitarian) needs of people affected by negative effects of climate change) and do not provide individuals and groups with a legal remedies to protect their individual and group rights.

Due to the significant impact of climate change on the respect for human rights, but also due to the lack of effective international legal mechanisms of international treaties relating to climate change, individual complaints are increasingly being

¹³⁸ See Heri, *op. cit.*, note 135., p. 314-315 and Weber, T., *KlimaSeniorinnen: Changing Legal Opportunity Structures in the Face of the Climate Crisis*, Austrian Law Journal, Vol. 2024, No. 1, 2024, p. 109, 110-113.

filed before international human rights treaty bodies. Thus, the human rights perspective is increasingly used as a “gap filler” through existing universal and regional international human rights mechanisms. To date, the UN human rights treaty bodies such as the Committee on Human Rights, as well as regional bodies such as the European Court of Human Rights have issued some important decisions in cases relating to the protection of individuals and groups from climate change, such as the landmark decisions in the cases *Billy and others v. Australia* and *KlimaSeniorinnen v. Switzerland*.

However, we consider the efforts made so far in the international community to be insufficient. Resolving the problem of human rights violations resulting from climate change must be approached in a multidimensional and multisectoral manner, requiring cooperation from all parties, states, international governmental and non-governmental organizations, and local communities. The goal is to ensure sustainable development and to place a human rights approach at the center of policy and strategy development to address the problems faced by individuals and groups due to climate change, especially the categories of people most affected by climate change - environmentally displaced persons or the persons that are at risk of environmental displacement. In order to give the aforementioned problem the attention it deserves, it would be ideal to adopt new, more effective binding instruments, but the question is how realistic is this in the present time. In any case, there is certainly room in the context of existing legal avenues to instruct states and governments on which policies and measures they should adopt in order to jointly resolve the crisis that the entire world has been facing in recent decades. We hope that the advisory opinions of the International Court of Justice and the Inter-American Court of Human Rights that we await will encourage states and international organizations to more effectively combat climate change, but also to more effectively use existing and (maybe) establish new legal remedies for people and groups most at risk from climate change.

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