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The right to a clean, healthy, and sustainable environment as customary international law: de lege lata or de lege ferenda?

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List of Abbreviations

Art	Article
CIL	Customary International Law
ACNNR	ASEAN Agreement on the Conservation of Nature and Natural Resources
ASEAN	Association of Southeast Asian Nations
AU	African Union
CRC	Committee on the Rights of the Child
CSO	Civil Society Organisation
Doc.	Document
ECtHR	European Court of Human Rights
EU	European Union
GHG	Greenhouse gases
HRC	United Nations Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IEA	International Environmental Agreements
IJRC	International Justice Resource Center
ILA	International Law Association
ILC	International Law Commission
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea
No.	Number
OAS	The Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
PACE	Parliamentary Assembly of the Council of Europe
p.	page
para.	paragraph
paras.	paragraphs
R2HE	Right to a clean, healthy and sustainable environment
Res.	Resolution
SP	Special Procedures
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNTC	United Nations Treaty Collection
UNO	Vereinte Nationen (United Nations in German)
v.	versus

Abstract

This thesis investigates whether the right to a clean, healthy, and sustainable environment (R2HE) has become part of customary international law (*de lege lata*) or remains *in statu nascendi* (*de lege ferenda*). As of 2024, over 80% of UN Member States have recognised a variation of this right, either in national or regional laws. The 2022 UN General Assembly resolution further strengthened its global recognition, while international courts, such as the International Court of Justice (ICJ) and the Inter-American Court of Human Rights within their pending advisory proceedings may shed further light of this issue.

The research focuses on two essential elements that need to exist cumulatively for formation of customary international law: State practice and *opinio juris* and provides substantial evidence for the existence of both elements to confirm the customary nature of the R2HE. While some states, particularly small island developing states, face challenges in implementing the R2HE due to capacity constraints, they nonetheless express *opinio juris* on its existence through their participation in international agreements and other international documents. In contrast, certain states that abstained from the UN General Assembly vote on the R2HE have still enacted relevant legislation and joined treaties, demonstrating the widespread acceptance of the R2HE. The challenges remain, particularly concerning the enforcement of the R2HE and corresponding responsibilities. Nevertheless, the widespread State practice and *opinio juris* indicate that the R2HE is firmly embedded in international law, with growing pressure for further action to address the global environmental crisis.

Abstrakt

In dieser Arbeit wird untersucht, ob das Recht auf eine saubere, gesunde und nachhaltige Umwelt Teil des Völkergewohnheitsrechts geworden ist (*de lege lata*) oder *in statu nascendi* bleibt (*de lege ferenda*). Bis zum Jahr 2024 haben über 80 % der UNO-Mitgliedstaaten eine Variante dieses Rechts entweder in nationalen oder regionalen Gesetzen anerkannt. Die Resolution der UNO-Generalversammlung aus dem Jahr 2022 hat die weltweite Anerkennung dieses Rechts weiter gestärkt, während internationale Gerichte wie der Internationale Gerichtshof und der Interamerikanische Gerichtshof für Menschenrechte im Rahmen ihrer anhängigen Beratungsverfahren weitere Erkenntnisse zu diesem Thema liefern können.

Die Recherche konzentriert sich auf zwei wesentliche Elemente, die für die Entstehung von Völkergewohnheitsrecht kumulativ vorhanden sein müssen: Staatliche Praxis und *opinio juris*, und sie liefert Beweise für das Vorhandensein beider Elemente, um den Gewohnheitscharakter des Recht auf eine saubere, gesunde und nachhaltige Umwelt zu bestätigen. Während einige Staaten, insbesondere kleine Inselentwicklungsstaaten, aufgrund von Kapazitätsengpässen bei der Umsetzung des Rechts auf eine saubere, gesunde und nachhaltige Umwelt konfrontiert sind, äußern sie dennoch ihre *opinio juris* zu dessen Existenz durch ihre Beteiligung an internationalen Abkommen und anderen internationalen Dokumenten. Im Gegensatz dazu haben einige Staaten, die sich bei der Abstimmung über das Recht auf eine saubere, gesunde und nachhaltige Umwelt in der UNO-Generalversammlung der Stimme enthalten haben, dennoch einschlägige Gesetze erlassen und sind Verträgen beigetreten, was zeigt, dass das Recht auf eine saubere, gesunde und nachhaltige Umwelt weithin akzeptiert wird. Die Herausforderungen bleiben bestehen, insbesondere was die Durchsetzung des Rechts auf eine saubere, gesunde und nachhaltige Umwelt und die entsprechenden Verantwortlichkeiten betrifft. Nichtsdestotrotz zeigen die weit verbreitete Staatenpraxis und die *opinio juris*, dass das Recht im internationalen Recht verankert ist und der Druck für weitere Maßnahmen zur Bewältigung der globalen Umweltkrise wächst.

I. Introduction

In 2024, more than 4/5 of the 193 United Nations (hereinafter UN) Member States recognised some version of the right to a clean, healthy and sustainable environment (hereinafter R2HE) in their domestic law at the national or regional level.¹ The global phenomenon of states developing new legislation increased litigation of the R2HE before domestic and international courts and tribunals. Treaties being adopted directly or indirectly referring to the R2HE call for exploring whether the R2HE has already crystallised into customary international law (hereinafter CIL) or if it is still at the level of *de lege ferenda*. Regional treaties such as the For example, the San Salvador Additional Protocol to the American Convention on Human Rights, the African Convention on the Conservation of Nature and Natural Resources and the Arab Charter on Human Rights mention a right to a healthy environment.

The hypothesis of the following research is that the R2HE can indeed be considered CIL.

In the first part, the study focuses on explaining the elements of CIL. It lays down, mainly based on previous decisions of the International Court of Justice (hereinafter ICJ), the cumulative conditions that need to be met for CIL to form, which are the existence of State practice accompanied by the belief that the practice is based on a legal obligation (*opinio juris*). The study then analyses the processes that arguably lead to the formation of the R2HE as CIL. It focuses on relevant jurisprudence and international legal instruments as well as other relevant international documents, such as the UN Human Rights Council and UN General Assembly (hereinafter UNGA) resolutions that concern the protection of the environment and climate change, decisions of the UN human rights treaty-bodies and special procedures, outcome documents from UN conferences regarding the environment, as well as scientific reports, such as various reports of the Intergovernmental Panel on Climate Change (hereinafter IPCC). All these documents, as well as comments, public statements and votes of States in international fora illustrate consistent state conduct and *opinio juris*. The research specifically focuses on a few selected countries that vary in their geographic, social, cultural and economic characteristics.

¹ David Boyd, 'The Right to a Healthy Environment, A User's Guide' (OHCHR, 22 April 2024) 8.

II. Methodology

Different research methodologies, such as doctrinal, comparative and historical research, are combined with various interpretation methods for the purposes of preparing this thesis.

Doctrinal research involves analysing and systematically examining legal rules and principles set out in primary sources such as statutes, regulations, and case law and secondary sources like textbooks and commentaries.² This method is beneficial for analysing legal concepts and their evolution over time, identifying inconsistencies or gaps in the law, or assessing the practical implications of legal rules.³ In present research, empirical data from chosen multilateral treaties, case law and scientific reports is analysed based on the research hypothesis, which is, in the next step, tested and either confirmed or rejected.

The comparative research methodology involves analysis of different bodies of law or jurisdictions to find similarities and differences in the approach to a legal issue.⁴ The primary goal of comparative research is to identify similarities and differences between legal systems and to analyse the reasons behind these similarities and differences.⁵ Among different methods of comparative research, this thesis uses the analytical method, which aims at analysing legal concepts and rules found in different legal systems to find common and other parts of those concepts.⁶ The research, in this case, mainly compares legal doctrines in different countries and/or regions to analyse whether they have common parts that can further lay down the existence or non-existence of CIL.

Historical study can mean the objective and systematic study of evolvments from the past to the present concerning a system, an idea or an institution, which should lay down their functioning but also aid in understanding and finding advantages and disadvantages.⁷ For

² Laura Cahillane and Jennifer Schweppe, *Legal research methods: principles and practicalities* (Clarus Press 2016) 214.

³ Ibid 57.

⁴ Maurer School of Law, 'Legal Dissertation: Research and Writing Guide' (Jerome Hall Law Library Indiana University Bloomington, 2023) <<https://law.indiana.libguides.com/dissertationguide>> accessed 29 August 2024.

⁵ David Nelken, 'Comparative Legal Research: Its Function in the Development of Harmonized Law' [2017] 9(2) Annual Review of Law and Social Science 271.

⁶ Mark Van Hoecke, 'Methodology of Comparative Legal Research' [2015] (Law and Method) <DOI 10.5553/REM/000010> accessed 29 August 2024.

⁷ Bhat, P. Ishwara, 'Historical Legal Research: Implications and Applications', *Idea and Methods of Legal Research* (Delhi, 2020; online edn, Oxford Academic, 23 Jan. 2020) <<https://doi-org.uaccess.univie.ac.at/10.1093/oso/9780199493098.003.0007>> accessed 5 Oct. 2024.

the research in this master thesis, the aim was to approach the search for proof of CIL historically, and show how the R2HE evolved throughout the years, both within individual states and in the international arena.

In the purposive interpretation, which is the interpretation used in this thesis, in addition to the textual interpretation, the "purpose" of the text serves as the critical factor in determining which of its possible semantic meanings reflects the legal sense. Identifying this legal meaning involves balancing both the subjective purpose (the intent of the lawmaker) and the objective purpose (the broader goals or functions of the law).⁸

The combination of those approaches suits the objectives of the research and lead to answers to the research question and sub-questions.

⁸ Barak, A. (2005) *Purposive interpretation in law* (PUP 2005) 86.

III. Literature review on formation of customary international Law

A. Formation of customary international law

In any society, certain rules may be found by which this society adjusts their behaviour, and those rules define what is allowed or is prohibited, and they are guarded by the members of this particular group because of social pressure or possibly other implications.⁹ CIL emerges when the way things have been done becomes the way things must be done. In some way, it could be said that law begins with custom.¹⁰ The idea of customary law, tracing back as far as Roman law¹¹, was later also taken over by international law. The international legal system that is known today is generally connected to the creation and consolidation of nation-states, especially in Europe.¹²

CIL can be considered a form of tacit agreement between States: in given circumstances, States behave toward each other in certain ways that are considered to be acceptable and, therefore, tacit assent to those behaviours, first with the intent to future conduct and then little by little, as legally determining future conduct. What renders this process complicated is the fact that custom is also binding on States that did not actively participate in the process of formation of the custom, under the condition that they did not object to the custom during its formation. If a State consistently objected to the rule of law while it was still in the process of becoming a rule, the State also has the option to ‘opt-out’ of the application of this specific rule, even after it became known to be general CIL.¹³ This is defined as the persistent objector doctrine, and its origin can be found in the *Fisheries* case between the United Kingdom and Norway, where the legality of the baselines drawn by Norway around its coasts to calculate the breadth of its territorial sea was questioned.¹⁴ The court decided that the United Kingdom’s claim for a “custom” ten-mile rule was inapplicable due to Norway’s consistent objection to that rule.¹⁵

⁹ Malcolm N. Shaw, *International Law* (6th edn, CUP 2018) 60.

¹⁰ David J Bederman, *Custom as a Source of Law* (CUP, 2010) 3.

¹¹ Kadens, Emily. ‘Custom’s Past.’ in Curtis A. Bradley, *Custom’s Future: International Law in a Changing World* (CUP 2016) 11–33.

¹² Anders Henriksen, *International Law* (4th edn, OUP 2017) 4.

¹³ Malcolm Evans, *International Law* (5th edn, OUP 2018) 97.

¹⁴ *Ibid.*

¹⁵ The court mentioned: ‘In any event, the ten-mile rule would appear to be inapplicable as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian coast’ in *Fisheries* (United Kingdom v Norway) (Judgement) [1951] ICJ Rep 116 para 131.

Furthermore, CIL also binds States that only came into existence after the custom had already been formed.¹⁶ Namely, such States may not object to already existing CIL and are bound by it. They did not have the option to persist during the creation, and if they only object subsequently, they are nevertheless bound by the rule.¹⁷

Article 38 of the ICJ Statute is nowadays known to be the most authoritative and comprehensive statement concerning the sources of international law.¹⁸ Particularly in lit (b), the article mentions “international custom as evidence of a general practice accepted as law”, which is also often referred to as CIL or simply custom.

CIL is made up of two elements: (1) State Practice and (2) *opinio juris sive necessitatis* (opinion as to law or necessity), which is usually abbreviated to *opinio juris*. State practice is the general and consistent practice by states, whereas *opinio juris* requires the practice to be accepted by law.¹⁹ The historical case that helped define the matter was the *North Continental Shelf case*, in which the ICJ determined:

*“Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of the rule of law requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the opinio juris sive necessitates. The States concerned must, therefore, feel that they are conforming to what amounts to a legal obligation. The frequency or even habitual character of the acts is not in itself enough.”*²⁰

The International Law Commission (hereinafter ILC) as an expert body established and empowered by the UNGA²¹, with a mandate of ‘the promotion of the progressive development of international law and its codification’²² in its seventieth session (2018)

¹⁶ Malcolm Evans, *International Law* (5th edn, OUP 2018) 90.

¹⁷ Ibid 97.

¹⁸ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 15 UNCTAD 355 (ICJ Statute) art 18; Malcolm N. Shaw, *International Law* (6th edn, CUP 2018) 59.

¹⁹ Malcolm N. Shaw, *International Law* (6th edn, CUP 2018) 84.

²⁰ *North Sea Continental Shelf* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) (Judgement) [1969] ICJ Rep 3 para 77. Other landmark ICJ’s cases explaining CIL are the *Fisheries* (United Kingdom v. Norway) (1951), *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America) (1984) and the *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* (1996).

²¹ UNGA Res 174(II) (1947).

²² Statute of the ILC, Art 1(1).

adopted 'Draft conclusions on identification of customary international law, with commentaries' and submitted these to the UNGA as part of the Commission's report covering the work of that session (A/73/10)²³. Many ILC's draft conclusions are considered highly influential despite their soft law nature.²⁴

1. State practice

The content of State practice

Since States are abstract entities, their practice consists of the practice of State organs. This may range from the judiciary, the legislature, the executive, the military, and State officials such as a Head of State. State practice includes but is not limited to public statements by State officials (i.e., the Prime Minister, the President, the Foreign Minister, the Attorney General), executive actions and practices, diplomatic correspondence, legislation, case law, and statements and votes of States in international fora.²⁵ Some scholars differentiate between actions (state practice) and statements (*opinio juris*).²⁶ For example if a State respects individual's human rights, such as for example the right to a due process in a national legal case, the fact that this right is actually ensured for individuals would equal to State practice, while if the State affirms in a statement the existence of this same human right, or casts a vote on a UNGA resolution regarding human rights, that would translate into *opinio juris*.²⁷

Consistency, generality and duration of practice

No rules are defined concerning the consistency, generality or duration of practice needed to create a custom.²⁸ To establish a rule of CIL, the settled practice must not necessarily be the practice of every single State of the world, it is merely required to be relatively widespread, representative, and consistent. The condition of being widespread must be considered specifically based on the issue and circumstances in question; it may not be quantified in general. Concerning the condition being representative, it is important to determine whether

²³ ILC, 'Report of the International Law Commission on the Work of its 70th Session' (30 April – 1 June and 2 July -10 August 2018) Draft Conclusions on Identification of Customary International Law UN Doc A/73/10.

²⁴ Boyle and Chinkin, *The Making of International Law* (OUP 200) 171-183.

²⁵ Ibid 93.

²⁶ Anthony D'Amato, *The Concept of Custom in International Law* (Cornell University Press 1971) 89-90; 160.

²⁷ Malcolm Evans, *International Law* (5th edn, OUP 2018) 93.

²⁸ Ibid 93.

the practice is followed by States that are diverse geographically, economically, and geopolitically.²⁹

In the Nicaragua judgement the ICJ clarified, how to interpret a divergence between statements of States and their actual acts, by explaining:

*“The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules, and that instances of State conduct inconsistent with a given rule should generally have been treated as breaches of that rule, not as indications of the recognition of a new rule. If a State acts in a way prima facie incompatible with a recognized rule but defends its conduct by appealing to exceptions or justifications contained within the rule itself, then whether or not the State's conduct is in fact justifiable on that basis, the significance of that attitude is to confirm rather than to weaken the rule.”*³⁰

The question about the impact on CIL when an issue is new and there was little time to prove practice was also explained by the ICJ in the *North Continental Shelf* case, where the court clarified, that it does not matter if only a short period of time has passed for actions to be State practice, to form CIL it is important that the practice should be extensive and virtually uniform, as well as showing general recognition of a rule of law or legal obligation.³¹

It has been argued, that in new areas of practice, such as space exploration, it would be possible to form “instant custom” based on widely accepted UNGA resolutions.³² This approach is controversial and not generally accepted.³³ Some scholars are convinced that CIL is developed by a dialogue of time, and that, by definition, instant custom is excluded.³⁴

Practice of parties to treaties

CIL can be declared through multilateral treaties and declarations by international fora such as the UNGA. Those instruments may also crystallize emerging customs and generate new

²⁹ Ibid.

³⁰ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) (Merits, Judgment) [1986] ICJ Rep 14 para 186.

³¹ *North Sea Continental Shelf* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) (Judgement) [1969] ICJ Rep 3 para 74.

³² H. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stevens & Sons 1965).

³³ Malcolm Evans, *International Law* (5th edn, OUP 2018) 94.

³⁴ J. Crawford and P. Viles, *State Responsibility: The General Part* (Cambridge University Press 1994) 93.

customs.³⁵ Human rights law may be used as an example for having largely grown by adopting wide-ranging international conventions. Due to the fact that almost all States have ratified some of these conventions, it is often mentioned that their conventional provisions also bind non-parties, based on the conclusion that they also amount to CIL. To clarify whether an obligation in a treaty reflects a customary obligation, the practice of the States who are not parties to the treaty must be examined to clarify whether they consider themselves as bound by the obligation, as well as parties to the treaty. The conforming practices by treaty parties may be ambiguous.³⁶ This ambiguity was also discussed in the *North Sea Continental Shelf* case, where the ICJ discussed that the State parties acted in certain obligations, seemingly because of their application of a Convention between the State parties. The ICJ further laid down that, therefore, this practice did not necessarily be connected to the existence of customary law.³⁷ A widely adopted treaty is likely to reflect custom, but it may also create a challenge to determine whether treaty parties are adhering to it out of a sense of treaty obligation or customary obligation.³⁸

2. Opinio Juris

State practice must be accompanied by a belief by the acting States, that they are doing so because they feel legally obliged to. This is the moment CIL is created.³⁹ The ILC clarifies in its conclusion 9(1) that ‘the practice in question must be undertaken with a sense of legal right or obligation’.⁴⁰ This creates several difficulties. First, since States are abstract entities and do not have ‘beliefs’, therefore when trying to conclude about the belief of a State, its actions and words must be examined.⁴¹

Another issue is, that *opinio juris* demands for behaviour in accordance with law, and that requires an action different from or contrary to what is considered as law until then.⁴² Therefore, *opinio juris* should be regarded as a process, in which States behave in a particular

³⁵ *North Sea Continental Shelf* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) (Judgement) [1969] ICJ Rep 3 paras 63,71.

³⁶ Baxter, ‘Treaties and Custom’ [1970] (129 The Hague Academy Collected Courses Online / Recueil des cours de l’Académie de La Haye en ligne) 64.

³⁷ *North Sea Continental Shelf* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) (Judgement) [1969] ICJ Rep 3 para 76.

³⁸ Malcolm Evans, *International Law* (5th edn, OUP 2018) 95.

³⁹ Malcolm N. Shaw, *International Law* (7th edn, CUP 2021) 72.

⁴⁰ ILC, ‘Report of the International Law Commission on the Work of its 70th Session’ (30 April – 1 June and 2 July -10 August 2018) UN Doc A/73/10 138.

⁴¹ Malcolm Evans, *International Law* (5th edn, OUP 2018) 96.

⁴² Malcolm N. Shaw, *International Law* (7th edn, CUP 2021) 73.

way, believing that their actions are according with the law or that they are in the process of becoming law.⁴³ Further, the process depends on how other States react, whether they accept or reject this process of legislation. That leads to the next step, which is the necessity of modifying rigid definitions of legality to determine whether those State activities may be deemed legitimate.⁴⁴ If a State acts differently from what has been regarded as law before, in the belief that this practice is according to law, and other States follow suit, a new custom is created. If other States reject the State practice in question, the proposition will rather faint, and the original rule will be reinforced through State practice and common acceptance.⁴⁵ The ICJ noted in the *Nicaragua case*:

*"Reliance by a State on a novel right or an unprecedented exception to the principle might, if shared in principle by other States, tend towards a modification of customary international law"*⁴⁶

The complication, to define when one rule supersedes another, is inherent in the nature of CIL.⁴⁷ It is, therefore, necessary to view *opinio juris* more flexibly and to connect it with overt manifestations of customary rules in the context of national and international behaviour.⁴⁸ This is needed to be able to accept that ideas of actions which are seemingly contrary to law are the sprout of new law. It is also related to the challenge in proving, that a State behaving in a particular way is doing so in the belief that it is according to law.⁴⁹ This approach can be practiced in a very extreme way by deducing *opinio juris* from material acts. In the *North Sea Continental Shelf case*, Judge Tanaka suggested that:

*"There is no other way than to ascertain the existence of opinio juris from the fact of the external existence of a certain custom and its necessity felt in the international community, rather than to seek evidence as to the subjective motives for each example of State practice, which is something which is impossible of achievement."*⁵⁰

The ILC in its conclusion 10(2) about the identification of CIL laid down, that evidence for *opinio juris*:

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) (Merits, Judgment) [1986] ICJ Rep 14 para 109; *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) [1988] 76 International Law Report pp 349,443.

⁴⁷ Malcolm N. Shaw, *International Law* (7th edn, CUP 2021) 73.

⁴⁸ Ibid 74.

⁴⁹ Ibid.

⁵⁰ *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) (Merits, Judgment) [1986] ICJ Rep 14 para 176.

*“include, but are not limited to: public statements made on behalf of States; official publications; government legal opinions; diplomatic correspondence; decisions of national courts; treaty provisions; and conduct in connection with resolutions adopted by an international organisation or at an intergovernmental conference.”*⁵¹

The ICJ in the *Nicaragua* case stated that the

*“opinio juris may, though with all due caution, be deduced from, inter alia, the attitude of the Parties and the attitude of States towards certain General Assembly resolutions”*⁵²

and further confirmed this position in the *Nuclear Weapons* Advisory opinion, by designating some UNGA resolutions as ‘evidence’ of *opinio juris*.⁵³

Both elements of CIL are not always easy to differentiate. In 2005, the International Committee of the Red Cross (hereinafter ICRC) in its study on customary rules of international humanitarian law applicable in international and non-international armed conflicts aimed to clarify which rules have become CIL and which have not.⁵⁴ The findings are being updated on the ICRC website.⁵⁵ Some acts represent both practice and *opinio juris* at the same time, as States’ verbal acts very often construct State practice but also simultaneously show the legal conviction or belief of the State.⁵⁶

B. Treaties and other documents of international law at global and regional level supporting the existence of a right to a clean, healthy, and sustainable environment as customary international law

In the following chapter, a number of multilateral treaties, as well as regional treaties, are analysed to showcase support for the existence of R2HE as CIL. The chapter is split into a section on multilateral treaties, subcategorised into international environmental law treaties

⁵¹ ILC, ‘Report of the International Law Commission on the Work of its 70th Session’ (30 April – 1 June and 2 July – 10 August 2018) UN Doc A/73/10 140.

⁵² *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) (Merits, Judgment) [1986] ICJ Rep 14 para 188.

⁵³ *Legality of the Threat or Use of Nuclear Weapons* (Advisory opinion) [1996] 254 para 70.

⁵⁴ Jean-Marie Henckaerts, ‘Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict’ (2005) 87 *International Review of the Red Cross* 857.

⁵⁵ ICRC, ‘International Humanitarian Law Databases’ (ICRC, 2007) <<https://ihl-databases.icrc.org/en/customary-ihl>> accessed on 01 September 2024.

⁵⁶ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume II*, (CUP 2005) xlii.

and international human rights treaties, and regional treaties, split in treaties of the European Union and treaties in other regions.

1. Multilateral treaties

According to the International Environmental Agreements (hereinafter IEA) Database Project, there have been 3700 international environmental treaties, conventions, and other agreements concluded since 1850.⁵⁷ The focus of this thesis is on environmental and human rights treaties, identified as relevant to demonstrate the emergence of R2HE as CIL.

1.1 International Environmental Law Treaties

Although not an IEA strictly speaking, the **UN Convention on the Law of the Sea (UNCLOS)**, adopted in 1982, governs the rights and responsibilities of nations regarding the world's oceans.⁵⁸ With 170 States parties and additional 14 who have signed but not ratified, it provides a comprehensive legal framework for ocean use and conservation, setting out principles, commitments, and mechanisms that shape global maritime policy.⁵⁹ UNCLOS aims to establish a legal order for the seas that promotes peaceful use, equitable resource utilization, conservation of living resources, and protection of the marine environment.⁶⁰ The relevant provisions for R2HE are in the preamble, as well as in Articles 1, 145, 146, 192-194, 206 (see Annex B.1.1.1). This treaty reflects State practice, especially for the States that ratified the treaty, and therefore agree to the international obligation to protect the marine environment. However, the signatory States must also be considered, as they accept, at the very least, the content of the treaty, and it could be considered as a statement of belief that they agree to it. Regarding *opinio juris*, it demonstrates a clear recognition of the anthropogenic impact on the sea and the need to mitigate it. This treaty focuses on the marine environment, yet as seen in Article 146, it also mentions that human life shall be protected. Reading this in conjunction with the rest of the treaty, and considering its aim, it follows that already in 1982 States recognized the need for the protection of human life in connection with the pollution of the environment. It proves, that the R2HE was not

⁵⁷ Ronald B. Mitchell and the IEA Database Project, 'International Environmental Agreements (IEA) Database Project' (University of Oregon, 2002 -2020) <<https://iea.uoregon.edu/>> accessed on 14 June 2023

⁵⁸ United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).

⁵⁹ United Nations Treaty Collection, 'UNCLOS' <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI6&chapter=21&Temp=mtdsg3&clang=_en> accessed 28 October 2024.

⁶⁰ UNCLOS preamble.

yet defined as such, but the need to protect human life, and therefore individual's rights in this regard was established and shows the will of the States.

The **UN Framework Convention on Climate Change (hereinafter UNFCCC)**, adopted in 1992, is a foundational treaty addressing climate change.⁶¹ The Convention has near universal membership (197 States parties) and lays the groundwork for international cooperation on climate change, establishing key principles, commitments, and institutional frameworks that continue to shape global climate policy.⁶² It is the parent treaty of the 2015 Paris Agreement and the 1997 Kyoto Protocol.⁶³ The primary objective of the UNFCCC is to stabilise greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.⁶⁴ The relevant parts of the UNFCCC for the R2HE can be found in the preamble as well as Articles 2-4 (see Annex B.1.1.2). With its near-universal membership, this treaty, signed ten years after UNCLOS, further demonstrates both State practice and *opinio juris*. Again, this treaty does not directly mention a R2HE, but Article 3 notes that the protection of the climate system shall be adhered to for the benefit of the present and future generations of humankind. The preamble also mentions the need to bear in mind different social needs in different countries and consider scientific evolutions. The States parties in this case prove, that a protection is needed in the name of future generations, considering the protection of the environment with the goal to benefit humankind. This leads to both a statement of *opinio juris* by ratifying the treaty as well as voicing the opinion that individuals have rights, at least seen as humans as a whole, to protection of the climate system and therefore the R2HE.

The **UN Convention on Biological Diversity (UNCBD)**, adopted in 1992, has 196 parties (including the EU and all of its Member States).⁶⁵ Its provisions relevant for R2HE are the preamble, Articles 1, 6, 10 and 14 (see Annex B.1.1.3). This treaty specifically mentions the

⁶¹ United Nations Framework Convention on Climate Change (adopted 20 January 1994, entered into force 21 March 1994) 102-38, 1771 UNTS 107 (UNFCCC).

⁶² United Nations Climate Change, 'What is the United Nations Framework Convention on Climate Change?' (United Nations Climate Change) <<https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change#:~:text=The%20198%20countries%20that%20have,ultimate%20aim%20of%20the%20UNFCCC>> accessed 08 October 2024

⁶³ United Nations Climate Change, 'About the secretariat?' (United Nations Climate Change) <<https://unfccc.int/about-us/about-the-secretariat>> accessed 08 July 2024

⁶⁴ UNFCCC art. 2.

⁶⁵ Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (UNCBD).

awareness of how important the protection of biological diversity is in meeting the food, health, and other needs of the world population. The other point is that biological diversity shall be protected for the benefit of present and future generations.⁶⁶ When considering this in connection with a R2HE, it could be said that one aim is to meet food, health and other needs. One could possibly say that the scientific evidence at the time of adoption was not yet so advanced about how much biological diversity affects the food resources and health of humans, but it was already clear that it must be protected. Individual's right to food, health and other needs shall be protected, since the biological diversity is connected to the enjoyment of this right for every individual, it might be considered as a proof of *opinio juris* of the States, that every person shall have this right and that the State's obligations are in the interest of future generations.

In December 1997, the **Kyoto Protocol** was adopted, and there are currently 192 parties to the Protocol.⁶⁷ Its main objective is to combat climate change by reducing greenhouse gas (hereinafter GHG) emissions globally, based on the premise that global warming exists and human-made CO₂ emissions have caused it.⁶⁸ As already laid down in the UNFCCC, the Kyoto Protocol again uses the principle of common but differentiated responsibilities, recognising that different countries have different capabilities and responsibilities in addressing climate change.⁶⁹ The most relevant part of the protocol is Article 3§1 (see Annex B.1.1.4) This treaty focuses on the obligations to reduce GHG in numbers; concerning the R2HE, it could be argued that despite not mentioning the need for protection for individuals, the obligations to reduce GHG should be something that is owed not just to the international community, but also to each States' citizens, and hence this would be a part of the R2HE. Further, the Kyoto Protocol is proof that throughout the years that have passed since the UNFCC and UNCBD, the need to define clearer goals has become more imminent. I believe it shows that States have realised that there is enough scientific evidence as well as political will to implement changes and that for the enjoyments of the rights of individuals it is necessary, that those goals are met.

⁶⁶ Ibid preamble.

⁶⁷United Nations Framework Convention on Climate Change, 'Kyoto Protocol' (UNFCCC, 2023) <https://unfccc.int/kyoto_protocol#:~:text=In%20short%2C%20the%20Kyoto%20Protocol,accordance%20with%20agreed%20individual%20targets> accessed 28 October 2024.

⁶⁸ Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162 (Kyoto Protocol) Art. 2,3.

⁶⁹ Kyoto Protocol art. 10.

The **Aarhus Convention**, formally known as the UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, was adopted on June 25, 1998, and currently ratified by 46 countries and the European Union.⁷⁰ It brings different empowerments to citizens regarding the environment, founded on the principles of participative democracy.⁷¹ The relevant provisions are in the preamble and Article 9 (see Annex B.1.1.5). With the aim to provide access to justice in environmental matters and the note in the preamble about every person having the right to live in an environment adequate to his or her health and well-being, this convention already mentions an individual right. Moreover, through the recognition of the need to be able to enforce justice in those matters, the convention also proves that the States wish, to a certain extent, that their citizens use those mechanisms to ensure their rights. This leads to the fact, that the States effectively practice a R2HE, since the citizens are able to enforce their individual rights connected to justice in environmental matters.

The **Paris Agreement**, adopted on December 12, 2015, under the UNFCCC, aims to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.⁷² It was signed by 195 countries and ratified by 192 as of October 2024, reflecting broad international commitment to climate action.⁷³ The relevant parts of it are Articles 2 and 3 (see Annex B.1.1.6).

The Paris Agreement mentions in its preamble the need to address climate change with human rights and the right to health in mind. Ahead of the Paris Agreement, the wish and demand to enshrine human rights into both the preamble as well as the operative part was voiced by different scholars as well as civil society organisations (hereinafter CSO).⁷⁴ The fact, that a note to human rights ended up merely in the preamble, led to frustrations in the

⁷⁰ Organization for Security and Co-operation in Europe, 'Aarhus Convention' (OSCE, 2023) <<https://aarhus.osce.org/about/aarhus-convention>> accessed 01 September 2024.

⁷¹ Organization for Security and Co-operation in Europe, 'Aarhus Convention' (OSCE, 2023) <<https://aarhus.osce.org/about/aarhus-convention>> accessed 01 September 2024.

⁷² Secretariat of the United Nations Framework Convention on Climate Change, 'What is the Paris agreement?' (*Secretariat of the United Nations Framework Convention on Climate Change*) <<https://unfccc.int/process-and-meetings/the-paris-agreement>> accessed on 28 October 2024.

⁷³ Secretariat of the United Nations Framework Convention on Climate Change, 'Paris Agreement - Status of Ratification' (*Secretariat of the United Nations Framework Convention on Climate Change*) <<https://unfccc.int/process/the-paris-agreement/status-of-ratification>> accessed on 22 October 2024.

⁷⁴ Patrícia Galvão Ferreira, 'Did the Paris Agreement Fail to Incorporate Human Rights in Operative Provisions?' (2016) 113 Centre for International Governance Innovation Papers 3.

international community, as it provides for a far weaker protection and status.⁷⁵ In my opinion, obligations to a right to health that are found in the preamble, can be considered as step towards a R2HE, since a healthy environment must be considered when protecting the right to health. Moreover, when considering the ambitions of including human rights in the operative provisions and the fact that it was challenged by only three countries⁷⁶ shows a very strong opinion by the other member States. It proves, that most States were convinced, that a R2HE should be protected by human-rights mechanisms and a human-rights based approach by including it in operative clauses. The mere inclusion of the human rights obligations in the preamble, despite the frustrations, proves that the aim of all member States is aligned in the sense that climate change and therefore the protection of the individual's R2HE should be connected to human rights.

1.2 International Human Rights Treaties

The **International Covenant on Civil and Political Rights (hereinafter ICCPR)** was signed in 1966 and currently has 174 member States.⁷⁷ It does not contain any provision explicitly mentioning the environment or environmental protection. Nevertheless, the (quasi)jurisprudence of the Human Rights Committee (hereinafter CCPR), which will be laid down in part D, the CCPR draws obligations of States for environmental protection from the ICCPR's Articles 6, 7, 17 and 27 (see Annex B. 1.2.1).

The ICCPR is a great example of the connection between human rights and the environment, considering that when it was originally concluded, the environment was of no concern to the States, but as the CCPR argues in its cases, to ensure those human rights nowadays, a healthy and sustainable environment needs to be present to allow humans to still enjoy those rights. The relevant articles do not mention the R2HE, yet they mention the right to life and the protection of it as well as no inhuman or degrading treatment and no interference with one's privacy, family or home. Seen those rights in the light of the scientific facts, as they will be mentioned in C., it is impossible to enjoy those human rights without environmental protection. Therefore, the ICCPR has become a very important instrument concerning the R2HE, because States in order to comply with the ICCPR have to be ready to grant a R2HE

⁷⁵ Ibid.

⁷⁶ Saudi Arabia, the United States, and Norway. See Patrícia Galvão Ferreira, 'Did the Paris Agreement Fail to Incorporate Human Rights in Operative Provisions?' (2016) 113 Centre for International Governance Innovation Papers 3.

⁷⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) 407; Office of the United Nations High Commissioner for Human Rights, 'Human Rights Indicators' (OHCHR, 2023) <<https://indicators.ohchr.org/>> accessed 01 September 2024.

to individuals to be able to adhere to their obligations. Further, as will be shown in D.1, the CCPR is also of the opinion, that the mentioned Articles of the ICCPR may be connected to a R2HE, by proving in jurisprudence, that the existing rights of the CCPR shall be interpreted in a way that they include the R2HE. Environmental change can in some cases be directly connected to the enjoyment of the rights guaranteed in the CCPR, which leads to the effective protection of individuals R2HE.

The **International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR)**, adopted in 1976 and with 172 parties, focuses on ensuring economic, social, and cultural rights, including labour rights, the right to health, the right to education, and the right to an adequate standard of living.⁷⁸ Although it does not mention the R2HE, it includes the right to health and, connected to it, the improvement of environmental hygiene, with the relevant parts (see Annex B.1.2.2). Those rights can eventually only be fulfilled if a R2HE is also fulfilled. Further, in Art 5, the convention also mentions the need to protect and fulfil all human rights based on the best scientific evidence available.⁷⁹ Art 9 also demands compliance with human rights, requiring the refraining of acts that could worsen climate change.⁸⁰ Given the scientific evidence that will be discussed later in detail, the right to health can be impacted by climate change, and ultimately, R2HE may be considered through the articles in the convention as effectively present, despite no direct mention. The ICESCR, therefore, adds another layer to the protection of a R2HE by protecting different social and economic rights that can only be ensured if the environment is also protected since, otherwise, individuals are unable to enjoy their rights stemming from this Covenant. Specifically, since the Committee also mentioned in its General Comment No. 14 that the right to health should be interpreted the following (footnotes omitted)⁸¹:

“11. The Committee interprets the right to health, as defined in Article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and

⁷⁸ International Covenant on Economic, Social and Cultural Rights, UNGA Res 2200A (XXI) (16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁷⁹ Ibid Art 5.

⁸⁰ Ibid Art 9.

⁸¹ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000.

information, including on sexual and reproductive health. A further important aspect is

the participation of the population in all health-related decision-making at the community, national and international levels.

...

15. 'The improvement of all aspects of environmental and industrial hygiene' (art. 12.2 (b)) comprises, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact human health. ..."

The **Convention on the Rights of the Child (CRC)**⁸² is one of the most ratified conventions, having 196 State Parties and only 1 State,⁸³ who signed but did not ratify. Similar to the above-mentioned human rights treaties, the environment is not particularly mentioned, but the most relevant provision is Article 4 (see Annex B. 1.2.3). Nevertheless, the Committee on the Rights of the Child clarified in its General Comment No. 26 the impacts on children's rights by environmental harm and climate change and what governments should do to ensure that children live in a clean, healthy and sustainable world. The general comment highlights the urgent need to tackle the harmful impacts of environmental degradation, especially climate change, on children's ability to enjoy their rights defines State obligations to offer guidance on legislative, administrative, and other effective measures to address environmental harm, with an emphasis on climate change.⁸⁴ This is a proof, that for every child, there is a R2HE drawn from the CRC, as the rights mentioned in this treaty, may only be fulfilled if a R2HE is fulfilled for the children. They are able to claim those rights from member States.

⁸² Convention on the Rights of the Child, opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; Office of the United Nations High Commissioner for Human Rights, 'Human Rights Indicators' (OHCHR, 2023) <<https://indicators.ohchr.org/>> accessed 01 September 2024.

⁸³ United States of America.

⁸⁴ Committee on the Rights of the Child, General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, RC/C/GC/26, 23 August 2023.

2. Regional treaties

The **Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution**, adopted in 1978 and effective from 1979, aims to safeguard the marine environment and coastal areas of the Gulf region from pollution caused by human activities. Ratified by all eight countries of the Persian Gulf region⁸⁵. The relevant provisions are found in Annex B.2.1. This regional treaty shows that even before the UNCLOS, discussed in B.1, the Persian Gulf region was already concerned with the protection of the marine environment. Although R2HE is not mentioned explicitly, I believe it is the evidence of State practice and *opinio juris*, as early as 1978, in a region that might not be seen to have a big impact in the contemporary discussion of environmental protection. Already at that time, the member States to this treaty, as seen in the relevant articles, recognize the need to achieve environmental goals in a harmonious manner. Further, they also make a note to the scientific information available to fulfil their obligations in protection of the marine environment. The R2HE is not directly connected to that, since there is no individual right stemming from it, yet it shows, that the dedication and acceptance of science concerning environmental protection. Those States in the Persian Gulf region give importance to scientific evidence to reach their goals in environmental protection. Despite not mentioning a R2HE, it at least shows, their acts are aligned and supported by scientific evidence, leading to the fact that they possibly also accept the scientific evidence connected to the need of a R2HE.

The **African Charter on Human and Peoples' Rights**, also known as the Banjul Charter, aims to promote and protect human and peoples' rights and freedoms across Africa, emphasising the balance between individual rights and collective rights within the African context.⁸⁶ There are currently 54 State parties to the Charter. Art. 24 also specifically states that “all peoples shall have the right to a general satisfactory environment favourable to their development”. The Banjul Charter is an important regional human rights instrument, which is, unlike other human rights treaties, special because it guarantees both civil and political rights as well as socio-economic rights, and it obliges States in all of those rights.⁸⁷ This

⁸⁵ Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

⁸⁶ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) preamble.

⁸⁷ Naldi GJ. The African Union and the Regional Human Rights System. In: Evans M, Murray R, eds. *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (CUP 2008) 20-48.

treaty proves that Africa was amongst the first regions to directly mention the R2HE, showing the existence of belief and State practice already before the UNFCCC and the UNCBD.

The **ASEAN Agreement on the Conservation of Nature and Natural Resources**, adopted in 1985 and signed by all ten member States of the Association of Southeast Asian Nations (ASEAN), aims to promote cooperation among ASEAN member States in conserving and sustainably managing the region's biodiversity and natural resources.⁸⁸ Its relevant provisions are found in Annex B.2.3. This treaty provides evidence for State practice and *opinio juris* in the region of Asia, adding to the diversity that is sought to prove CIL, showing that the belief to protect the environment and implement according to legislation is present. It further notes in the preamble that the member States recognise the importance of protection for present and future generations, adding to the fact that a R2HE could be considered.

The **San Salvador Additional Protocol to the American Convention on Human Rights**, adopted in 1988 and effective from 1999, is signed and ratified by 16 countries of the region.⁸⁹ Its relevant article is 11 stating

“1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.

2. The States Parties shall promote the protection, preservation, and improvement of the environment.”

This treaty literally recognises the R2HE and plays an important role in the global conviction of States, representing their belief in this right.

The **Noumea Convention**, formally known as the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, was signed in 1986 by

⁸⁸ ASEAN Agreement on the Conservation of Nature and Natural Resources (adopted 9 July 1985) (ACNNR) preamble.

⁸⁹ Organization of American States, 'Protocol of San Salvador' (OAS, 2023)

<<https://www.oas.org/en/sare/social-inclusion/protocol-ssv/#:~:text=It%20was%20adopted%20in%201988,%2C%20Peru%2C%20Suriname%20and%20Uruguay>> accessed 01 September 2024.

thirteen countries.⁹⁰, it came into force on August 22, 1990.⁹¹ The relevant parts are laid down in Annex B.2.5. The parties to this treaty also note in the preamble that the aim of protection is for the benefit of enjoyment of present and future generations. In conjunction with the obligations mentioned concerning environmental protection, it could be considered that the right to the benefit could be seen as an early adoption of a R2HE. The Convention mentions in the preamble that its goal is protection for the benefit of present and future generations. The operative clauses refer to the obligation of measures in this concern. Further, States are being held liable and need to compensate, if the goals are not met. This translates into an individual's right who may be able to claim compensation and therefore might be considered as R2HE.

The **Alpine Convention** (1995), formally known as the Convention on the Protection of the Alps, is an international treaty aiming at protecting the natural environment, promoting sustainable development, and preserving the cultural heritage of the Alpine region.⁹² It covers a vast area of the European Alps, encompassing eight countries.⁹³ The relevant parts of the convention are the preamble and Article 2 (see Annex B.2.6). This convention is mainly focusing on the health of the Alpine environment, yet it also mentions in said Art 2, that the objective shall be achieved to guarantee the basis for living standards of indigenous population in the area. This can be read, as part of the R2HE, as indigenous people are often especially concerned by the effects of climate change and shall be able to claim their rights as individuals connected to their living environment in the Alps.

The **African Convention on the Conservation of Nature and Natural Resources** (Revised Version, 2003) was adopted by African Union member States on July 11, 2003, and came into force on July 23, 2016.⁹⁴ This Convention aims to enhance regional cooperation in the sustainable management of Africa's natural resources.⁹⁵ The relevant Article 24 States "All people shall have the right to a general satisfactory environment favourable to their

⁹⁰ Australia, Cook Islands, Federated States of Micronesia, Fiji, France, Kiribati, Marshall Islands, Nauru, New Zealand, Papua New Guinea, Solomon Islands, Tuvalu and the United States of America.

⁹¹ Secretariat of the Pacific Regional Environment Programme, 'Noumea Convention' (SPREP, 2023) <<https://www.sprep.org/convention-secretariat/noumea-convention>> accessed 01 September 2024.

⁹² EC Convention on the Protection of the Alps (Alpine Convention) [1991] OJ L 61/32, preamble.

⁹³ Austria, France, Germany, Italy, Liechtenstein, Monaco, Slovenia, and Switzerland.

⁹⁴ African Union, 'African Convention on the Conservation of Nature and Natural Resources (Revised Version)' (AU, 2023) <<https://au.int/en/treaties/african-convention-conservation-nature-and-natural-resources-revised-version>> accessed 01 September 2024.

⁹⁵ African Convention on the Conservation of Nature and Natural Resources (Revised Version, adopted 15 September 2003, entered into force 12 March 2006) 44 ILM 831 preamble.

development.” The Convention mentions the rights of all citizens, hence the individual’s R2HE.

In 2004, based on the request of the League of Arab States, the Arab Commission on Human Rights drafted the **Arab Charter on Human Rights**.⁹⁶ It aims to put human rights at the “centre of key national concerns” and includes the international principles of human rights being universal, indivisible, interdependent and interrelated. Nevertheless, it remains problematic that some of the rights of the Arab Charter on Human Rights are subject to interpretations of Islamic Shari’a.⁹⁷ As of 2021, the Charter was signed by 16 States.⁹⁸ Article 38 states

“Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.”

Despite the problematic efficiency of this treaty, member States have acknowledged a R2HE and obliged themselves to act, therefore proving both their opinion and State practice. At the very least, they want to appear in the international fora that this is a right they are convinced of.

The Regional Agreement on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters in Latin America and the Caribbean, commonly known as the **Escazú Agreement**, was adopted on March 4, 2018, in Escazú, Costa Rica, and came into force on April 22, 2021. This landmark agreement was signed by 24 States.⁹⁹ The relevant parts can be found in Annex B.2.9. This agreement, in its preamble, reaffirms that every person shall have access to information and the possibility to participate in decision-making concerning the environment. This is another aspect of R2HE since it

⁹⁶ M Rishmawi, ‘The Arab Charter on Human Rights and the League of Arab States: An Update’ (2010) 10 Human Rights Law Review 169–178 <<https://doi.org/10.1093/hrlr/ngp043>> accessed on 01 September 2024.

⁹⁷ Ibid.

⁹⁸ International Justice Resource Center, ‘Middle East and North Africa’ (IJRC, 2021) <<https://ijrcenter.org/regional/middle-east-and-north-africa/#:~:text=As%20of%20January%202021%2C%20there,United%20Arab%20Emirates%2C%20and%20Yemen>> accessed 01 September 2024.

⁹⁹ United Nations Treaty Collection, ‘Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean’ (UNTC 2021) <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-18&chapter=27&clang=en> accessed on 01 September 2024.

directly demands the involvement of citizens and leads to the enjoyment of rights for every citizen.

3. European Union

The European Union (hereinafter EU) is treated separately due to its special legal personality in international law, being the only supranational organisation in the international legal order.¹⁰⁰ Its Member States have agreed that the EU law has primacy over the legislation of its Member States.¹⁰¹

The two main treaties are the **Treaty of the European Union** (hereinafter TEU) and the **Treaty of the Functioning of the Union** (hereinafter TFEU). The TEU outlines the general principles, objectives, and governance structures of the EU, providing a foundational framework for its operation.¹⁰² Its relevant provision is Article 3(3), stating, “The Union ... shall work for the sustainable development of Europe ... aiming at ... a high level of protection and improvement of the quality of the environment ...”. The TFEU also establishes the legal basis for environmental policy in the EU and obligates the EU and its member States to integrate environmental protection requirements into all areas of policy and to ensure a high level of environmental protection.¹⁰³ The relevant Articles 11 and 191 can be found in Annex B.3.2. The EU aims at ensuring the rights it establishes for the citizens in all member States. By acknowledging already during its own establishment that environmental protection needs to be integrated and shall be done while protecting human health, it already recognises that there are certain rights for citizens in their right to health that are connected to the environment.

The **Charter of Fundamental Rights of the European Union** is a comprehensive document that consolidates the fundamental rights and freedoms enjoyed by individuals within the EU. It was proclaimed in 2000 and became legally binding with the entry into force of the Treaty of Lisbon in 2009. The Charter brings together rights previously found in various EU treaties, international conventions, and the constitutional traditions of EU member States.¹⁰⁴ Article 37 states that

¹⁰⁰ Klabbers, *An introduction to international organizations law* (3rd edn, CUP 2015) 9.

¹⁰¹ Foster, *Foster on EU Law* (7th edn, OUP 2019) 100.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

“a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”.

This proves that environmental protection is even considered a fundamental right for the member States and should, therefore, also lead to the same protection as the other fundamental rights mentioned in the charter. It shows that throughout different policies in the Union, this right shall be integrated, ideally also allowing for individuals to claim their rights based on this Charter.

The **European Green Deal** is a comprehensive plan of action launched by the European Commission in December 2019 to make the EU climate-neutral by 2050. The Green Deal is a roadmap for transforming the EU's economy and society to reduce its greenhouse gas emissions and protect the environment while promoting economic growth and social justice.¹⁰⁵ The key objectives of the EU Green Deal are the following: to reduce greenhouse gas emissions, to promote sustainable energy, to transition to a circular economy, to protect biodiversity and to support a sustainable food system.¹⁰⁶ The European Commission will regularly monitor progress and ensure that member States are on track to meet their commitments.

The listed EU documents prove that environmental protection was important to be included in both of the founding treaties during the creation of the EU. Further, sustainability was mentioned as well, which may be connected to the sustainability notion of a R2HE. Despite the Green Deal being only a non-obligatory plan of action, it shows the details of needed actions and the wish and belief of the States to adhere to and ensure enforcement for the goal of transforming the EU's society. In my opinion, the fact that a system change and roadmap is given for member States, as well as individuals, shows that the member States are convinced that this is a right that shall be available to every citizen. Moreover, I believe the actual action plans and roadmaps also provide State practice that effectively leads to R2HE.

¹⁰⁵ L. Schaffer and K. Rogge, 'European Green Deal – Opportunities and Challenges for EU Climate Policy and Energy Transition' (2020) 11(2) *Frontiers in Energy Research*.

¹⁰⁶ European Commission (EC) 'A European Green Deal' (Brussels 2019) COM (2019) 640 (EU Green Deal), 2.1.7.

4. UN and Council of Europe Documents

4.1 UN Human Rights Council

The UN Human Rights Council, as an intergovernmental body within the UN system, is responsible for strengthening the promotion and protection of human rights. Its Member States are directly voted by the 196 States of the UNGA, and therefore, their decisions can also be seen as a representation of the opinion of the States.¹⁰⁷ Since they entrust those Member States with the mandates and the responsibility of the function. The Human Rights Council (hereinafter HRC) determined in 2018 that: “more than 100 States [had] recognised some form of a right to a healthy environment in, inter alia, international agreements, their constitutions, legislations or policies”.¹⁰⁸ This shows the recognition of the R2HE in a vast number of States and strengthens its existence in an international forum. In a resolution of 8 October 2021, the HRC recognised, with 43 votes in favour and four abstentions, that access to a healthy and sustainable environment is a universal right.¹⁰⁹ The relevant parts are in the preamble and Articles 1-3. This resolution, which finds access to a healthy and sustainable environment a universal right, is, therefore, an important matter in connection to the recognition of the R2HE as *opinio juris*, as it falls under statements that express the beliefs of States, seeing that they voted for it.

4.2 General Assembly of the United Nations

On 28 July 2022, the UNGA adopted a Resolution on the human right to a clean, healthy and sustainable environment.¹¹⁰ The Member States voted unanimously for this resolution, with 161 votes in favour out of 169 present Member States, eight abstentions¹¹¹, and no votes against.¹¹² The resolution states that “[A] vast majority of States have recognised some form of the right to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies” and:

“1. Recognizes the right to a clean, healthy and sustainable environment as a human right;

¹⁰⁷ Office of the United Nations High Commissioner for Human Rights, 'About the Human Rights Council' (OHCHR, 2023) <<https://www.ohchr.org/en/hr-bodies/hrc/about-council>> accessed 01 September 2024.

¹⁰⁸ Human Rights Council Resolution 37/8, 'Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka' (adopted 22 March 2018) UN Doc A/HRC/RES/37/8 (HRC Res 37/8 (n 1) last preambular paragraph.

¹⁰⁹ Human Rights Council Resolution 48/13, 'The human right to a clean, healthy and sustainable environment' (adopted 18 October 2021) UN Doc A/HRC/RES/48/13.

¹¹⁰ UNGA Res A/RES/76/300, 'The Human Rights to a Safe, Clean, Healthy and Sustainable Environment' (adopted 28 July 2022) UN Doc A/RES/76/300.

¹¹¹ China, Russian Federation, Belarus, Cambodia, Iran, Syria, Kyrgyzstan and Ethiopia.

¹¹² UNGA Official Records, 76th Session, Plenary Meeting 97, UN Doc A/76/PV.97 (2 August 2022).

2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
4. Calls upon States, international organisations, business enterprises and other relevant stakeholders to adopt policies, enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.”

This resolution is of utmost importance, considering it shows the belief of UN Member States, and the fact that there were merely abstentions but no votes against proves that the States agree or at least accept the notions of the resolution, hence a R2HE.

4.3 Acts from the Council of Europe

In 2021, the **Parliamentary Assembly of the Council of Europe** (hereinafter PACE) adopted a Recommendation with the title: “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”.¹¹³ In this Recommendation, the Committee of Ministers was asked to draw up an additional protocol to the European Convention on Human Rights and an additional protocol to the European Social Charter on the right to a safe, clean, healthy and sustainable environment based on the terminology used by the UN. The PACE also recommended that member States build and consolidate a legal framework – on both domestic and European levels – to ensure the right to a safe, clean, healthy and sustainable environment, based on the UN guidance on this matter.¹¹⁴ While the PACE may not pass binding laws in the Council of Europe, it has a strong position through being able to demand action from 46 European governments, who are obliged to reply.¹¹⁵ The abovementioned Recommendation and Resolution prove that the Member States believe in the need to create the said additional layers of legal commitments towards environmental protection, as the PACE consists of appointed or elected delegates from each Member State.¹¹⁶

¹¹³ PACE Recommendation 2211 (2021) (adopted on 29 September 2021).

¹¹⁴ PACE Resolution 2396 (2021) (adopted on 29 September 2021).

¹¹⁵ Parliamentary Assembly of the Council of Europe, 'Powers of the Parliamentary Assembly' (PACE, 2023) <<https://pace.coe.int/en/pages/powers>> accessed 01 September 2024.

¹¹⁶ PACE Rules of Procedure of the Assembly Resolution 1202 (1999) (adopted 4 November 1999).

The Council of Europe **Commissioner for Human Rights** in 2019 commented.¹¹⁷ “The Council of Europe bodies overseeing the implementation of the European Convention of Human Rights and the European Social Charter have produced an extensive body of case law that delineates States parties’ obligations in the field of the environment. Despite the absence in the Convention of a specific reference to the environment, the European Court of Human Rights has clearly established that various types of environmental degradation can result in violations of substantive human rights, such as the right to life, to private and family life, the prohibition of inhuman and degrading treatment, and the peaceful enjoyment of the home. Moreover, the European Committee of Social Rights has interpreted the right to health included in the Charter to encompass the right to a healthy environment.” Since this statement comes from the Commissioner for Human Rights of the Council of Europe, it might not be considered a statement of one single State, yet what should be considered is that he was voted by the PACE, and therefore he is given a certain trust and also the belief that his work and recommendations are valued. Therefore, this should be considered as well; moreover, since he plays an influencing role, this might also lead to State practice along the same ideas and mean that States practice or are convinced of a R2HE.

C. Scientific reports

In the following part, several scientific reports are analysed to showcase support for the existence of R2HE as CIL.

In the current ongoing case for the ICJ advisory opinion concerning the Obligations of States with respect to Climate Change the ICJ pays special attention to scientific reports. They play a role in forming both State practice and *opinio juris* by influencing policies and publishing opinions that are approved by policymakers and may be able to represent the *opinio juris*.

The most extensive scientific reports about climate change are produced by the IPCC. The IPCC was established in 1988 through an endorsement by the UNGA and has since delivered six different assessment reports pertaining to six assessment cycles.¹¹⁸ Those reports are unique in their existence, as Philippe Tulkens, Head of Unit in the Commission’s Directorate-

¹¹⁷ Commissioner for Human Rights Human rights comment ‘Living in a clean environment: a neglected human rights concern for all of us’, 4 June 2019.

¹¹⁸ Intergovernmental Panel on Climate Change, 'History' (IPCC, 2023)

<[https://www.ipcc.ch/about/history/#:~:text=The%20Intergovernmental%20Panel%20on%20Climate%20Change%20\(IPCC\)%20was%20established%20by,UN%20General%20Assembly%20in%201988](https://www.ipcc.ch/about/history/#:~:text=The%20Intergovernmental%20Panel%20on%20Climate%20Change%20(IPCC)%20was%20established%20by,UN%20General%20Assembly%20in%201988)> accessed 01 September 2024.

General for Research and Innovation, says: "[they] include summaries for policymakers that are approved, word by word, by all 195 government members of the IPCC – including the EU".¹¹⁹ In their special character, being approved by all 195 government makers, they are strong evidence for opinions and practices, as the governments themselves may, therefore, not question or deny those findings.

This study focuses on several chosen IPCC reports that show scientific evidence about anthropogenic influence on the environment as well as proof that change is needed to ensure basic human needs. Due to space limitations, some scientific reports that are, for example, also mentioned in the *Klimaseniorinnen* case, as well as *Duarte Agostinho* and the ongoing ICJ advisory proceedings, are not specifically researched, though they also add to the evidence.

The **Special Report on Renewable Energy Sources and Climate Change Mitigation** recognises that, to meet social and economic growth while improving human welfare and health, there is a need for energy and associated services. Basic human needs, such as lighting, cooking, space comfort, mobility and communication, of communities need to be fulfilled. However, since 1850, the use of fossil fuels (coal, oil, and gas) has increased and eventually dominated the energy supply, leading to a rapid growth in carbon dioxide (CO₂) emissions.¹²⁰ The provision of energy services also contributes significantly to a historic increase in greenhouse gas (GHG) emissions. This special report also refers to the IPCC Fourth Assessment Report that found that the increase of the global average temperature since the mid-20th century is with more than 90% probability because of the anthropogenic impact on greenhouse gas concentrations.¹²¹

The **Special Report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation, Summary for Policymakers** focuses on the fact that a changing climate alters the frequency, intensity, spatial extent, duration, and timing of extreme weather and climate events, potentially leading to unprecedented occurrences of such events.¹²² In disaster risk management, exposure and vulnerability are key factors to

¹¹⁹ Ibid.

¹²⁰ IPCC, 'Special Report on Renewable Energy Sources and Climate Change Mitigation' Summary for Policymakers and Technical Summary (IPCC, 2011) 2.

¹²¹ Ibid.

¹²² IPCC, 'Special Report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation' Summary for Policymakers (IPCC, 2012) A.

consider. Both extreme and non-extreme events impact vulnerability to upcoming events by changing resilience, coping capacity and adaptive capacity. This eventually affects the livelihood options, resources, and capacities of humans to prepare for and cope with future disasters.¹²³ Exposure and vulnerability depend on different factors such as economy, social circumstances, geography, demography, and culture, as well as the institutional system, governments and environmental factors. Observed changes in climate extremes also come from an anthropogenic influence on the climate that adds to natural climate variability.¹²⁴ There is a high likelihood that the mean sea level will continue to rise, leading to extremely high water levels in coastal areas. It is also shown that changes during heat waves, glacial retreats, and/or permafrost degradation will affect different landscapes and create instabilities. Leading to more extreme events, they will then impact water, agriculture and food security for humans as well as forestry, health and tourism.¹²⁵

The **IPCC Special Report on the impacts of global warming of 1.5°C** determined that by 2017, human-induced warming had reached approximately one °C above pre-industrial levels (the period 1850-1900) and was increasing at a rate of 0.2°C per decade (high confidence). Consequently, ambitious mitigation actions were deemed essential to limit warming to 1.5°C.¹²⁶ The report also found that any rise in global temperatures, such as an additional 0.5°C, was projected to negatively impact human health (high confidence). The risks were projected to be lower at 1.5°C compared to 2°C for heat-related morbidity and mortality (very high confidence) and for ozone-related mortality if emissions contributing to ozone formation remained high (high confidence).¹²⁷

The IPCC emphasised the critical need for immediate, integrated climate action, highlighting that climate change poses a significant threat to human well-being and planetary health. It warned that the opportunity to ensure a livable and sustainable future for all is rapidly closing (very high confidence). Climate-resilient development, which combines adaptation and mitigation efforts to promote sustainable development, relies on enhanced international cooperation, improved access to adequate financial resources, inclusive governance, and

¹²³ Ibid.

¹²⁴ Ibid B.

¹²⁵ Ibid D.

¹²⁶ IPCC, Special Report on the Impacts of Global Warming of 1.5°C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, Summary for Policymakers (IPCC, 2018) Chapter 1, Executive summary, pp. 51-52.

¹²⁷ Ibid p. 177.

coordinated policies (high confidence). The decisions and actions taken in this decade will have lasting effects for thousands of years (high confidence).¹²⁸

The Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems lays down that climate change exacerbates land degradation and desertification, threatening food security and biodiversity. Increasing temperatures, changing precipitation patterns, and more frequent extreme weather events are affecting land productivity and ecosystems.¹²⁹ Land surface air temperature has risen nearly twice as much as the global average temperature since the pre-industrial period.¹³⁰ Agriculture, Forestry and Other Land Use activities lead to 23% of total net anthropogenic emissions of GHGs (medium confidence).¹³¹ This number rises to between 21% and 37% if pre- and post-production activities in the global food system are also weighed in.¹³² Climate change imposes additional pressures on land, intensifying existing threats to livelihoods, biodiversity, human and ecosystem health, infrastructure, and food systems (high confidence). Projected impacts on land are expected to increase across all future GHG emission scenarios (high confidence). Certain regions will encounter heightened risks, while others will face previously unanticipated risks (high confidence).¹³³

Those four chosen scientific reports, among various others, that would be available, prove for once that the anthropogenic impact on climate change is clearly visible. They also prove the following consequences for human health, wellbeing, and living standards. In conjunction with the rights that have been discussed in the treaties, as well as what will be discussed in the jurisprudence, they prove that effects may still be mitigated, or rather, have to be mitigated, and the environment must be protected to be able to provide and protect humans and their rights. Therefore, they are the scientific base for why the R2HE should be enforced.

¹²⁸ Ibid p. 25.

¹²⁹ IPCC, Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems (IPCC, 2019) Summary A.2.

¹³⁰ Ibid.

¹³¹ Ibid Summary A.3.

¹³² Ibid.

¹³³ Ibid Summary, A.5.

D. Case law relevant to identification and interpretation of customary international law

The following part lays down existing jurisprudence on an international, regional, and domestic level with the aim of identifying State practice on all those different levels and helping interpret the *opinio juris* of the States concerned.

The first part is structured into three subcategories: decisions from the (1.1) CCPR, (1.2) CRC and (1.3) the International Tribunal for the Law of the Sea.

Further, the regional jurisprudence is split into decisions from the (2.1) European Court of Human Rights (hereinafter ECtHR), (2.2) the Inter-American Court of Human Rights (hereinafter IACtHR) and (2.3) the African Commission on Human Rights.

The part of domestic jurisprudence is split into several States and their chosen national cases. The aim of analysing domestic jurisprudence was to prove the widespread State practice needed for CIL.

1. International jurisprudence

1.1 Human Rights Committee

In the case of *Ioane Teitiota v. New Zealand (2020)*, a Kiribati citizen was denied asylum in New Zealand, where the Supreme Court upheld the lower courts' decisions, ruling that the appellant did not qualify as a refugee under international human rights law.¹³⁴ However, the Court noted 'that environmental degradation resulting from climate change or other natural disasters could [] create a pathway into the Refugee Convention or protected person jurisdiction.'¹³⁵

In the next step, Ioane Teitiota, therefore, filed a petition to the CCPR.¹³⁶ The Committee could, in the end, not find a violation of Article 6 ICCPR because of the State's possibility to still act on the matter.¹³⁷

However, concerning this decision of the Committee, there were two dissenting opinions of Committee members who have argued in different approaches as to why, in fact, the acts or, better, the omissions of the State should be considered a violation of Article 6. Committee member Duncan Laki Muhumuza lays down that the conditions that the author claims "are

¹³⁴ *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 12.

¹³⁵ *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107 2.10.

¹³⁶ *Ioane Teitiota v New Zealand* (Communication No 2728/2016, UN Human Rights Committee, 2020) UN Doc CCPR/C/127/D/2728/2016 2.

¹³⁷ *Ibid* 9.12.

significantly grave and pose a real, personal and reasonably foreseeable risk of a threat to his life under article 6 (1)"¹³⁸ He also refers to the Human Rights Committee general comment No. 36 (2018) on the right to life (para 3) that the Committee shall ensure that the right to life also allows an individual to "to enjoy a life with dignity, and to be free from acts or omissions that are intended or may be expected to cause their unnatural or premature death"¹³⁹

The second dissenting opinion of Committee Member Vasilka Sancin lays down that the mentioned missing access to safe drinking water does indeed pose an imminent threat to the author's life.¹⁴⁰ Moreover, as mentioned in the findings of the CCPR, mere access to "potable water" does not equate to "safe drinking water". As shown in the findings of the Special Rapporteur on the human right to safe drinking water and sanitation, Kiribati has failed to implement its National Development Strategy 2003-2007 to ensure safe drinking water, and therefore, it should rather be in the State's responsibility to demonstrate that the author may enjoy access to safe drinking water. There is a positive obligation of the State to protect its citizens' lives from risks arising.¹⁴¹ See Annex D.1.1.1.

The *Ioane Teitiota v. New Zealand* case supports the evolving recognition of the R2HE by highlighting the link between environmental degradation and human rights protections. Although the CCPR did not find a violation of Article 6, dissenting opinions are crucial. Committee member Duncan Laki Muhumuza argued that environmental risks posed a foreseeable threat to life, aligning with the right to life under General Comment No. 36, which includes protection from environmental harm. Similarly, Vasilka Sancin emphasised the State's obligation to ensure safe drinking water, noting that the lack of access posed a direct threat to life. These dissenting views strengthen the argument that environmental protection is integral to human rights and further support the recognition of R2HE in customary international law.

In the case of *Daniel Billy et al. v. Australia (2022)*, eight Torres Strait Islanders and six of their children accused the Australian government of failing to protect their human rights under the ICCPR by inadequately addressing climate change.¹⁴² The complaint to the CCPR

¹³⁸ Ibid Annex I.

¹³⁹ Ibid.

¹⁴⁰ Ibid Annex II.

¹⁴¹ Ibid.

¹⁴² *Daniel Billy et al. v Australia* (Communication No 3624/2019, UN Human Rights Committee, 2022) UN Doc CCPR/C/135/D/3624/2019 1.1.

highlighted violations of ICCPR Article 27 (right to culture), Article 17 (right to privacy, family, and home), and Article 6 (right to life) due to inadequate climate mitigation and coastal defence measures.¹⁴³

Despite not finding a violation against Article 6, the CCPR mentioned that climate change can indeed lead to a reasonably foreseeable threat to life. A violation of Articles 17 and 27 was found. The CCPR mentioned that according to Article 17, “[W]hen environmental damage threatens disruption to privacy, family and the home, States parties must prevent serious interference with the privacy, family and home of individuals under their jurisdiction.”¹⁴⁴

Concerning Article 27, the CCPR found that the failure to adopt timely climate change adaptation measures to protect the Islanders' collective ability to preserve and practice their culture constitutes a violation of Article 27 of the Covenant.¹⁴⁵ The relevant parts of the decision can be found in Annex D.1.1.2.

In a dissenting opinion and another partially dissenting opinion, Committee Members published that they are convinced that a violation of Art 6 should have also been found, considering that the Member States have “a positive obligation to minimise “reasonably foreseeable threats to life.”¹⁴⁶

This decision shows that it is not merely the right to life that is concerned when it comes to the effects of environmental harm. There is no mention of the R2HE, obviously, since the claims are based on the ICCPR, yet what can be said is that the R2HE stems and can be found in the rights from the ICCPR. The rights protected in this convention, as shown in the decisions of the CCPR, cannot be guaranteed without guaranteeing a R2HE. Further, the dissenting opinions show that there are indeed experts who do believe that Art. 6 was violated and a R2HE can be drawn from it.

The *Daniel Billy et al. v. Australia* case contributes to the recognition of the R2HE by demonstrating how inadequate climate action can result in violations of cultural and personal rights. The CCPR's findings on Articles 17 and 27 highlight that environmental harm directly interferes with the ability of affected communities to maintain their way of life and personal spaces. Additionally, dissenting opinions emphasised that the failure to mitigate climate risks

¹⁴³ Ibid 3.1-3.6.

¹⁴⁴ Ibid 8.9.

¹⁴⁵ Ibid 8.14.

¹⁴⁶ Ibid Joint opinion of Committee members Arif Bulkan, Marcia V.J. Kran and Vasilka Sancin (partially dissenting).

should have also been recognised as a violation of the right to life, reinforcing the principle that States have a duty to protect individuals from foreseeable environmental threats. This case underscores the growing expectation that States must adopt timely measures to address climate impacts, further advancing the argument for R2HE as a norm under international law.

In the case *Portillo Cáceres v. Paraguay (2019)*, twelve Paraguayan nationals claimed the State violated their rights under articles 6, 7, and 17 of the ICCPR, both alone and in conjunction with article 2(3).¹⁴⁷ The Committee found a violation of Articles 6, 17, and 2(3) in conjunction with Articles 6 and 17 (relevant parts of the Views can be found in Annex D.1.3). The CCPR noted the authors' claim that the State's failure to act violated Article 6 of the Covenant, both regarding Mr. Portillo Cáceres, who died from pesticide poisoning, and the other authors, who were not protected from similar harm. Referring to its General Comment No. 36, the Committee reaffirmed that the right to life includes protection from environmental threats, such as pollution, that could lead to premature or unnatural death. Given the large-scale pesticide fumigation, which contaminated the area and caused poisoning, the Committee found a violation of Article 6 and, due to the impact on the authors' homes and way of life, also a violation of Article 17.¹⁴⁸ The *Portillo Cáceres v. Paraguay* case supports the R2HE by highlighting the State's obligation to protect individuals from environmental harm. With the violations found, the CCPR reaffirmed that the right to life includes an individual's right to protection from environmental threats like pollution.

Concerning the proof that all of the above-mentioned cases of the CCPR represent State practice, it should be considered that the CCPR consists of independent experts and cannot be considered as acts of one State or all the member States. Yet the member States accepted and agreed that these experts are able to give comprehensive and influencing opinions as well as handle and decide over individual complaints. Despite not being legally binding, the CCPR has a highly authoritative role and will communicate recommendations to the member States, who want, as parties to the underlying treaty, to be willing to adhere to the obligations

¹⁴⁷ *Portillo Cáceres v Paraguay* (Communication No 2752/2016, UN Human Rights Committee, 2019) UN Doc CCPR/C/126/D/2752/2016. 2.1.

¹⁴⁸ Ibid.

of the treaty.¹⁴⁹ Therefore, the decisions and opinions of those cases play a role in forming the opinion of the States and also leading to State practice as an outcome.

1.2 United Nations Committee on the Rights of the Child

In the case *Sacchi et al. v. Argentina et al. (2021)*, sixteen children of various nationalities filed a complaint to the Committee on the Rights of the Child (CRC) against Argentina (as well as Brazil, France, Germany and Türkiye).¹⁵⁰ They complained about being victims of climate change and that the respondent States (a) fail to prevent foreseeable human rights violations by reducing their emissions at the “highest possible ambition” level and (b) delay the high cuts in carbon emissions that would be needed to protect lives and welfare of children at home and abroad.¹⁵¹ The case was declared inadmissible due to the non-exhaustion of domestic remedies, yet the CRC determined important points, such as the scope for extra-territorial jurisdiction in relation to environmental protection as well as their victim status. The relevant parts of the decision can be found in Annex D.1.2.1. The *Sacchi et al. v. Argentina et al. case*, though declared inadmissible, contributes to the recognition of the R2HE by proving the responsibility of States to prevent individuals from foreseeable harm from climate change. The CRC emphasised the relevance of extra-territorial jurisdiction in environmental protection and acknowledged the children as victims of climate change. This case underscores the global nature of environmental harm and States' duties to take ambitious action to mitigate emissions in mind with the impact on individuals, and hence the R2HE.

1.3 International Tribunal for the Law of the Sea

On 21 May 2024, the International Tribunal for the Law of the Sea issued an Advisory Opinion on States' obligations to protect and preserve the world's oceans from climate change impacts in unanimous agreement.¹⁵² Throughout the opinion, the Court refers to the scientific reports of the IPCC, legally strengthening the importance of those scientific reports and linking the facts of climate change to the health and environment of the seas.¹⁵³ The relevant parts can be found in Annex D.1.31. The Advisory Opinion advances the R2HE by

¹⁴⁹ OHCHR, ‘Individual Complaint Procedures under the United Nations Human Rights Treaties’ Factsheet Nr 7/2 (UN 2013) 11.

¹⁵⁰ *Sacchi and Others v. Argentina* (Communication 104-108/2019 Committee on the Rights of the Child, 2021) UN Doc. CRC/C/88/D/104/2019.

¹⁵¹ *ibid* 3.

¹⁵² *Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) 2024 ITLOS Nr. 31.

¹⁵³ *ibid*.

acknowledging that climate change has real and measurable impacts on the world's oceans, which, in turn, affect individuals. The legal recognition of environmental degradation as a threat to human life and dignity allows for stronger protections under international law, ensuring that individuals have recourse when their environment—and, by extension, their rights—are endangered. In essence, the Advisory Opinion empowers individuals by affirming that States must take climate action to protect the oceans, which are crucial to sustaining life and environmental balance. This is a critical step in embedding the R2HE within international legal frameworks, offering individuals greater protection and the ability to demand action from their governments. An advisory opinion, as such, does not have a legally binding force upon the States, yet it has historically proven to be highly influential. Therefore, the opinions should be considered by the member States and lead to State practice concerning the outcome of the decision.

2. Regional jurisprudence

2.1 ECtHR

In *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024)*, the applicants included an association under Swiss law dedicated to promoting and implementing effective climate protection (“*Verein KlimaSeniorinnen*”) on behalf of its over 2,000 members, primarily women aged over 70. Additionally, four women, all members of the association and over 80 years old, are involved.¹⁵⁴ They complained about health issues that worsened during heatwaves, significantly impacting their lives, living conditions, and health.¹⁵⁵ The Court found that there were critical gaps in the Swiss authorities' process and concluded the following relevant findings that can be found in Annex 2.1.1.

The findings in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024)* significantly strengthen R2HE by expanding its scope to include the impact of climate change on vulnerable populations, such as the elderly. The case underscores that States have a duty to protect individuals from foreseeable climate-related harms, linking environmental degradation directly to human rights. It reinforces the idea that insufficient climate action can constitute a violation of R2HE, thereby advancing the recognition of State obligations to take proactive measures in addressing climate risks, further solidifying R2HE in international human rights law.

¹⁵⁴ *Klimaseniorinnen v Switzerland* App No. 53600/20 (ECtHR, 09 April 2024) (‘*Klimaseniorinnen*’) paras 10-19.

¹⁵⁵ *Klimaseniorinnen* paras 10-82.

In *Duarte Agostinho & Others v. Portugal & 31 Others (2024)*, six young adults and children from Portugal filed a complaint with the ECtHR against 33 countries.¹⁵⁶, claiming that the respondent States violated their human rights by not taking sufficient action on climate change, and therefore, they longed for an order to demand more ambitious actions from the States.¹⁵⁷

The court found no basis to extend the judicial application as the applicants requested, establishing territorial jurisdiction only for Portugal. The complaint against other respondent States was, therefore, inadmissible. Additionally, since the applicants had not exhausted domestic remedies in Portugal, the complaint against Portugal was also deemed inadmissible.

Nevertheless, the court mentioned that Art 8 of the ECHR should be considered a right to effective protection from the serious effects of climate change and its impact on their life, health, well-being and quality of life.¹⁵⁸ The relevant findings can be found in Annex D.2.1.2. This leads to the fact, that every individual, has the right to claim effective protection from the serious effects of climate change and its impact on their life. This is effectively a R2HE, since the individuals can demand the protection from effects, and herewith may demand a healthy environment.

In *Careme v. France (2024)*, the former mayor of Grande-Synthe filed a complaint with the ECtHR under Articles 8 and 2 of the ECHR, arguing that the French government's inadequate climate action violated his rights. In 2019, he and the municipality requested the Council of State to annul the government's refusal to adopt stronger climate measures. On July 1, 2021, the Council of State ruled that the reduction in emissions was insufficient and ordered the government to take additional measures by March 31, 2022, to meet the 40% GHG reduction target by 2030. However, the applicant's personal claim was dismissed. Before the ECtHR, he argued that this dismissal ignored his personal exposure to climate risks.¹⁵⁹

The relevant findings can be found in Annex D.2.1.3.

¹⁵⁶ The Member States of the Council of Europe (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Denmark, Estonia, Finland, France, Croatia, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain and Sweden) as well as Norway, Russia, Switzerland, Turkey, Ukraine and the United Kingdom.

¹⁵⁷ *Duarte Agostinho and Others v. Portugal and Others* App No 39371/20 (ECtHR, 09 April 2024) ('*Duarte Agostinho*') paras 12-30.

¹⁵⁸ *Ibid* 519.

¹⁵⁹ *Carême v. France* App No 7189/21 (ECtHR, 09 April 2024) Grand Chamber.

Despite the fact that both cases were inadmissible in the end, what is important in connection to a R2HE is that the court clearly notes that the individual's rights for effective protection concerning environmental harm shall be guaranteed, as well as the fact that the States are responsible for not meeting their climate goals. This, therefore, shows that a R2HE already exists, though the application is still connected to challenges.

2.2 Inter-American Court of Human Rights

In Community of *La Oroya vs Peru (2021)*, the Inter-American Commission on Human Rights (hereinafter IACHR) filed an application with the Inter-American Court of Human Rights (IA Court) about the responsibility of the State Peru towards the La Oroya Community that was violated in their right to a healthy environment due to pollution by a metallurgical complex in the community.¹⁶⁰

Based on the translations from a 2024 article by David Boyd, UN Special Rapporteur on Human Rights and the Environment, the most relevant paragraphs of the decision are 120,126,129, 231,294 (see Annex C.2.2.1).¹⁶¹

Those paragraphs mention that the right to clean air stems from the right to a healthy environment and that States have obligations to set laws, monitor the air quality and implement and enforce action plans to address the issues.¹⁶²

Further, States must guarantee the interests of both present and future generations and should recognise that Environmental pollution disproportionately affects marginalised and vulnerable groups, including those facing poverty, discrimination, and systemic marginalisation, such as pregnant women, children, and the elderly.¹⁶³

In November 2017, the Inter-American Court of Human Rights published an **Advisory Opinion concerning “The Environment and Human Rights.”**¹⁶⁴ The Court determined

¹⁶⁰ Inter-American Commission on Human Rights, 'Press Release: IACHR Files Case Before IA Court on Peru's Responsibility for the Effects of Contamination in La Oroya Community' (14 October 2021) <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/274.asp> accessed 01 September 2024.

¹⁶¹ David Boyd, 'Landmark Court Decision on Right to a Healthy Environment: La Oroya v Peru' (Global Network for Human Rights and the Environment, 24 March 2024) <<https://gnhre.org/?p=17944>> accessed 05 October 2024.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Inter-American Court of Human Rights, State Obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: Interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2, Advisory Opinion OC-23/17 on the environment and human rights, 15 November 2017.

that a right to a healthy environment stems from Article 26 of the American Convention (Economic, social, and Cultural Rights).¹⁶⁵ The relevant concluding findings of the Advisory Opinion are laid down in Annex D.2.2.2. This is another proof, that the R2HE can be drawn from an existing right in the American Convention.

2.3 African Commission on Human and People's Rights

The case *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria (2001)* originated with the claims of the Ogoni people that a number of their fundamental rights had been violated by the Nigerian military regime, acting through the State oil company, which had failed to take measures to protect the local population from acts harmful to the environment.¹⁶⁶

The Commission went on to find a violation of the right of peoples to dispose freely of their wealth and natural resources and of the right to a clean and safe environment protected by Articles 21 and 24 of the Banjul Charter when State exploitation of oilfields polluted the environment of the Ogoni people.¹⁶⁷ The relevant parts are paragraphs 50-53 and 68 (see Annex C.2.3.1), which lay down that the Commission found that States need to take reasonable measures to protect a R2HE. It also refers to the special role of the African Charter when it comes to protecting individuals' rights and determines that environmental rights are clearly human rights and shall be protected as such.

3. Domestic jurisprudence

3.1 Austria

In 2014, in *Decision W104 2000178-1 of the Bundesverwaltungsgericht* in Austria, the Federal Administrative Court had to decide whether the planned project of a high-voltage electricity switching sub-station was allowed to be constructed. An environmental compatibility and impact test was carried out as a base for this decision. The court investigated the effect the project would have on the environment and the outcomes and advantages it plans to have.¹⁶⁸ The relevant parts of the decision can be found in Annex D.3.1.1.

¹⁶⁵ Klimaseniorinnen 225.

¹⁶⁶ Naldi GJ. The African Union and the Regional Human Rights System. In: Evans M, Murray R, eds. *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (CUP 2008) 20-48.

¹⁶⁷ *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria* (African Commission on Human and Peoples' Rights 27 October 2001) Communication No 155/96 para. 52.

¹⁶⁸ Bundesverwaltungsgericht BVWG 26.08.2014, W104 2000178-1.

This is only one of several decisions in Austria, though it does show that the individual's rights are considered when undertaking projects that impact the environment. In a way, this can be considered as a R2HE, examining projects before they are undertaken to ensure that the rights of the citizens are not harmed due to harm done to the environment.

3.2 Colombia

In *Future Generations v. Ministry of the Environment and Others (2018)*, 25 youth plaintiffs aged 7 to 26 sued various Colombian government bodies, municipalities, and corporations to enforce their rights to a healthy environment, life, health, food, and water. They argue that climate change and the government's failure to reduce deforestation and meet the zero-net deforestation target for the Colombian Amazon by 2020 threaten their fundamental rights.¹⁶⁹ The plaintiffs filed a "tutela," a special constitutional claim to enforce fundamental rights.¹⁷⁰ The court found that, indeed, those rights should be protected. The decision was based on duties towards people on the planet as well as the environmental rights of future generations.¹⁷¹ This is an important State practice and opinion, adding to CIL by representing those acts for a State in South America, adding to the diversity of various States that show the practice of R2HE, as the individuals were able to claim their R2HE in form of fundamental rights. The relevant provisions are laid down in Annex D.3.2.1.

3.3 Ecuador

In *Texaco v. Aguinda (2001, 2003)*, a group of Ecuadorian plaintiffs sued Texaco (later Chevron) in alleging environmental damage and health issues from Texaco's oil operations in the Ecuadorian Amazon from 1964 to 1992. The plaintiffs claimed that Texaco's activities led to severe contamination of soil and water, resulting in adverse health effects and environmental destruction.¹⁷² The Ecuadorian court found Texaco liable for environmental damage caused by oil drilling in the Ecuadorian Amazon.¹⁷³ The relevant articles are to be found in Annex D.3.3.1. The violations found by the court allowed the citizens to ensure their R2HE, since the claim was their right for a protection given by the government if a company damages the environment.

¹⁶⁹ *Future Generations v. Ministry of the Environment and Others* "Demanda Generaciones Futuras v. Minambiente (Unofficial Translation of Excerpts from the Supreme Court Decision 04 April 2018) 1.2.1 – 1.2.3.

¹⁷⁰ Ibid introduction.

¹⁷¹ Ibid 5.2-5.3.

¹⁷² *Aguinda v. Texaco, Inc.*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001).

¹⁷³ *Maria Aguinda et. Al. v. Chevron Texaco Corporation*, (High Superior Court of Justice of Nueva Loja, Unofficial Translation of the Judgement February 2011).

3.4 Germany

In the ***Climate protection ruling German Constitutional Court*** decision of 24 March 2021, the German Federal Constitutional Court ordered that the Federal Climate Change Act of 12 December 2019 (Bundes-Klimaschutzgesetz – KSG) lacks sufficient specifications on how further emission reductions from 2031 and onwards shall be managed.¹⁷⁴ The relevant provisions of the headnotes of the order are laid down in Annex D.3.6.1. With this decision, the German Constitutional Court sets an important precedent of ensuring that the obligations to emission reductions may not be neglected by the State. This leads to the fact that individuals can be ensured that they have indeed a R2HE, and they have the right to claim if the State fails to meet targets.

3.5 The Netherlands

In the ***Urgenda Foundation v. The State of the Netherlands (2019)*** case, the Dutch Supreme Court affirmed lower court decisions requiring the Dutch government to reduce greenhouse gas emissions by at least 25% by 2020, finding that the government had a duty of care to protect its citizens from the effects of climate change.¹⁷⁵ The relevant findings of the Court from the official summary of the judgement are found in Annex D.3.5.1.

This case was a milestone in the R2HE because the court clearly defined the duties of the State towards its citizens concerning the effects of climate change, therefore ensuring the R2HE.

In ***Milieudefensie/Friends of the Earth Netherlands v. Royal Dutch Shell (2021)***, the Milieudefensie/Friends of the Earth Netherlands and co-plaintiffs sued Shell in the Hague District Court, claiming Shell's contributions to climate change violate its duty of care under Dutch law and human rights obligations. The plaintiffs, including several NGOs and over 17,000 citizens, sought a court order for Shell to reduce its CO2 emissions by 45% by 2030 and to zero by 2050, in line with the Paris Agreement.¹⁷⁶ The relevant provisions can be found in Annex D.3.5.2. This case is relevant because it shows that the court does not believe that only the State is responsible for the R2HE, but also companies may be called upon their

¹⁷⁴ *Climate Protection Ruling* Bundesverfassungsgericht (German Constitutional Court) (24 March 2021) 1 BvR 2656/18.

¹⁷⁵ *Urgenda Foundation v The State of the Netherlands* (Supreme Court of the Netherlands, 20 December 2019) ECLI:NL:HR:2019:2006.

¹⁷⁶ *Milieudefensie et al. v. Royal Dutch Shell plc.* (The Hague District Court, 26 May 2021) ECLI:NL:RBDHA:2021:5339 para 2.1.

duty to care. It allows for a higher efficiency of a R2HE since claims can also be made towards companies, and it gives another layer of protection and the possibility of justice to individuals.

3.6 Pakistan

In ***Leghari v. Federation of Pakistan (2015)***, Ashgar Leghari, a Pakistani farmer, sued the national government for failing to implement the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030). He argued that the government's inaction on climate adaptation impacted Pakistan's water, food, and energy security, violating his fundamental right to life.¹⁷⁷ In its final order, the court highlighted climate justice as the successor to environmental justice, emphasising a human-centred approach that links human rights with development.¹⁷⁸ The relevant findings are laid down in Annex D.3.6.1. The court's findings noted that the right to life includes the right to a healthy and clean environment.¹⁷⁹ This proves the R2HE present in jurisprudence also in different countries than the ones previously mentioned, differing in its characteristics such as economy, culture and development.

3.7 United States of America

In ***Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc. (2000)***, a citizen suit by the Friends of the Earth (FOE) under the Clean Water Act against the company Laidlaw that had been discharging pollutants into a river. The Fourth Circuit Court of Appeals held that the plaintiff had standing to bring the suit and that the company had violated the Clean Water Act.¹⁸⁰ The case shed light on the definition and use of public interest, as in the final decision, Judge Ginsburg explained that a plaintiff may claim individual rights from environmental harm done, which is, in general, in the public interest rather than an individual's interest. It must be proven that the individual is personally affected by the harm.¹⁸¹ It is relevant because it shows that if an individual is affected, the rights, including the R2HE, must be protected and may be claimed. The relevant parts are found in Annex D.3.7.1.

¹⁷⁷ *Leghari v Federation of Pakistan* ((Lahore High Court, 4 June 2015) PLD 2015 SC 365).

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid* 12.

¹⁸⁰ *Friends of the Earth v Laidlaw Environmental Services (TOC), Inc.*, 528 US 167 (2000).

¹⁸¹ Emily Longfellow, 'Friends of the Earth v Laidlaw Environmental Services: A new look at environmental standing' [2000] 24 *Environs Environmental Law and Policy Review Journal UC Davis* 1:3 29
<<https://environs.law.ucdavis.edu/volumes/24/1/articles/longfellow.pdf>> accessed on 08 June 2023.

E. Special procedures

‘The crown jewel of the [human rights] system’ is what Kofi Annan called the Special Procedures (SP) during a message to the 3rd Session of the Human Rights Council (HRC) on 29th November 2006.¹⁸² Special procedures in human rights are either an individual who is referred to as “Special Rapporteur” or “Independent Expert” or a working group with five members, where each one represents one of the five UN regional groupings; they play a key role in expanding international human rights and ensure human rights protection and promotion.¹⁸³ This is due to their impartiality and independence as well as their influences through monitoring and fact-finding, but they are also playing a role in setting standards. In the past, Special Rapporteurs have been influenced by their contributions to the elaboration, interpretation, and implementation of international human rights law.¹⁸⁴

1. Special Rapporteur on the human right to a clean, healthy and sustainable environment

1.1 Framework principles on human rights and the environment

The UN Special Rapporteur in 2018 published a report summarising the main human rights obligations connected to the enjoyment of a safe, clean, healthy and sustainable environment.¹⁸⁵ In my opinion, the most relevant of the principles are the following, whereas the entire report went into detail about other obligations:

“Framework principle 1

States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.

Framework principle 2

States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.”

¹⁸² UN Secretary General, in Message to Human Rights Council, Cautions against Focusing on Middle East at expense of Darfur, Other Grave Crises’ (un, 29 November 2006) <www.un.org/press/en/2006/sgsm10769.doc.htm> accessed 13 August 2024.

¹⁸³ Aoife Nolan, Rosa Freedman, and Thérèse Murphy, *The United Nations Special Procedures System* (Routledge 2017).

¹⁸⁴ Surya P. Subedia, Steven Wheatley, Amrita Mukherjeeb and Sylvia Ngane, ‘The role of the special rapporteurs of the United Nations Human Rights Council in the development and promotion of international human rights norms’ (2011) 15 *The International Journal of Human Rights* 2.

¹⁸⁵ HRC, ‘Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment’ ‘Framework principles on human rights and the environment, annexed to the Special Rapporteur’s Report’ (24 January 2018) UN Doc A/HRC/37/59.

1.2 2019 Report to the Human Rights Council (A/HRC/40/55)

In this report from January 2019, the Special Rapporteur focused on the right to breathe clean air as one of the human rights to a safe, clean, healthy and sustainable environment. The most important point, which can also be seen in the relevant terms in Annex E.1.2, is that States have clear obligations to protect human rights from environmental harm, particularly air pollution, which poses significant risks to these rights. Given the foreseeable and preventable effects of poor air quality, States must take immediate action. In 2017, UN experts highlighted that air pollution is a serious threat, requiring States to prevent and control toxic exposure to protect human rights.¹⁸⁶

The framework principles on human rights and the environment outline three relevant categories of obligations: procedural, substantive, and special. Procedural obligations involve ensuring public participation and access to information and justice. Substantive obligations require States to avoid violating the right to clean air, protect it from third-party violations (especially by businesses), and enforce laws and policies to fulfil this right. States must also prevent discrimination and avoid rolling back protections.¹⁸⁷

Special obligations apply to vulnerable groups, requiring additional measures to safeguard their right to clean air. In sum, States must address air pollution as a human rights issue, ensuring effective legal frameworks and prioritising the protection of vulnerable populations without regressing on progress.¹⁸⁸

1.3 2019 Report to the General Assembly

Building on the framework principles on human rights and the environment from his predecessor (see 1.1), the Special Rapporteur noted the following towards the UNGA. The especially relevant paragraphs are 63-66 and 70. They put a focus on the framework principles on human rights and the environment that establish three key State obligations—procedural, substantive, and special obligations towards vulnerable populations—that can be applied in the context of climate change to respect, protect, and fulfil human rights.¹⁸⁹

Procedural obligations require States to provide accessible and affordable information on climate change, integrate it into education, ensure inclusive and gender-based public

¹⁸⁶ HRC, 'Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' 'Report of the Special Rapporteur' (8 January 2019) UN Doc A/HRC/40/55.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ UNGA, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (15 July 2019) UN Doc A/74/161.

participation in climate actions, and enable access to justice and effective remedies. States must assess the human rights impacts of climate policies, respect indigenous rights (such as free, prior, and informed consent), and protect environmental and human rights defenders from harassment and violence.¹⁹⁰

Substantive obligations compel States to ensure that their actions do not violate the right to a safe climate, protect this right from third-party infringements (particularly by businesses), and enforce laws and policies that fulfil this right. States must also avoid discriminatory and retrogressive measures in their climate actions, which include obligations related to mitigation, adaptation, finance, and addressing loss and damage.¹⁹¹

International environmental law reinforces these human rights obligations through the "no harm" rule, which prohibits polluting activities that cause harm across borders. Violations of this rule, such as greenhouse gas emissions that contribute to global climate damage are increasingly seen as violations of customary international law. The landmark *Urgenda case* in the Netherlands set a precedent by holding the government accountable for meeting its climate commitments under international human rights law.¹⁹²

In 2018, the Committee on Economic, Social and Cultural Rights warned that failure to prevent foreseeable climate-related harm or to mobilise maximum resources to address it constitutes a breach of States' human rights obligations. States must allocate their maximum available resources to promote renewable energy, clean transport, sustainable agriculture, and adaptive measures, particularly for vulnerable communities. Failure to meet international climate commitments is seen as a violation of the duty to protect citizens' human rights.¹⁹³

1.4 *"Right to a healthy environment: good practices" Report to the Human Rights Council 2020*

In this report, the Special Rapporteur summarised good practices concerning the implementation of the human right to a safe, clean, healthy and sustainable environment based on 175 States.¹⁹⁴ The mere fact that so many States have recognised the right itself can be considered good practice according to the Special Rapporteur.

The relevant parts of the report are III.A.9-13 (see Annex E.1.14).

¹⁹⁰ Ibid 64.

¹⁹¹ Ibid 63.

¹⁹² Ibid 66.

¹⁹³ Ibid 70,74.

¹⁹⁴ HRC, 'Right to a healthy environment: good practices' (30 December 2019) UN Doc A/HRC/43/53.

The Special Rapporteur highlights, the importance of legally recognising the right to a safe, clean, healthy, and sustainable environment, which may be considered a "good practice" in environmental protection already. This legal recognition can occur through constitutional protection, environmental legislation, or the ratification of regional treaties.¹⁹⁵

Constitutional protection of this right exists in 110 States, which is significant because constitutions hold the highest legal authority in domestic systems and reflect societal values and aspirations.¹⁹⁶

Regional treaties supporting this right have been ratified by 126 States. These treaties include the African Charter on Human and Peoples' Rights, the Aarhus Convention, the Protocol of San Salvador, and the Arab Charter on Human Rights. Additionally, the recent Escazú Agreement in Latin America and the Caribbean requires further ratifications to enter into force.¹⁹⁷

National legislation also plays a critical role, with 101 States incorporating the right into domestic law. Countries like Argentina, Brazil, Colombia, Costa Rica, France, the Philippines, Portugal, and South Africa stand out for using the right to a healthy environment as a guiding principle in their laws, policies, and regulations.¹⁹⁸

Overall, more than 80% of UN Member States (156 out of 193) legally recognise the right to a safe, clean, healthy, and sustainable environment, whether through constitutions, legislation, or treaties. The Special Rapporteur also compiled the relevant legal texts recognising this right.¹⁹⁹

1.5 *"The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals" (A/77/284, 2022)*

In this thematic report, the Special Rapporteur specifically highlighted the Sustainable Development Goals (SDGs) and concluded the following relevant parts:

"(a) Incorporate the right to a clean, healthy and sustainable environment at all levels. (global, regional and national), including in a legally binding global instrument, the Universal Declaration of Human Rights, post-2020 global biodiversity framework, the European Convention on Human Rights and national constitutions, legislation and policies;

(b) Acknowledge that the Goals are built on a robust foundation of human rights law,

¹⁹⁵ Ibid III.A.9.

¹⁹⁶ Ibid III.A.10.

¹⁹⁷ Ibid III.A.11.

¹⁹⁸ Ibid III.A.11, 12.

¹⁹⁹ Ibid III.A.13.

establishing legally binding obligations;”

2. Special Rapporteur on the promotion and protection of human rights in the context of climate change

2.1 “Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation” (A/77/226)

With its mandate established in 2021, this Special Rapporteur published a 2022 thematic report to the UNGA providing the following especially relevant recommendations 89,90, 97,98 (see Annex E.2.1).

The Special Rapporteur makes several key recommendations to address the mitigation gap in climate change, expanding on those from a 2019 report on human rights and the environment. One important suggestion is the creation of an international human rights tribunal. This tribunal would hold governments, businesses, and financial institutions accountable for their continued investments in fossil fuels and carbon-intensive industries, given the human rights impacts these activities generate.²⁰⁰

Additionally, the Special Rapporteur recommends that all Member States include youth representatives in their national parliaments, ensuring that the concerns of younger generations, particularly on climate change, are prioritised. Furthermore, the UNGA is encouraged to grant legal standing to children and young people, including indigenous youth, in national, subnational, and international court systems. This would enable them to play a direct role in climate-related legal proceedings.²⁰¹

These recommendations aim to enhance accountability and ensure that the voices of younger generations are central to global climate action.

The interesting consideration about UN Special Rapporteurs is that their work has, as mentioned, become very influential in international law. I believe this is because, as experts, they bring a lot of knowledge and experience to their positions, and their independence and impartiality, is a special asset, considering they are concerned with highly politicised topics. Furthermore, through their research in countries on specific topics, they have data and proof to rely on during their reports and can create objective insights. The fact that the above-

²⁰⁰ UNGA, ‘Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change’ (26 July 2022) UN Doc A/77/226 90.

²⁰¹ Ibid 97-98.

mentioned mandates were renewed for many years adds to the fact that States see the importance of those topics and confirm the valuable positions of the Special Rapporteurs.

IV. Results

A. State practice on the right to a clean, healthy, and sustainable environment as customary international law

The analysed multilateral treaties, widely ratified, prove that States support protecting the environment and human implications of its degradation. Starting with the UNFCCC in 1992, where the 198 Member States acknowledged the need to protect the environment as a concern of humankind and formulated obligations and goals for it. Historically, the IEA focused first on goals and vague expressions of environmental protection in various areas, but over the years, the aim to ensure the health and well-being of humans crystalized. This is further supported by the regional agreements, where it can be seen that throughout all regions in the world, States felt the need to strengthen and develop the protection of the environment to protect humans further. Also, when looking at the EU, in particular, which in itself is a particular supranational organisation that drives on its principle of subsidiarity, but also solidarity and strong cooperation in the region, its main treaties TEU and TFEU, show that EU member States are committed to fundamental rights and their soft law such as the European Green Deal prove the existence of the State practice supporting the existence of the R2HE.

This shows that the practice needed to prove CIL exists at different levels in different regions, different economic areas and different cultures, considering that no matter if in Arabic, African or Asian regions, agreements have been concluded to ensure the protection of the environment, and hence lead to a right to a healthy environment for individuals. The Special Rapporteur on the human right to a clean, healthy and sustainable environment, David R. Boyd, stated that in 2020, 156 States had national legislation to protect the environment.²⁰² Thus, the practice can be considered diverse geographically, but also economically and geopolitically, which is also reflected in the number of agreements in different regions of the world that differ themselves in several of those characteristics. When it comes to the time element of the practices discussed, despite the fact that the ICJ confirmed there is no need for a specific time to have passed (see A.1), it could even be argued that the practices concerning R2HE started a long time ago. The earliest agreement discussed in this thesis

²⁰² HRC, 'Right to a healthy environment: good practices' (30 December 2019) UN Doc A/HRC/43/53.

was in 1982 (the UNCLOS), whereas on a regional level, the Kuwait Regional Agreement was as early as 1978. Further, the UNGA resolution directly confirmed the R2HE.²⁰³

What is possibly questionable is the practice of States that are not part of certain treaties to determine the existence of CIL. States that are not part of the mentioned treaties, at the very least, have not disagreed with decisions and/or the contents of the treaties.

B. *Opinio juris* on the right to a clean, healthy, and sustainable environment as customary international law

The Human Rights Council Resolution in 2018 already confirmed the existing practice of over 100 States. In another Human Rights Council Resolution in 2021, 47 States at least recognised that access to a healthy and sustainable environment is a universal right. The most crucial resolution was the UNGA Resolution in 2022 on the human right to a clean, healthy, and sustainable environment; with 161 States agreeing and only eight States casting their vote to abstain from the decision, a unanimous decision was made. Since the reaction of other States is also important for the creation of CIL, and here, the fact that 8 States decided to rather not cast a vote but actively decided not to vote against the decision, shows in my opinion, that they agree and believe that R2HE exists.

Since the ICJ confirmed in both Nicaragua as well as the Nuclear Weapons case that UNGA resolutions are evidence for *opinio juris*²⁰⁴ I believe this is the case with R2HE.

The various judgements of international, regional and national Courts, relying on different legislations, come to the same findings, namely that the R2HE is necessary for future generations, is a fundamental right, is a human right, is constitutionally protected in several countries, shows clearly, that the States do believe in R2HE as a legally binding right.

Another factor to prove the belief of the States is the special procedures as well as other bodies created through the UN system. By accepting visits of the Special Rapporteur in their country, States prove, in my opinion, their willingness to change and their commitment to believing in R2HE and its proper implementation. Moreover, the mere fact that certain mandates of Special Rapporteurs, specifically the mentioned mandate concerning the environment, as well as the creation of a new mandate concerning climate change, show that the States do consider this a matter of importance if they continually agree to it. Another

²⁰³ UNGA Res A/RES/76/300, 'The Human Rights to a Safe, Clean, Healthy and Sustainable Environment' (adopted 28 July 2022) UN Doc A/RES/76/300.

²⁰⁴ *Military and Paramilitary Activities Merits, Judgment para 188, Nuclear Weapons*, at 254, para. 70.

possibility to demonstrate the belief of the States in a R2HE is the mere existence of the IPCC, as well as the fact that their findings have become more and more established, legally recognised, and strengthened. Since the IPCC is a panel that consists of both scientists and State representatives, it shows that all the States involved agree with the idea that the environment needs to be protected. Furthermore, they also agree with the findings since the reports are always written by those panels where those said scientists and representatives work together and aim at finding both objective truths as well as possibilities for change. Therefore, a State whose officials are involved in the IPCC is estopped from claiming not to believe in the scientific proof of the impact of climate change as well as the belief in changes in policies.

V. Discussion

There is a lot of evidence to prove both State practice and *opinio juris* concerning the R2HE, as confirmed also by the Special Rapporteur David Boyd in his 2024 “User’s Guide to the Right to a Healthy Environment,” suggesting that the R2HE is increasingly viewed as CIL.²⁰⁵ As described in the elements of CIL, it is questionable how the States that do not seem to align with the other States react. Boyd mentioned in this regard that the majority of those States that do not yet legally recognise the R2HE are small island developing States that simply face capacity challenges in changing their laws and constitutions.²⁰⁶ However, as seen in the (B.4.3.1) Resolution of the UNGA for the recognition of the right to a healthy and sustainable environment, States other than some island States abstain during the vote. This means that the island States do indeed approve and agree and show their *opinio juris* to the R2HE but are rather incapable of implementing it, as opposed to the States who abstained from their vote, who, on the other hand, based on the statistics, treaties and jurisprudence discussed in both this master thesis as well as by David Boyd, have already accepted or, at the very least implemented some sort of practice through treaties or legislation. It could be argued that State practice and *opinio juris* exist in almost all States of the world.

The ICJ is currently in the process of preparing the advisory opinion about the obligations of States with respect to climate change and could possibly support the argument for the

²⁰⁵ David Boyd, ‘The Right to a Healthy Environment, A User’s Guide’ (OHCHR, 22 April 2024) 4.

²⁰⁶ Ibid.

presence of CIL.²⁰⁷ The IACtHR received a similar request and is developing an advisory opinion on the scope of State obligations for responding to the climate emergency under the frame of international human rights law and, specifically, under the American Convention on Human Rights. Together with the ITLOS decision mentioned in D.1.3.1, those three advisory opinions will for sure be moulding the approach of environmental protection stemming from international law, and with this, the R2HE, as the obligations that the advisory opinions refer to, create possibilities for individuals to claim their rights towards States. Environmental protection and R2HE are intertwined with each other, considering that environmental protection is needed to ensure R2HE is enforced.

Nevertheless, a few challenges to ensure R2HE remain. First and foremost, there is the “elephant in the room” concerning public international law, which is a lack of enforcement that followingly leads to a lack of accountability.²⁰⁸ Referring here to the example of Canada, which has not met its targets for GHG emissions in the past thirty years, and failure has not borne any consequences for the State.²⁰⁹

Moreover, States like to claim that it is not their sole responsibility, and it is difficult to calculate or pin down the impact made by their individual contribution and, therefore, also the obligations that should be kept by each one of them.

Based on the research mentioned in this thesis and by seeing the bigger picture of this issue, I believe the solution to overcome both challenges is right in front of our eyes.

Indeed, the lack of enforceability must be acknowledged. Still, the international instruments that have been developed, including their mechanisms, have already helped make it possible to implement the needed changes in environmental protection. In my opinion, this is also an issue that should be seen from an ethical point of view towards our contemporary society as well as future generations. In a way, it can be connected to aged philosophies of the mere existence and creation of law, which again leads to customary law. The idea that practices become law, as mentioned in Chapter A, is present in any society throughout history, and those laws have been created because of a demand in society. I believe that the same is happening currently regarding the need to protect a healthy and sustainable environment. The lack of enforceability can be overcome with the possibilities of enforceability found in different levels of law in connection to the obvious demand from citizens of this world.

²⁰⁷ International Court of Justice, Obligations of States in respect of Climate Change <<https://www.icj-cij.org/case/187>> accessed on 27 October 2024.

²⁰⁸ Ibid 11.

²⁰⁹ Ibid.

The ways of enforcing and the effectiveness of the existing laws could possibly be studied separately and are not covered in-depth by the research in this thesis.

Further, R2HE, in its definition, is a right for every individual to enjoy a clean, healthy and sustainable environment. Comparing a R2HE to other laws that come from international or regional obligations, the focus should not be on who is responsible for the cause but rather on how every party can ensure that the R2HE is provided for everyone. In a concrete example, this would mean the following: if an economic treaty is concluded internationally, it is also not questioned who brought along a possible economic crisis that led to the treaty in the first place. Yet the State parties will ensure that every individual may enjoy the outcomes of this economic agreement, without pushing away responsibility of what has created the need for a said agreement. Their focus will be on the enforcement of the newly raised international obligations without focusing on the fact that they may not be responsible for the reasons behind the agreement. The R2HE should, therefore, be treated in the same way.

When it comes to States claiming not to be solely responsible and trying to demand other actors to be more responsible, there is, again, already an existing solution in international law. The international environmental law treaties mentioned in Chapter B, but also the ones that were not included in this very study due to space limitations, have created and described the principle of “common but shared responsibilities”. It is clearly defined that, of course, not every State is equally responsible, and they may not all have the same possibilities, but they do indeed have a shared responsibility.²¹⁰ Connecting this, it is clear that not everyone has added to the previously caused harm to the environment in the same way, but what should be clear at this point in time, connected with the knowledge about climate change impacts from science, is that it is at the very least of the responsibilities of States to not allow harmful actions from now on. Everything that can be changed towards better practices, reducing impacts, and mitigating impacts should be changed within the possibilities of each and every State. This again connects to the R2HE being an individual right; the aim of “common but shared responsibilities” is to show that every State shall assume its responsibilities,

²¹⁰ Encyclopaedia Britannica, 'Common but Differentiated Responsibilities'
<<https://www.britannica.com/topic/common-but-differentiated-responsibilities>> accessed 01 September 2024.

especially when it comes to ensuring the rights towards the individuals in its area of responsibility.

Numerous existing and new cases are living proof that both national and international courts determine the obligations of actors (mainly States), and also define their responsibilities relevant to R2HE.

VI. Conclusion

There is a vast amount of evidence that proves State practice as well as *opinio juris* concerning the R2HE in international law. 156 States have recognised the right in different instruments such as multilateral treaties, national legislation, regional agreements, and jurisprudence.²¹¹ Among those are Aarhus Convention with 45 State parties, the San Salvador Protocol with 16 State parties and the African Charter on Human and Peoples' Rights with 52 State parties.²¹²

These instruments reflect not only the acknowledgment of environmental protection as a global priority but also show that the R2HE may be protected through human right instruments such as the CCPR and the CRC.

Jurisprudence on international level is shows that existing human rights may be interpreted and viewed in the light of a R2HE. National jurisprudence shows different angles that States take when it comes to enforcing a R2HE, such as implementing policies that demand citizen's participation or granting constitutional rights to ensure a R2HE. The adoption of key international instruments, including the 2022 UNGA resolution on R2HE, reinforces that States believe that the R2HE should be considered as a human right.

However, the precise scope and enforceability of the R2HE remain unsettled, presenting a challenge. Enforcement mechanisms are limited. Many States argue that their individual actions are insufficient to address the global environmental crisis, complicating the allocation of responsibility. The principle of "common but differentiated responsibilities" acknowledges the varying capabilities and responsibilities among States, but the absence of accountability mechanisms allows for non-compliance.

²¹¹ HRC, 'Right to a healthy environment: good practices' (30 December 2019) UN Doc A/HRC/43/53.

²¹² See Chapter B.

Nonetheless, the forthcoming advisory opinions of the ICJ and the IACtHR, and the already adopted ITLOS advisory opinion, carry a potential to further define the obligations of States under CIL, including with respect to the R2HE. These opinions will shape the future trajectory of the R2HE by clarifying the responsibilities of States in addressing environmental harm and protecting the rights of individuals.

The R2HE represents more than legal obligations—it embodies an ethical duty toward present and future generations. While enforcement mechanisms remain limited *de lege lata*, the ongoing development of regional and national frameworks, along with rising public demand for environmental justice, suggests that the R2HE will continue to gain traction. The future challenge is not to assign blame for past environmental damage but to ensure that all States, within their capabilities, actively contribute to securing a clean, healthy, and sustainable environment for all. As the recognition of the R2HE advances, international law must evolve to provide more effective enforcement mechanisms, aligning legal obligations with the urgent need for decisive action.

VII. Case law references

1. Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Advisory Opinion) 2024 ITLOS Nr. 31.
2. *Aguinda v. Texaco, Inc.*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001).
3. Bundesverwaltungsgericht BVWG 26.08.2014, W104 2000178-1.
4. *Carême v. France* App No 7189/21 (ECtHR, 09 April 2024) Grand Chamber.
5. Climate Protection Ruling Bundesverfassungsgericht (German Constitutional Court) (24 March 2021) 1 BvR 2656/18.
6. *Daniel Billy et al. v Australia* (Communication No 3624/2019, UN Human Rights Committee, 2022) UN Doc CCPR/C/135/D/3624/2019 1.1.
7. *Duarte Agostinho and Others v. Portugal and Others* App No 39371/20 (ECtHR, 09 April 2024) ('Duarte Agostinho').
8. *Friends of the Earth v Laidlaw Environmental Services (TOC), Inc.*, 528 US 167 (2000).
9. *Future Generations v. Ministry of the Environment and Others* "Demanda Generaciones Futuras v. Minambiente (Unofficial Translation of Excerpts from the Supreme Court Decision 04 April 2018).
10. Inter-American Court of Human Rights, Advisory Opinion OC-23/17.
11. International Court of Justice, Obligations of States in respect of Climate Change <<https://www.icj-cij.org/case/187>> accessed on 27 October 2024.
12. *Ioane Teitiota v New Zealand* (Communication No 2728/2016, UN Human Rights Committee, 2020) UN Doc CCPR/C/127/D/2728/2016 2.
13. *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* [2015] NZSC 107.
14. *Klimaseniorinnen v Switzerland* App No. 53600/20 (ECtHR, 09 April 2024) ('Klimaseniorinnen').
15. Legality of the Threat or Use of Nuclear Weapons (Advisory opinion) [1996] 254.
16. *Leghari v Federation of Pakistan* ((Lahore High Court, 4 June 2015) PLD 2015 SC 365.
17. *Maria Aguinda et. Al. v. Chevron Texaco Corporation*, (High Superior Court of Justice of Nueva Loja, Unofficial Translation of the Judgement February 2011).
18. *Milieudefensie et al. v. Royal Dutch Shell plc.* (The Hague District Court, 26 May 2021) ECLI:NL:RBDHA:2021:5339.

19. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits, Judgment) [1986] ICJ Rep 14.
20. North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) (Judgement) [1969] ICJ Rep 3.
21. Portillo Cáceres v Paraguay (Communication No 2752/2016, UN Human Rights Committee, 2019) UN Doc CCPR/C/126/D/2752/2016. 2.1.
22. Sacchi and Others v. Argentina (Communication 104-108/2019 Committee on the Rights of the Child, 2021) UN Doc. CRC/C/88/D/104/2019.
23. The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria (African Commission on Human and Peoples' Rights 27 October 2001) Communication No 155/96.
24. Urgenda Foundation v The State of the Netherlands (Supreme Court of the Netherlands, 20 December 2019) ECLI:NL:HR:2019:2006.

VIII. Sources

1. African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).
2. African Convention on the Conservation of Nature and Natural Resources (Revised Version, adopted 15 September 2003, entered into force 12 March 2006) 44 ILM 831.
3. African Union, 'African Convention on the Conservation of Nature and Natural Resources (Revised Version)' (AU, 2023) <<https://au.int/en/treaties/african-convention-conservation-nature-and-natural-resources-revised-version>> accessed 01 September 2024.
4. Anders Henriksen, International Law (4th edn, OUP 2017).
5. Anthony D'Amato, The Concept of Custom in International Law (Cornell University Press 1971).
6. Aoife Nolan, Rosa Freedman, and Thérèse Murphy, The United Nations Special Procedures System (Routledge 2017).
7. ASEAN Agreement on the Conservation of Nature and Natural Resources (adopted 9 July 1985) (ACNNR).
8. Barak, A. (2005) Purposive interpretation in law (PUP 2005).
9. Baxter, 'Treaties and Custom' [1970] (129 The Hague Academy Collected Courses Online / Recueil des cours de l'Académie de La Haye en ligne).

10. Bhat, P. Ishwara, 'Historical Legal Research: Implications and Applications', *Idea and Methods of Legal Research* (Delhi, 2020; online edn, Oxford Academic, 23 Jan. 2020) <<https://doi-org.uaccess.univie.ac.at/10.1093/oso/9780199493098.003.0007>> accessed 5 Oct. 2024.
11. Boyle and Chinkin, *The Making of International Law* (OUP 200).
12. Commissioner for Human Rights Human rights comment 'Living in a clean environment: a neglected human rights concern for all of us', 4 June 2019.
13. Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000.
14. Committee on the Rights of the Child, General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, RC/C/GC/26, 23 August 2023.
15. Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (UNCBD).
16. Convention on the Rights of the Child, Office of the United Nations High Commissioner for Human Rights, 'Human Rights Indicators' (OHCHR, 2023) <<https://indicators.ohchr.org/>> accessed 01 September 2024.
17. Convention on the Rights of the Child; A/HRC/31/52.
18. David Boyd, 'The Right to a Healthy Environment, A User's Guide' (OHCHR, 22 April 2024).
19. David Boyd, 'Landmark Court Decision on Right to a Healthy Environment: La Oroya v Peru' (Global Network for Human Rights and the Environment, 24 March 2024) <<https://gnhre.org/?p=17944>> accessed 05 October 2024.
20. David J Bederman, *Custom as a Source of Law* (CUP, 2010).
21. David Nelken, 'Comparative Legal Research: Its Function in the Development of Harmonized Law' [2017] 9(2) *Annual Review of Law and Social Science* 271.
22. EC Convention on the Protection of the Alps (Alpine Convention) [1991] OJ L 61/32.
23. Emily Longfellow, 'Friends of the Earth v Laidlaw Environmental Services: A new look at environmental standing' [2000] 24 *Environ Environmental Law and Policy Review Journal UC Davis* 1:3 29
<<https://environs.law.ucdavis.edu/volumes/24/1/articles/longfellow.pdf>> accessed on 08 June 2023.

24. Encyclopaedia Britannica, 'Common but Differentiated Responsibilities'
<<https://www.britannica.com/topic/common-but-differentiated-responsibilities>>
accessed 01 September 2024.
25. European Commission (EC) 'A European Green Deal' (Brussels 2019) COM (2019) 640 (EU Green Deal), 2.1.7.
26. Foster, *Foster on EU Law* (7th edn, OUP 2019).
27. H. Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (Stevens & Sons 1965).
28. HRC, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' 'Framework principles on human rights and the environment, annexed to the Special Rapporteur's Report' (24 January 2018) UN Doc A/HRC/37/59.
29. HRC, 'Right to a healthy environment: good practices ' (30 December 2019) UN Doc A/HRC/43/53.
30. HRC, 'Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' 'Report of the Special Rapporteur' (8 January 2019) UN Doc A/HRC/40/55.
31. Human Rights Council Resolution 37/8, 'Promoting Reconciliation, Accountability, and Human Rights in Sri Lanka' (adopted 22 March 2018) UN Doc A/HRC/RES/37/8.
32. Human Rights Council Resolution 48/13, 'The human right to a clean, healthy and sustainable environment' (adopted 18 October 2021) UN Doc A/HRC/RES/48/13.
33. ICRC, 'International Humanitarian Law Databases' (ICRC, 2007) <<https://ihl-databases.icrc.org/en/customary-ihl>> accessed on 01 September 2024.
34. ILC, 'Report of the International Law Commission on the Work of its 70th Session' (30 April – 1 June and 2 July -10 August 2018) UN Doc A/73/10.
35. Inter-American Commission on Human Rights, 'Press Release: IACHR Files Case Before IA Court on Peru's Responsibility for the Effects of Contamination in La Oroya Community' (14 October 2021)
<https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/274.asp> accessed 01 September 2024.
36. Intergovernmental Panel on Climate Change, 'History' (IPCC, 2023)
<<https://www.ipcc.ch/about/history/#:~:text=The%20Intergovernmental%20Panel%2>

0on%20Climate%20Change%20(IPCC)%20was%20established%20by,UN%20Gene
ral%20Assembly%20in%201988> accessed 01 September 2024.

37. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) 407; Office of the United Nations High Commissioner for Human Rights, 'Human Rights Indicators' (OHCHR, 2023) <<https://indicators.ohchr.org/>> accessed 01 September 2024.
38. International Covenant on Economic, Social and Cultural Rights, UNGA Res 2200A (XXI) (16 December 1966, entered into force 3 January 1976) 993 UNTS 3.
39. International Justice Resource Center, 'Middle East and North Africa' (IJRC, 2021) <<https://ijrcenter.org/regional/middle-east-and-north-africa/#:~:text=As%20of%20January%202021%2C%20there,United%20Arab%20Emirates%2C%20and%20Yemen>> accessed 01 September 2024.
40. IPCC, 'Special Report on Renewable Energy Sources and Climate Change Mitigation' Summary for Policymakers and Technical Summary (IPCC, 2011).
41. IPCC, 'Special Report on Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation' Summary for Policymakers (IPCC, 2012).
42. IPCC, Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems (IPCC, 2019).
43. IPCC, Special Report on the Impacts of Global Warming of 1.5°C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, Summary for Policymakers (IPCC, 2018) Chapter 1, Executive summary.
44. J. Crawford and P. Viles, State Responsibility: The General Part (Cambridge University Press 1994).
45. Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume II, (CUP 2005).
46. Jean-Marie Henckaerts, 'Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict' (2005) 87 International Review of the Red Cross 857.
47. Kadens, Emily. 'Custom's Past.' in Curtis A. Bradley, Custom's Future: International Law in a Changing World (CUP 2016).
48. Klabbers, An introduction to international organizations law (3rd edn, CUP 2015).

49. Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 February 2005) 2303 UNTS 162 (Kyoto Protocol).
50. L. Schaffer and K. Rogge, 'European Green Deal – Opportunities and Challenges for EU Climate Policy and Energy Transition' (2020) 11(2) *Frontiers in Energy Research*.
51. Laura Cahillane and Jennifer Schweppe, *Legal research methods: principles and practicalities* (Clarus Press 2016).
52. M Rishmawi, 'The Arab Charter on Human Rights and the League of Arab States: An Update' (2010) 10 *Human Rights Law Review* 169–178
<<https://doi.org/10.1093/hrlr/ngp043>> accessed on 01 September 2024.
53. Malcolm Evans, *International Law* (5th edn, OUP 2018).
54. Mark Van Hoecke, 'Methodology of Comparative Legal Research' [2015] (*Law and Method*) <DOI 10.5553/REM/.000010> accessed 29 August 2024.
55. Maurer School of Law, 'Legal Dissertation: Research and Writing Guide' (Jerome Hall Law Library Indiana University Bloomington, 2023)
<<https://law.indiana.libguides.com/dissertationguide>> accessed 29 August 2024.
56. Naldi GJ. The African Union and the Regional Human Rights System. In: Evans M, Murray R, eds. *The African Charter on Human and Peoples' Rights: The System in Practice 1986–2006* (CUP 2008).
57. Office of the United Nations High Commissioner for Human Rights, 'About the Human Rights Council' (OHCHR, 2023) <<https://www.ohchr.org/en/hr-bodies/hrc/about-council>> accessed 01 September 2024.
58. Office of the United Nations High Commissioner for Human Rights, 'Toxic air pollution: UN rights experts urge tighter rules to combat invisible threat' (8 February 2017) <<https://www.ohchr.org/en/press-releases/2017/02/toxic-air-pollution-un-rights-experts-urge-tighter-rules-combat-invisible>> accessed 01 September 2024
59. OHCHR 'Climate change and the International Covenant on Economic, Social and Cultural Rights' Statement of the Committee on Economic, Social and Cultural Rights (8 October 2018).
60. OHCHR, 'Individual Complaint Procedures under the United Nations Human Rights Treaties' Factsheet Nr 7/2 (UN 2013).

61. Organization for Security and Co-operation in Europe, 'Aarhus Convention' (OSCE, 2023) <<https://aarhus.osce.org/about/aarhus-convention> accessed> 01 September 2024.
62. Organization of American States, 'Protocol of San Salvador' (OAS, 2023) <<https://www.oas.org/en/sare/social-inclusion/protocol-ssv/#:~:text=It%20was%20adopted%20in%201988,%2C%20Peru%2C%20Suriname%20and%20Uruguay>> accessed 01 September 2024.
63. PACE Recommendation 2211 (2021) (adopted on 29 September 2021).
64. PACE Resolution 2396 (2021) (adopted on 29 September 2021).
65. PACE Rules of Procedure of the Assembly Resolution 1202 (1999) (adopted 4 November 1999).
66. Parliamentary Assembly of the Council of Europe, 'Powers of the Parliamentary Assembly' (PACE, 2023) <<https://pace.coe.int/en/pages/powers>> accessed 01 September 2024.
67. Patrícia Galvão Ferreira, 'Did the Paris Agreement Fail to Incorporate Human Rights in Operative Provisions?' (2016) 113 Centre for International Governance Innovation Papers 3.
68. Ronald B. Mitchell and the IEA Database Project, 'International Environmental Agreements (IEA) Database Project' (University of Oregon, 2002 -2020) <<https://iea.uoregon.edu/>> accessed on 14 June 2023
69. Saudi Arabia, the United States, and Norway. See Patrícia Galvão Ferreira, 'Did the Paris Agreement Fail to Incorporate Human Rights in Operative Provisions?' (2016) 113 Centre for International Governance Innovation Papers 3.
70. Secretariat of the Pacific Regional Environment Programme, 'Noumea Convention' (SPREP, 2023) <<https://www.sprep.org/convention-secretariat/noumea-convention>> accessed 01 September 2024.
71. Secretariat of the United Nations Framework Convention on Climate Change, 'Paris Agreement - Status of Ratification' (Secretariat of the United Nations Framework Convention on Climate Change) <<https://unfccc.int/process/the-paris-agreement/status-of-ratification>> accessed on 22 October 2024.
72. Secretariat of the United Nations Framework Convention on Climate Change, 'What is the Paris agreement?' (Secretariat of the United Nations Framework Convention on Climate Change) <<https://unfccc.int/process-and-meetings/the-paris-agreement>> accessed on 28 October 2024.

73. Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 15 UNCIO 355 (ICJ Statute).
74. Surya P. Subedia, Steven Wheatley, Amrita Mukherjeeb and Sylvia Ngane, 'The role of the special rapporteurs of the United Nations Human Rights Council in the development and promotion of international human rights norms' (2011) 15 The International Journal of Human Rights 2.
75. UNGA Official Records, 76th Session, Plenary Meeting 97, UN Doc A/76/PV.97 (2 August 2022).
76. UNGA Res 174(II) (1947).
77. UNGA Res A/RES/76/300, 'The Human Rights to a Safe, Clean, Healthy and Sustainable Environment' (adopted 28 July 2022) UN Doc A/RES/76/300.
78. UNGA, 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (15 July 2019) UN Doc A/74/161.
79. UNGA, 'Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change' (26 July 2022) UN Doc A/77/226 90.
80. United Nations Climate Change, 'About the secretariat?' (United Nations Climate Change) <<https://unfccc.int/about-us/about-the-secretariat>> accessed 08 July 2024
81. United Nations Climate Change, 'What is the United Nations Framework Convention on Climate Change?' (United Nations Climate Change) <<https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change#:~:text=The%20198%20countries%20that%20have,ultimate%20aim%20of%20the%20UNFCCC>> accessed 08 October 2024
82. United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3 (UNCLOS).
83. United Nations Framework Convention on Climate Change (adopted 20 January 1994, entered into force 21 March 1994) 102-38, 1771 UNTS 107 (UNFCCC).
84. United Nations Framework Convention on Climate Change, 'Kyoto Protocol' (UNFCCC, 2023)
<https://unfccc.int/kyoto_protocol#:~:text=In%20short%2C%20the%20Kyoto%20Protocol,accordance%20with%20agreed%20individual%20targets> accessed 28 October 2024.

85. United Nations Treaty Collection, 'Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean' (UNTC 2021)
<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-18&chapter=27&clang=_en > accessed on 01 September 2024.
86. United Nations Treaty Collection,
'UNCLOS' <https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI6&chapter=21&Temp=mtdsg3&clang=_en> accessed 28 October 2024.

IX. Annex

B. Treaties and other documents of international law at global and regional levels reflecting the rules of customary international law

1.1 International Environmental Law Treaties

1.1.1 United Nations Convention on the Law of the Sea (UNCLOS) (1982)

The States Parties to this Convention, ...

Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment,

Article 1

Use of terms and scope

"pollution of the marine environment" means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities

Article 145

Protection of the marine environment

Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. To this end the Authority shall adopt appropriate rules, regulations and procedures for inter alia: (a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities; (b) the protection and conservation of the natural resources of the Area and the prevention of damage to the flora and fauna of the marine environment.

Article 146

Protection of human life

With respect to activities in the Area, necessary measures shall be taken to ensure effective protection of human life. To this end the Authority shall adopt appropriate rules, regulations and procedures to supplement existing international law as embodied in relevant treaties.

Article 192

General obligation States have the obligation to protect and preserve the marine environment.

Article 193

Sovereign right of States to exploit their natural resources

States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

Article 194

Measures to prevent, reduce and control pollution of the marine environment

1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their

disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

Article 206

Assessment of potential effects of activities

When States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments in the manner provided in article 205”

1.1.2 United Nations Framework Convention on Climate Change (UNFCCC) (1992)

“Acknowledging that change in the Earth’s climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of [GHG], that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth’s surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of [GHG] has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,...

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof, Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,...

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,...

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,...

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all [GHG], with due consideration of their relative contributions to the enhancement of the greenhouse effect,...

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,...

Determined to protect the climate system for present and future generations ...”²¹³

Further, Article 1 is relevant as to definitions in connection to climate change.

Article 2

Objective

“The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions

²¹³ UNFCCC preamble.

of the Convention, stabilization of [GHG] concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. [...]

Article 3

Principles

“In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following: 1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost ...

4. The Parties have a right to, and should, promote sustainable development ...

5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties ...”

Article 4

Commitments

“1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

(a) Develop, periodically update, publish and make available to the Conference of the Parties ... national inventories of anthropogenic emissions ...

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all [GHG] not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

(c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices ...

(d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs ...

(e) Cooperate in preparing for adaptation to the impacts of climate change ...

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research ...

2. The developed country Parties ... commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of [GHG] and protecting and enhancing its [GHG] sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other [GHG] not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate ... detailed information on its policies and measures referred to in subparagraph (a) above, ... with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other [GHG] not controlled by the Montreal Protocol ...”

1.1.3 UN Convention on Biological Diversity (UNCBD) (1992)

“The Contracting Parties,

Conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components,

Conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere,

Affirming that the conservation of biological diversity is a common concern of humankind,

...

Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner,

Concerned that biological diversity is being significantly reduced by certain human activities,

...

Aware that conservation and sustainable use of biological diversity is of critical importance for meeting the food, health and other needs of the growing world population, for which purpose access to and sharing of both genetic resources and technologies are essential,...

Desiring to enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and

Determined to conserve and sustainably use biological diversity for the benefit of present and future generations,

Have agreed as follows: ...

Article 1

Objective

The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

Article 6

General Measures for Conservation and sustainable use

...

(b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies

Article 10

sustainable use of components of biological Diversity

Each Contracting Party shall, as far as possible and as appropriate: (a) Integrate consideration of the conservation and sustainable use of biological resources into national decision-making; (b) Adopt measures relating to the use of biological resources to avoid or minimize adverse impacts on biological diversity; (c) Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements; (d) Support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced; and (e) Encourage cooperation between its governmental authorities and its private sector in developing methods for sustainable use of biological resources.

Article 14

Impact assessment and minimizing adverse impacts

1. Each Contracting Party, as far as possible and as appropriate, shall:
 - (a) Introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures;
 - (b) Introduce appropriate arrangements to ensure that the environmental consequences of its programmes and policies that are likely to have significant adverse impacts on biological diversity are duly taken into account;
 - (c) Promote, on the basis of reciprocity, notification, exchange of information and consultation on activities under their jurisdiction or control which are likely to significantly affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction, by encouraging the conclusion of bilateral, regional or multilateral arrangements, as appropriate;
 - (d) In the case of imminent or grave danger or damage, originating under its jurisdiction or control, to biological diversity within the area under jurisdiction of other States or in areas beyond the limits of national jurisdiction, notify immediately the potentially affected States

of such danger or damage, as well as initiate action to prevent or minimize such danger or damage; and

(e) Promote national arrangements for emergency responses to activities or events, whether caused naturally or otherwise, which present a grave and imminent danger to biological diversity and encourage international cooperation to supplement such national efforts and, where appropriate and agreed by the States or regional economic integration organizations concerned, to establish joint contingency plans.”

1.1.4 Kyoto Protocol (1997)

Article 3 § 1

“The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the [GHG] listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.”

1.1.5 Aarhus Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (1998)

“The Parties to this Convention, ...

Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself, Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,

... Have agreed as follows:”

Article 9

Access to justice

“[...] 2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.”

1.1.6 Paris Agreement (2015)

“Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge,...

Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it,...

Acknowledging that climate change is a common concern of humankind, 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,
...”

Article 2

“1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: (a) Holding the increase in the global average temperature to well below 2oC above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5oC above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low [GHG] emissions development, in a manner that does not threaten food production; and

(c) Making finance flows consistent with a pathway towards low [GHG] emissions and climate-resilient development.

Article 3

“As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts ...

1.2 International Human Right treaties

1.2.1 International Covenant on Civil and Political Rights (ICCPR) (1966)

“Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. ...

...

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

...

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”

1.2.2 International Covenant on Economic, Social and Cultural Rights (ICESCR) (1976)

“Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

The Committee on Economic, Social and Cultural Rights also published a Statement in 2018 concerning climate change and the Covenant, stating the following²¹⁴:

“5. Under the International Covenant on Economic, Social and Cultural Rights, States parties are required to respect, protect and fulfil all human rights for all. They owe such duties not only to their own populations, but also to populations outside their territories, consistent with articles 55 and 56 of the United Nations Charter. In doing so they should, consistent with the Covenant, act on the basis of the best scientific evidence available.

6. This Committee has already noted that a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of this obligation. The nationally determined contributions (NDCs) that have been announced until now are insufficient to meet what scientists tell us is required to avoid the most severe impacts of climate change. In order to act consistently with their human rights obligations, the NDCs should be revised to better reflect the ‘highest possible ambition’ referred to in the Paris Agreement (article 4.3). The future implementation guidelines of the Agreement should require from States that they take into account their human rights duties in the design of the NDCs. This implies acting in accordance with the principles of gender sensitivity, participation, transparency and accountability; and building on local and traditional knowledge. ...

9. Complying with human rights in the context of climate change is a duty of both State and non-State actors. This requires respecting human rights, by refraining from the adoption of measures that could worsen climate change; protecting human rights, by effectively regulating private actors to ensure that their actions do not worsen climate change; and fulfilling human rights, by the adoption of policies that can channel modes of production and consumption towards a more environmentally sustainable pathway....”

1.2.3 Convention on the Rights of the Child (CRC) (1989)

“Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the

²¹⁴ OHCHR ‘Climate change and the International Covenant on Economic, Social and Cultural Rights’ Statement of the Committee on Economic, Social and Cultural Rights (8 October 2018).

maximum extent of their available resources and, where needed, within the framework of international co-operation.”

2. Regional treaties

2.1 Kuwait Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution (1978)

“Recognizing the need to develop an integrated management approach to the use of the marine environment and the coastal areas which will allow the achievement of environmental and development goals in a harmonious manner,

Recognizing also the need for carefully planned research, monitoring and assessment programme in view of the scarcity of scientific information on marine pollution in the Region,

Considering that the States sharing the Region have a special responsibility to protect its marine environment,

...

Article III.

GENERAL OBLIGATIONS

(a) The Contracting States shall, individually and/or jointly, take all appropriate measures in accordance with the present Convention and those protocols in force to which they are party to prevent, abate and combat pollution of the marine environment in the Sea Area;

...

(d) The Contracting States shall co-operate with the competent international, regional and sub-regional organizations to establish and adopt regional standards, recommended practices and procedures to prevent, abate and combat pollution from all sources in conformity with the objectives of the present Convention, and to assist each other in fulfilling their obligations under the present Convention;

(e) The Contracting States shall use their best endeavour to ensure that the implementation of the present Convention shall not cause transformation of one type of pollution to another which could be more detrimental to the environment.

Article XI. ENVIRONMENTAL ASSESSMENT

(a) Each Contracting State shall endeavour to include an assessment of the potential environmental effects in any planning activity entailing projects within its territory,

particularly in the coastal areas, which may cause significant risks of pollution in the Sea Area;

(b) The Contracting States may, in consultation with the secretariat, develop procedures for dissemination of information of the assessment of the activities referred to in paragraph (a) above;

(c) The Contracting States undertake to develop, individually or jointly, technical and other guidelines in accordance with standard scientific practice to assist the planning of their development projects in such a way as to minimize their harmful impact on the marine environment. In this regard international standards may be used where appropriate.”

2.2 African Charter on Human and Peoples’ Rights (Banjul Charter) (1981)

Article 24:

“all peoples shall have the right to a general satisfactory environment favorable to their development”

2.3 ASEAN Agreement on the Conservation of Nature and Natural Resources (1985)

“Member States of the Association of South East Asian Nations (ASEAN):

RECOGNIZING the importance of natural resources for present and future generations;

CONSCIOUS of their ever-growing value from a scientific, cultural, social and economic point of view;

CONSCIOUS ALSO that the inter-relationship between conservation and socioeconomic development implies both that conservation is necessary to ensure sustainability of development, and that socioeconomic development is necessary for the achievement of conservation on a lasting basis;

RECOGNIZING the interdependence of living resources, between them and with other natural resources, within ecosystems of which they are part;

WISHING TO UNDERTAKE individual and joint action for the conservation and management of their living resources and the other natural elements on which they depend;

RECOGNIZING that international co-operation is essential to attain many of these goals;

CONVINCED that an essential means to achieve such concerted action is the conclusion and implementation of an Agreement;

ARTICLE 1

FUNDAMENTAL PRINCIPLE

(1) The Contracting Parties, within the framework of their respective national laws, undertake to adopt singly, or where necessary and appropriate through concerted action, the measures necessary to maintain essential ecological process and life-support systems, to preserve genetic diversity, and to ensure the sustainable utilization of harvested natural resources under their jurisdiction in accordance with scientific principles and with a view to attaining the goal of sustainable development.

(2) To this end they shall develop national conservation strategies, and shall co-ordinate such strategies within the framework of a conservation strategy for the Region.”

2.4 San Salvador Protocol to the American Convention on Human Rights (1988)

Article 11

Right to a Healthy Environment

“1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.”

2.5 Noumea Convention (Convention for the Protection of the Natural Resources and Environment of the South Pacific Region) (1990)

“THE PARTIES,

[...]

CONSCIOUS of their responsibility to preserve their natural heritage for the benefit and enjoyment of present and future generations;

RECOGNIZING the special hydrological, geological and ecological characteristics of the region which requires special care and responsible management;

RECOGNIZING FURTHER the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and by the insufficient integration of an environmental dimension into the development process;

SEEKING TO ENSURE that resource development shall be in harmony with the maintenance of the unique environmental quality of the region and the evolving principles of sustained resource management;

REALIZING FULLY the need for co-operation amongst themselves and with competent international, regional and sub-regional organisations in order to ensure a co-ordinated and comprehensive development of the natural resources of the region;

RECOGNIZING the desirability for the wider acceptance and national implementation of international agreements already in existence concerning the marine and coastal environment;

NOTING, however, that existing international agreements concerning the marine and coastal environment do not cover, in spite of the progress achieved, all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the South Pacific Region;

DESIROUS to adopt the regional convention to strengthen the implementation of the general objectives of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region adopted at Rarotonga, Cook Islands, on 11 March 1982;

HAVE AGREED as follows: [...]

Article 5

General obligations

1. The Parties shall endeavour, either individually or jointly, to take all appropriate measures in conformity with international law and in accordance with this Convention and those Protocols in force to which they are party to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities. In doing so the Parties shall endeavour to harmonise their policies at the regional level.

2. The Parties shall use their best endeavours to ensure that the implementation of this Convention shall not result in an increase in pollution in the marine environment outside the Convention Area.

...

Article 20

Liability and compensation

The Parties shall co-operate in the formulation and adoption of appropriate rules and procedures in conformity with international law in respect of liability and compensation for damage resulting from pollution of the Convention Area.”

2.6 Alpine Convention (1995)

“AWARE that the evergrowing pressures caused by man are increasingly threatening the Alpine region and its ecological functions, and that the damage is either irreparable or

rectifiable only with great effort, at considerable cost and, as a rule, over a long period of time,

Article 2

General obligations

3. The Contracting Parties shall pursue a comprehensive policy for the preservation and protection of the Alps by applying the principles of prevention, payment by the polluter (the 'polluter pays' principle) and cooperation, after careful consideration of the interests of all the Alpine States, their Alpine regions and the European Economic Community, and through the prudent and sustained use of resources. Transborder cooperation in the Alpine region shall be intensified and extended both in terms of the territory and the number of subjects covered.

4. . In order to achieve the objective referred to in paragraph 1, the Contracting Parties shall take appropriate measures in particular in the following areas:

a. population and culture the objective is to respect, preserve and promote the cultural and social independence of the indigenous population and to guarantee the basis for their living standards, in particular environmentally sound settlement and economic development, and promote mutual understanding and cooperation between Alpine and extra Alpine populations;

b. spatial planning the objective is to ensure the economic and rational use of land and the sound, harmonious development of the whole region, particular emphasis being placed on natural hazards, the avoidance of under and overuse and the conservation or rehabilitation of natural habitats by means of a thorough clarification and evaluation of landuse requirements, foresighted integral planning and coordination of the measures taken;

c. prevention of air pollution the objective is to drastically reduce the emission of pollutants and pollution problems in the Alpine region, together with inputs of harmful substances from outside the region, to a level which is not harmful to man, animals and plants;

d. soil conservation the objective is to reduce quantitative and qualitative soil damage, in particular by applying agricultural and forestry methods which do not harm the soil, through minimum interference with soil and land, control of erosion and the restriction of soil sealing, e. water management the objective is to preserve or reestablish healthy water systems, in particular by keeping lakes and rivers free of pollution, by applying natural hydraulic engineering techniques and by using water power, which serves the interests of both the indigenous population and the environment alike” ...

2.7 African Convention on the Conservation of Nature and Natural Resources (Revised Version, 2003)

Article 24

“All people shall have the right to a general satisfactory environment favourable to their development.”

2.8 Arab Charter on Human Rights (2004)

“Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.”

2.9 Regional Agreement on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazù Agreement, 2021)

“The Parties to the present Agreement,...

Reaffirming Principle 10 of the 1992 Rio Declaration on Environment and Development, which establishes the following: “Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”

Recalling also that, in the outcome document of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in 2012, entitled “The future we want”, among the many provisions referring to Principle 10 of the Rio Declaration, the Heads of State and Government and high-level representatives acknowledged that democracy, good governance and the rule of law, at the national and international levels, as well as an enabling environment, were essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and eradication of poverty and hunger; underscored that broad public participation and access to information and judicial and administrative proceedings were essential to the promotion of

sustainable development; and encouraged action at the regional, national, subnational and local levels to promote access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, as appropriate,

Considering United Nations General Assembly resolution 70/1 of 25 September 2015, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, by which it adopted a comprehensive, far-reaching and people-centred set of universal and transformative Sustainable Development Goals and targets, and reaffirmed its commitment to achieving sustainable development in its three dimensions — economic, social and environmental — in a balanced and integrated manner, ...

Article 1

Objective

The objective of the present Agreement is to guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development.

...

Article 4

General provisions

1. Each Party shall guarantee the right of every person to live in a healthy environment and any other universally-recognized human right related to the present Agreement.
2. Each Party shall ensure that the rights recognized in the present Agreement are freely exercised.
3. Each Party shall adopt the necessary measures, of a legislative, regulatory, administrative or any other nature, in the framework of its domestic provisions, to guarantee the implementation of the provisions of the present Agreement.
4. With the aim of contributing to the effective application of the present Agreement, each Party shall provide the public with information to facilitate the acquisition of knowledge on access rights.

5. Each Party shall ensure that guidance and assistance is provided to the public — particularly those persons or groups in vulnerable situations — in order to facilitate the exercise of their access rights.
6. Each Party shall guarantee an enabling environment for the work of persons, associations, organizations or groups that promote environmental protection, by recognizing and protecting them.
7. No provision in the present Agreement shall limit or repeal other more favourable rights and guarantees set forth, at present or in the future, in the legislation of a State Party or in any other international agreement to which a State is party, or prevent a State Party from granting broader access to environmental information, public participation in the environmental decision-making process and justice in environmental matters.
8. Each Party shall seek to adopt the most favourable interpretation for the full enjoyment of and respect for the access rights when implementing the present Agreement.
9. For the implementation of the present Agreement, each Party shall encourage the use of new information and communications technologies, such as open data, in the different languages used in the country, as appropriate. In no circumstances shall the use of electronic media constrain or result in discrimination against the public.
10. The Parties may promote knowledge of the provisions of the present Agreement in other international forums related to environmental matters, in accordance with the rules of each forum.

...

Article 8

Access to justice in environmental matters

1. Each Party shall guarantee the right of access to justice in environmental matters in accordance with the guarantees of due process.
2. Each Party shall ensure, in the framework of its domestic legislation, access to judicial and administrative mechanisms to challenge and appeal, with respect to substance and procedure: (a) any decision, action or omission related to the access to environmental information;
- (b) any decision, action or omission related to public participation in the decisionmaking process regarding environmental matters;
- (c) and any other decision, action or omission that affects or could affect the environment adversely or violate laws and regulations related to the environment.”

3. European Union

3.1 The Treaty of the European Union (TEU) (1992)

Article 3 § 3

“The Union ... shall work for the sustainable development of Europe ... aiming at ... a high level of protection and improvement of the quality of the environment ...”

3.2 The Treaty on the Functioning of the European Union (TFEU) (1992)

Article 11

“Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development.”

Article 191

“1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Union,
- the potential benefits and costs of action or lack of action, – the economic and social development of the Union as a whole and the balanced development of its regions. ...”

3.3 Charter of Fundamental Rights of the European Union (2000)

Article 37

“A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development”

3.4 European Green Deal (2019)

4. Other relevant Documents

4.1 UN Documents

4.1.1 UN Human Rights Council Resolution 37/7 (2018)

4.1.2 UN Human Rights Council Resolution 48/13 (2021)

“Recalling also States’ obligations and commitments under multilateral environmental instruments and agreements, including on climate change, and the outcome of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in June 2012, and its outcome document entitled “The future we want”, which reaffirmed the principles of the Rio Declaration on Environment and Development,

Recalling further all its resolutions on human rights and the environment, the most recent of which are resolutions 45/17 of 6 October 2020, 45/30 of 7 October 2020 and 46/7 of 23 March 2021, and relevant resolutions of the General Assembly, Recognizing that sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for

present and future generations,

Reaffirming the importance of international cooperation, on the basis of mutual respect, in full compliance with the principles and purposes of the Charter, with full respect for the sovereignty of States while taking into account national priorities, Recognizing that, conversely, the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment, and that

environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights, ...

1. Recognizes the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;
2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;”

4.1.3 UNGA Resolution on the human right to a clean, healthy and sustainable environment (2022)

“[A] vast majority of States have recognized some form of the right to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies.”

As well as:

- “1. Recognizes the right to a clean, healthy and sustainable environment as a human right;
2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;
3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
4. Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.”

D. Case law relevant for identification and interpretation of customary international law

1. International jurisprudence

1.1 Human Rights Committee

1.1.1 Ioane Teitiota v. New Zealand CCPR C 127 D 2728 2016, UN Human Rights Committee (HRC)

“9.4 The Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures. The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3).

The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life.

Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.

9.5 Moreover, the Committee observes that both it and regional human rights tribunals have established that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual’s well-being and lead to a violation of the right to life.

9.11 ... The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending States. Furthermore, 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.”

Annex I

Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)

1. Upon carefully examining the facts of the present communication, I am of the considered view that the author presents a case that reveals a violation and consequently, it

should be admissible. The facts before the Committee re-emphasize the need to employ a human-sensitive approach to human rights issues. Accordingly, I disagree with the position reached by the rest of the Committee. The State party placed an unreasonable burden of proof on the author to establish the real risk and danger of arbitrary deprivation of life, within the scope of article 6 of the Covenant. The conditions of life laid out by the author, resulting from climate change in Kiribati, are significantly grave and pose a real, personal and reasonably foreseeable risk of a threat to his life under article 6 (1). Moreover, the Committee needs to handle critical and significantly irreversible issues of climate change with an approach that seeks to uphold the sanctity of human life.

2. The author presents evidence, which is not disputed by either the State party or the rest of the Committee, that sea level rise in Kiribati has resulted in the scarcity of habitable space, causing life endangering violent land disputes, and in severe environmental degradation resulting in contamination of the water supply and the destruction of food crops, yet the author's family relied largely on subsistence agriculture and fishing. Since their removal to Kiribati, the author and his family have been unable to grow crops. Furthermore, the land in Tarawa (the location of the author's and his family's home) has reportedly been prone to significant flooding, with land being submerged up to knee-deep after king tides. Moreover, beyond reports of children getting diarrhoea and dying because of the poor quality of drinking water, the author and his family, on their return to Kiribati, have suffered from significant health issues, with one of his children contracting a serious case of blood poisoning, causing boils all over the body.

3. Whereas the risk to a person expelled or otherwise removed, must be personal – not deriving from general conditions, except in extreme cases – the threshold should not be too high or unreasonable. Even as the jurisprudence of the Committee emphasizes a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists, it has been critical to consider all relevant facts and circumstances, including the general human rights situation in the author's country of origin.²¹⁵ As a necessary corollary to the high threshold, the Committee has been careful to counterbalance a potentially unreachable standard with the need to consider all relevant facts and circumstances, which comprise, among other elements, the grave situation in the author's country.

4. It is the Committee's position that the right to life includes the entitlement of individuals to enjoy a life with dignity, and to be free from acts or omissions that are intended or may

²¹⁵ B.D.K. et al. v. Canada (CCPR/C/125/D/3041/2017), para. 7.3; and K v. Denmark (CCPR/C/114/D/2393/2014), para. 7.3.

be expected to cause their unnatural or premature death.²¹⁶ It is also the Committee's position that environmental degradation and climate change constitute extremely serious threats to the ability of both present and future generations to enjoy the right to life. In recognition of that reality, States have been obligated to preserve the environment and protect it against harm, pollution and climate change.²¹⁷

5. In my view, the author faces a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of the conditions in Kiribati. The considerable difficulty in accessing fresh water because of the environmental conditions should be enough to reach the threshold of risk, without needing to reach the point at which there is a complete lack of fresh water. There is evidence of the significant difficulty of growing crops. Moreover, even if deaths are not occurring with regularity on account of the conditions (as articulated by the Immigration and Protection Tribunal), it should not mean that the threshold has not been reached.²¹⁸ It would indeed be counter-intuitive to the protection of life to wait for deaths to be very frequent and considerable in number in order to consider the threshold of risk as met. It is the standard upheld in the Committee that threats to life can be a violation of the right, even if they do not result in the loss of life.²¹⁹ It should be sufficient that the child of the author has already suffered significant health hazards on account of the environmental conditions. It is enough that the author and his family are already facing significant difficulty in growing crops and resorting to the life of subsistence agriculture on which they were largely dependent. Consideration of the author's situation and that of his family, balanced with all the facts and circumstances of the situation in the author's country of origin, reveals a livelihood short of the dignity that the Covenant seeks to protect.

6. Lastly, while it is laudable that Kiribati is taking adaptive measures to reduce the existing vulnerabilities and address the evils of climate change, it is clear that the situation of life continues to be inconsistent with the standards of dignity for the author, as required under the Covenant. The fact that that is a reality for many others in the country does not make it any more dignified for the persons living in such conditions. The action taken by New Zealand is more like forcing a drowning person back into a sinking vessel, with the "justification" that after all, there are other passengers on board. Even as Kiribati does what it takes to address the conditions, for as long as they remain dire, the life and dignity of persons remains at risk.

²¹⁶ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 3.

²¹⁷ Ibid., para. 62.

²¹⁸ See para. 2.9 of the Committee's Views.

²¹⁹ See para. 9.4 of the Committee's Views.

Annex I - Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)

1. Upon carefully examining the facts of the present communication, I am of the considered view that the author presents a case that reveals a violation and consequently, it should be admissible. The facts before the Committee re-emphasize the need to employ a human-sensitive approach to human rights issues. Accordingly, I disagree with the position reached by the rest of the Committee. The State party placed an unreasonable burden of proof on the author to establish the real risk and danger of arbitrary deprivation of life, within the scope of article 6 of the Covenant. The conditions of life laid out by the author, resulting from climate change in Kiribati, are significantly grave and pose a real, personal and reasonably foreseeable risk of a threat to his life under article 6 (1). Moreover, the Committee needs to handle critical and significantly irreversible issues of climate change with an approach that seeks to uphold the sanctity of human life.
2. The author presents evidence, which is not disputed by either the State party or the rest of the Committee, that sea level rise in Kiribati has resulted in the scarcity of habitable space, causing life endangering violent land disputes, and in severe environmental degradation resulting in contamination of the water supply and the destruction of food crops, yet the author's family relied largely on subsistence agriculture and fishing. Since their removal to Kiribati, the author and his family have been unable to grow crops. Furthermore, the land in Tarawa (the location of the author's and his family's home) has reportedly been prone to significant flooding, with land being submerged up to knee-deep after king tides. Moreover, beyond reports of children getting diarrhoea and dying because of the poor quality of drinking water, the author and his family, on their return to Kiribati, have suffered from significant health issues, with one of his children contracting a serious case of blood poisoning, causing boils all over the body.
3. Whereas the risk to a person expelled or otherwise removed, must be personal – not deriving from general conditions, except in extreme cases – the threshold should not be too high or unreasonable. Even as the jurisprudence of the Committee emphasizes a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists, it has been critical to consider all relevant facts and circumstances, including the general human rights situation in the author's country of origin.²²⁰ As a necessary corollary

²²⁰*B.D.K. et al. v. Canada* (CCPR/C/125/D/3041/2017), para. 7.3; and *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3.

to the high threshold, the Committee has been careful to counterbalance a potentially unreachable standard with the need to consider all relevant facts and circumstances, which comprise, among other elements, the grave situation in the author's country.

4. It is the Committee's position that the right to life includes the entitlement of individuals to enjoy a life with dignity, and to be free from acts or omissions that are intended or may be expected to cause their unnatural or premature death.²²¹ It is also the Committee's position that environmental degradation and climate change constitute extremely serious threats to the ability of both present and future generations to enjoy the right to life. In recognition of that reality, States have been obligated to preserve the environment and protect it against harm, pollution and climate change.²²²

5. In my view, the author faces a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of the conditions in Kiribati. The considerable difficulty in accessing fresh water because of the environmental conditions should be enough to reach the threshold of risk, without needing to reach the point at which there is a complete lack of fresh water. There is evidence of the significant difficulty of growing crops. Moreover, even if deaths are not occurring with regularity on account of the conditions (as articulated by the Immigration and Protection Tribunal), it should not mean that the threshold has not been reached.²²³ It would indeed be counter-intuitive to the protection of life to wait for deaths to be very frequent and considerable in number in order to consider the threshold of risk as met. It is the standard upheld in the Committee that threats to life can be a violation of the right, even if they do not result in the loss of life.²²⁴ It should be sufficient that the child of the author has already suffered significant health hazards on account of the environmental conditions. It is enough that the author and his family are already facing significant difficulty in growing crops and resorting to the life of subsistence agriculture on which they were largely dependent. Consideration of the author's situation and that of his family, balanced with all the facts and circumstances of the situation in the author's country of origin, reveals a livelihood short of the dignity that the Covenant seeks to protect.

6. Lastly, while it is laudable that Kiribati is taking adaptive measures to reduce the existing vulnerabilities and address the evils of climate change, it is clear that the situation of life continues to be inconsistent with the standards of dignity for the author, as required under the Covenant. The fact that that is a reality for many others in the country does not

²²¹Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 3.

²²²Ibid., para. 62.

²²³See para. 2.9 of the Committee's Views.

²²⁴See para. 9.4 of the Committee's Views.

make it any more dignified for the persons living in such conditions. The action taken by New Zealand is more like forcing a drowning person back into a sinking vessel, with the “justification” that after all, there are other passengers on board. Even as Kiribati does what it takes to address the conditions, for as long as they remain dire, the life and dignity of persons remains at risk.

Annex II - Individual opinion of Committee member Vasilka Sancin (dissenting)

1. I regret that I cannot join the majority in finding that the Committee is not in a position to conclude that the State party’s assessment that the measures taken by Kiribati would suffice to protect the author’s right to life under article 6 of the Covenant was clearly arbitrary or manifestly erroneous, or amounted to a denial of justice (see paras. 9.12–9.13 of its Views). This is particularly so since, in my opinion, the State party failed to present evidence of a proper assessment of the author’s and his dependent children’s access to safe drinking water in Kiribati.
2. The author argued, among other things, that by removing him and his family to Kiribati, New Zealand had violated article 6 (1) of the Covenant, because they have no access to safe drinking water, which poses an imminent threat to their lives. Evidence, uncontested by the State party, can be found in paras. 2.4, 2.6 and 5 of the Committee’s Views.
3. The State party, on the contrary, concluded that there was no evidence to support the author’s contention that he was unable to obtain potable water or that he had no access to potable water (para. 2.8 of the Views). My concern arises from the fact that the notion of “potable water” should not be equated with “safe drinking water”. Water can be designated as potable, while containing microorganisms dangerous for health, particularly for children (all three of the author’s dependent children were born in New Zealand and were thus never exposed to water conditions in Kiribati).
4. In its Views (para. 9.6), the Committee repeats the State party’s argument that, although the Immigration and Protection Tribunal found the author to be entirely credible and accepted the evidence he presented, it considered that the evidence the author provided did not establish that he faced a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati. In particular, the Tribunal found that there was no evidence that he would be unable to grow food or access potable water, or that the Government of Kiribati had failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfil the author’s right to life. Those conclusions were based on the fact that the Government of Kiribati had taken steps to address the effects of climate

change, according to the 2007 National Adaptation Programme of Action. In its Views (para. 9.8), the Committee, while recognizing the hardship that may be caused by water rationing, concludes 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.

5. However, in their reports, experts, inter alia, the Special Rapporteur on the human right to safe drinking water and sanitation on her mission to Kiribati in July 2012 (A/HRC/24/44/Add.1), warned that the National Development Strategy 2003–2007 and the Kiribati Development Plan 2008–2011 contained policies and goals of direct relevance to water, but that the priorities set for the first three years in the 2008 National Water Resources Policy and the 2010 National Sanitation Policy had yet to be implemented. It is therefore my opinion that it falls to the State party, not the author, to demonstrate that the author and his family would in fact enjoy access to safe drinking (or even potable) water in Kiribati, to comply with its positive duty to protect life from risks arising from known natural hazards.

6. Considering all of the above, I am not persuaded that the author's claim concerning the lack of access to safe drinking water is not substantiated, as I find that the State party's assessment of the author's and his family situation was clearly arbitrary or manifestly erroneous. That is why, in the circumstances of the present case, I disagree with the Committee's conclusion 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.

1.1.2 Daniel Billy et al. V. Australia

"8.3 The Committee notes the authors' claim that the events in this case constitute a violation by act and omission of their right to a life with dignity under article 6 of the Covenant, owing to the State party's failure to perform its duty to provide adaptation and mitigation measures to address climate change impacts that adversely affect their lives, including their way of life. With respect to the State party's position that article 6 (1) of the Covenant does not obligate it to prevent foreseeable loss of life from climate change, the Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures to protect the right to life.²²⁵ The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals

²²⁵ For example, *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016), para. 9.4; *Toussaint v. Canada*, para. 11.3.

to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3).²²⁶ The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life.²²⁷ States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life.²²⁸ The Committee considers that such threats may include adverse climate change impacts, and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.²²⁹ The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity.”²³⁰

“8.12 [...] The Committee considers that when climate change impacts – including environmental degradation on traditional [indigenous] lands in communities where subsistence is highly dependent on available natural resources and where alternative means of subsistence and humanitarian aid are unavailable – have direct repercussions on the right to one’s home, and the adverse consequences of those impacts are serious because of their intensity or duration and the physical or mental harm that they cause, then the degradation of the environment may adversely affect the well-being of individuals and constitute foreseeable and serious violations of private and family life and the home.”²³¹ The Committee concludes that the information made available to it indicates that by failing to discharge its positive obligation to implement adequate adaptation measures to protect the authors’ home, private life and family, the State party violated the authors’ rights under article 17 of the Covenant.”

1.1.3 Portillo Cáceres v. Paraguay (2019)

“7.4 The Committee also takes note of developments in other international tribunals that have recognized the existence of an undeniable link between the protection of the

²²⁶See also *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.3.

²²⁷*Toussaint v. Canada* (CCPR/C/123/D/2348/2014), para. 11.3; *Portillo Cáceres et al. v. Paraguay*, para. 7.5.

²²⁸General comment No. 36, para. 7.

²²⁹*Ibid.*, para. 62.

²³⁰*Ibid.*, para. 26.

²³¹See *mutatis mutandis Benito Oliveira et al. v. Paraguay* (CCPR/C/132/D/2552/2015); general comment No. 23 (1994).

environment and the realization of human rights and that have established that environmental degradation can adversely affect the effective enjoyment of the right to life. Thus, severe environmental degradation has given rise to findings of a violation of the right to life. 7.5 In the present case, the Committee is of the view that heavily spraying the area in question with toxic agrochemicals – an action which has been amply documented – poses a reasonably foreseeable threat to the authors’ lives given that such large-scale fumigation has contaminated the rivers in which the authors fish, the well water they drink and the fruit trees, crops and farm animals that are their source of food. (...) Consequently, in view of the acute poisoning suffered by the authors, as acknowledged in the amparo decision of 2011 (paras. 2.20 and 2.21), and of the death of Mr. Portillo Cáceres, which has never been explained by the State party, the Committee concludes that the information before it discloses a violation of article 6 of the Covenant in the cases of Mr. Portillo Cáceres and the authors of the present communication. ... 7.8 ... When pollution has direct repercussions on the right to one’s private and family life and home, and the adverse consequences of that pollution are serious because of its intensity or duration and the physical or mental harm that it does, then the degradation of the environment may adversely affect the well-being of individuals and constitute violations of private and family life and the home. Consequently, in the light of the information that it has before it, the Committee concludes that the events at issue in the present case disclose a violation of article 17 of the Covenant.”

1.2 United Nations Committee on the Rights of the Child

1.2.1 *Sacchi et al. v. Argentina et al.* (2019)

“10.4 The Committee notes the relevant jurisprudence of the Human Rights Committee and the European Court of Human Rights referring to extraterritorial jurisdiction.²³² Nevertheless, that jurisprudence was developed and applied to factual situations that are very different to the facts and circumstance of this case. The authors’ communication raises novel jurisdictional issues of transboundary harm related to climate change.

²³²See, inter alia, Human Rights Committee, general comments No. 31 (2004), para. 10, and No. 36 (2018), para. 63, *Munaf v. Romania* (CCPR/C/96/D/1539/2006), para. 14.2, *A.S. et al. v. Malta* (CCPR/C/128/D/3043/2017), paras. 6.3–6.5, *A.S. et al. v. Italy* (CCPR/C/130/D/3042/2017), paras. 7.3–7.5; European Court of Human Rights, *Andreou v. Turkey*, Application No. 45653/99, Judgment of 27 October 2009, para. 25, and *Georgia v. Russia (II)*, Application No. 38263/08, Judgment of 21 January 2021, para. 81. See also Committee on the Rights of the Child, general comment No. 16 (2013), para. 39, and [CRC/C/NOR/CO/5-6](#), para. 27.

10.5 The Committee also notes Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on the environment and human rights, which is of particular relevance to the issue of jurisdiction in the present case as it clarified the scope of extraterritorial jurisdiction in relation to environmental protection.

10.7 Having considered the above, the Committee finds that the appropriate test for jurisdiction in the present case is that adopted by the Inter-American Court of Human Rights in its Advisory Opinion on the environment and human rights. This implies that when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question. The Committee considers that, while the required elements to establish the responsibility of the State are a matter of merits, the alleged harm suffered by the victims needs to have been reasonably foreseeable to the State party at the time of its acts or omissions even for the purpose of establishing jurisdiction.²³³

10.13 [...] The Committee considers that, as children, the authors are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection, States have heightened obligations to protect children from foreseeable harm.”²³⁴

²³³Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 136. See also paras. 175–180 on the precautionary principle. It is also worth noting the textual similarity between article 1 of the Inter-American Convention on Human Rights and article 2 of the Convention on the Rights of the Child, in respect of jurisdiction.

²³⁴ Preamble to the Convention on the Rights of the Child; [A/HRC/31/52](#), para. 81; and Committee on the Rights of the Child, “Report of the 2016 day of general discussion: children’s rights and the environment”, p. 23. Available from <<https://www.ohchr.org/en/hrbodies/crc/pages/discussion2016.aspx>>.

1.3 International Tribunal for the Law of the Sea

1.3.1 Advisory Opinion on States' obligations to protect and preserve the world's oceans from climate change impacts

“(b) The obligation under article 192 of the Convention to protect and preserve the marine environment has a broad scope, encompassing any type of harm or threat to the marine environment. Under this provision, States Parties have the specific obligation to protect and preserve the marine environment from climate change impacts and ocean acidification. Where the marine environment has been degraded, this obligation may call for measures to restore marine habitats and ecosystems. Article 192 of the Convention requires States Parties to anticipate risks relating to climate change impacts and ocean acidification, depending on the circumstances.

(c) This obligation is one of due diligence. The standard of due diligence is stringent, given the high risks of serious and irreversible harm to the marine environment from climate change impacts and ocean acidification.

(d) 152 Under article 194, paragraph 5, of the Convention, States Parties have the specific obligation to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life from climate change impacts and ocean acidification.

(e) Under articles 61 and 119 of the Convention, States Parties have the specific obligations to take measures necessary to conserve the living marine resources threatened by climate change impacts and ocean acidification. In taking such measures, States Parties shall take into account, inter alia, the best available science and relevant environmental and economic factors. This obligation requires the application of the precautionary approach and an ecosystem approach.

(f) The obligation to seek to agree under article 63, paragraph 1, and the obligation to cooperate under article 64, paragraph 1, of the Convention, require States Parties, inter alia, to consult with one another in good faith with a view to adopting effective measures necessary to coordinate and ensure the conservation and development of shared stocks. The necessary measures on which consultations are required must take into account the impacts of climate change and ocean acidification on living marine resources. Under article 118 of the Convention, States Parties have the specific obligation to cooperate in taking measures necessary for the conservation of living marine resources in the high seas that are threatened by climate change impacts and ocean acidification.

(g) Under article 196 of the Convention, States Parties have the specific obligation to take appropriate measures to prevent, reduce and control pollution from the introduction of non-indigenous species due to the effects of climate change and ocean acidification which may cause significant and harmful changes to the marine environment. This obligation requires the application of the precautionary approach.”

2. Regional jurisprudence

2.1 ECtHR

2.1.1 Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024)

“436. In sum, on the basis of the above findings, the Court will proceed with its assessment of the issues arising in the present case by taking it as a matter of fact 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, that States are aware of it and capable of taking measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5oC above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target.

...

548. It follows from the above considerations that effective respect for the rights protected by Article 8 of the Convention requires that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades. In this context, in order for the measures to be effective, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see, *mutatis mutandis*, *Georgel and Georgeta Stoicescu v. Romania*, no. 9718/03, § 59, 26 July 2011).

573. In conclusion, there were 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. Furthermore, the Court has noted that, as recognised by the relevant authorities, the State had previously failed to meet its past GHG emission reduction targets (see paragraphs 558 to 559). By failing to act in good time and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative

framework, the respondent State exceeded its margin of appreciation and failed to comply with its positive obligations in the present context. ...

574. The above findings suffice for the Court to find that there has been a violation of Article 8 of the Convention.”

Concerning the possibility to claim those cases, the Court came to the following relevant conclusions:

“635. The Court is not persuaded by the domestic courts’ findings that there was still some time to prevent global warming from reaching the critical limit (see paragraphs 56-59). This was not based on sufficient examination of the scientific evidence concerning climate change, which was already available at the relevant time, as well as the general acceptance that there is urgency as regards the existing and inevitable future impacts of climate change on various aspects of human rights (see paragraph 436; see also paragraph 337 as regards the respondent Government’s acceptance that there was a climate emergency). Indeed, the existing evidence and the scientific findings on the urgency of addressing the adverse effects of climate change, including the grave risk of their inevitability and their irreversibility, suggest that there was a pressing need to ensure the legal protection of human rights as regards the authorities’ allegedly inadequate action to tackle climate change

...

639. In this connection, the Court considers it essential to emphasise the key role which domestic courts have played and will play in climate-change litigation, a fact reflected in the case-law adopted to date in certain Council of Europe member States, highlighting the importance of access to justice in this field. Furthermore, given the principles of shared responsibility and subsidiarity, it falls primarily to national authorities, including the courts, to ensure that Convention obligations are observed.”

2.1.2 Duarte Agostinho & Others v. Portugal & 31 Others

“348. With respect to Article 8, having regard to the fact that the Court had recognised that serious damage to the environment could affect the well-being of a person and deprive him or her of the peaceful enjoyment of his or her home in such a way as to harm his or her private and family life, the Government could not completely exclude that this provision might apply in the context of climate change. Indeed, it was well known that the acceleration

of global warming was an extremely worrying phenomenon for humanity and that it resulted from CO₂ emissions of human origin. Global warming was undoubtedly likely to impact the quality of life of individuals, even if their health was not seriously endangered.

...

431. In recent times there has been an evolution of scientific knowledge, social and political attitudes and legal standards concerning the necessity of protecting the environment, including in the context of climate change. There has also been a recognition that environmental degradation has created, and is capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights. This is reflected in the scientific findings, international instruments and domestic legislation and standards, and is being recognised in domestic and international case-law (see paragraphs 173, 176, 225 and 236-267).

...

434. The Court cannot ignore the above-noted developments and considerations. On the contrary, it should be recalled that the Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 146, ECHR 2008). [...]

519. [...] Article 8 must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.

549. Moreover, in order for this to be genuinely feasible, and to avoid a disproportionate burden on future generations, immediate action needs to be taken and adequate intermediate reduction goals must be set for the period leading to net neutrality. Such measures should, in the first place, be incorporated into a binding regulatory framework at the national level, followed by adequate implementation. The relevant targets and timelines must form an integral part of the domestic regulatory framework, as a basis for general and sectoral mitigation measures. Accordingly, and reiterating the position taken above, namely that the margin of appreciation to be afforded to States is reduced as regards the setting of the

requisite aims and objectives, whereas in respect of the choice of means to pursue those aims and objectives it remains wide[...]

2.1.3 Carême v. France

77. In the present case, it should first be noted that in the proceedings which the applicant instituted in January 2019 in the Conseil d'État, acting on his own behalf and in his capacity as mayor of Grande-Synthe, in the name and on behalf of that municipality, he based his complaints on the local circumstances prevailing in the area in which the municipality of Grande-Synthe is located (see paragraphs 13-18 above). The applicant pointed, in particular, to the risks of flooding which the municipality faced as a result of the inadequacy of the mitigation action taken by the government and also as a result of the insufficiency of the existing local infrastructure to protect against the contemporary effects of climate change. Moreover, he pointed out that the house in which he resided was located less than four kilometres from the coastline and that according to some predictions it would be flooded by 2040, taking into account the effects of climate change. He therefore argued that he had not lodged the legal action as an ordinary citizen but as someone with a concrete legal interest, since in a foreseeable future his house was at real risk of flooding linked to climate change, which would therefore affect his property and his day-to-day environment (see paragraphs 23-24 above).

78. The Conseil d'État found that the relevant area where the municipality was located had been assessed as being at “a very high level of exposure” to climate risks and that, owing to its immediate proximity to the coast and the physical characteristics of its territory, the municipality was exposed in the medium term to high and increased risks of flooding and an increase in episodes of severe drought, with the effect not only of a reduction and degradation of water resources, but also significant damage to built-up areas, given the geological characteristics of the soil. Furthermore, the Conseil d'État noted that while these concrete consequences of climate change were likely to have their full effect on the territory of the municipality only by 2030 or 2040, “their inevitability”, in the absence of effective measures taken quickly to prevent the causes and in view of the time frame for public policy action in this area, was such as to justify the need to “act without delay” (see paragraph 28 above).

79. At the same time, while recognising the standing of the Grande-Synthe municipality, as regards the applicant's particular situation, the Conseil d'État found that he did not have an interest in bringing proceedings on the basis of the mere fact that his current residence was located in an area likely to be subject to flooding by 2040. This finding was premised on the

conclusions of the public rapporteur according to which there was no indication as to where the applicant's residence would be in the years to come, let alone in twenty years or more, so that his interest appeared to be affected in too uncertain a manner (see paragraph 29 above).

80. For its part, having regard to the key factors for victim status set out in *Verein KlimaSeniorinnen Schweiz and Others* (cited above, §§ 487-488), the Court finds no reason to question the hypothetical nature of the risk relating to climate change affecting the applicant, as stated by the Conseil d'État.

81. Furthermore, it is critical to note that, by the applicant's own admission at the hearing in reply to the Court's questions, after becoming a member of the European Parliament in May 2019, he had moved to Brussels (see paragraphs 9 and 68 above). He does not own, and no longer rents, any property in Grande-Synthe and currently his only concrete link with the municipality is the fact that his brother lives there. In this connection, the Court reiterates that according to its' well-established case-law, unless they can demonstrate additional elements of dependence – which is not the situation in the present case – adult siblings cannot rely on the family-life aspect of Article 8 (see, for instance, *Mamasakhlisi and Others v. Georgia and Russia*, nos. 29999/04 and 41424/04, § 282, 7 March 2023, with further references).

[...]

84. Holding otherwise, and given the fact that almost anyone could have a legitimate reason to feel some form of anxiety linked to the risks of the adverse effects of climate change in the future, would make it difficult to delineate the *actio popularis* protection – not permitted in the Convention system – from situations where there is a pressing need to ensure an applicant's individual protection from the harm which the effects of climate change may have on the enjoyment of their human rights.

85. As regards the applicant's argument that he complained to the Court as the former mayor of Grande-Synthe, the Court refers to its well-established case-law according to which decentralised authorities that exercise public functions, regardless of their autonomy vis-à-vis the central organs – which applies to regional and local authorities, including municipalities – are considered to be “governmental organisations” that have no standing to make an application to the Court under Article 34 of the Convention (see *Assanidze v. Georgia* [GC], no. 71503/01, § 148, ECHR 2004-II, and *Slovenia v. Croatia (dec.)* [GC], no. 54155/16, § 61, 18 November 2020, with further references). Accordingly, leaving aside the fact that he is no longer the mayor of Grande-Synthe, the Court finds that the applicant had

no right to apply to the Court or to lodge a complaint with it on behalf of the municipality of Grande-Synthe.

2.2 Inter-American Court of Human Rights

2.2.1 Community of La Oroya vs. Peru

“120. “people enjoy the right to breathe clean air as a substantive component of the right to a healthy environment, and, therefore, the State is obliged to: a) establish laws, regulations and policies that ensure air quality standards do not constitute risks to health; b) monitor air quality and inform the population of possible health risks; c) carry out action plans to control air quality that include the identification of the main sources of air pollution, and implement measures to enforce air quality standards”

126. “States are obliged to use all means at their disposal in order to prevent activities carried out under their jurisdiction from causing significant damage to the environment. This obligation must be fulfilled under a standard of due diligence, which must be appropriate and proportional to the degree of risk of environmental damage”

129. “guaranteeing the interest of both present and future generations and the conservation of the environment against its radical degradation is essential for the survival of humanity”

“231. “[...] the effects derived from environmental pollution fall disproportionately on people, groups and communities that already bear the weight of poverty, discrimination and systemic marginalization. Thus, the risk of harm is particularly high for those segments of the population that are currently in a situation of marginalization or vulnerability, including pregnant women, children, adolescents, and older people”

294. “it is sufficient to establish that the State allowed the existence of levels of contamination that put people’s health at significant risk and that people were actually exposed to the environmental contamination in such a way that their health was at risk”

2.2.2 Advisory opinion on the Environment and Human Rights

“Conclusion ...

242. Based on the above, in response to the second and third questions of the

requesting State, it is the Court's opinion that, in order to respect and to ensure the rights to life and to personal integrity:

- a. States have the obligation to prevent significant environmental damage within or outside their territory, in accordance with paragraphs 127 to 174 of this Opinion.
- b. To comply with the obligation of prevention, States must regulate, supervise and monitor the activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and procedures to minimize the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred, even when it has happened despite the State's preventive actions, in accordance with paragraph 141 to 174 of this Opinion.
- c. States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in the case of potential serious or irreversible damage to the environment, even in the absence of scientific certainty, in accordance with paragraph 180 of this Opinion.
- d. States have the obligation to cooperate, in good faith, to protect against environmental damage, in accordance with paragraphs 181 to 210 of this Opinion.
- e. To comply with the obligation of cooperation, States must notify other potentially affected States when they become aware that an activity planned under their jurisdiction could result in a risk of significant transboundary harm and also in cases of environmental emergencies, and consult and negotiate in good faith with States potentially affected by significant transboundary harm, in accordance with paragraphs 187 to 210 of this Opinion.
- f. States have the obligation to ensure the right of access to information, established in Article 13 of the American Convention, concerning potential environmental impacts, in accordance with paragraphs 213 to 225 of this Opinion;
- g. States have the obligation to ensure the right to public participation of the persons subject to their jurisdiction established in Article 23(1)(a) of the American Convention, in policies and decision-making that could affect the environment, in accordance with paragraphs 226 to 232 of this Opinion, and
- h. States have the obligation to ensure access to justice in relation to the State obligations with regard to protection of the environment set out in this Opinion, in accordance with paragraphs 233 to 240 of this Opinion.

243. The obligations described above have been developed in relation to the general obligations to respect and to ensure the rights to life and to personal integrity, because these were the rights that the State referred to in its request (*supra* paras. 37, 38, 46 and 69). However, this does not mean that the said obligations do not exist with regard to the other rights mentioned in this Opinion as being particularly vulnerable in the case of environmental degradation (*supra* paras. 56 to 69).”

2.3 African Commission on Human and People's Rights

2.3.1 The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria

“50. The Complainants allege that the Nigerian government violated the right to health and the right to clean environment as recognized under Articles 16 and 24 of the African Charter ...

51. These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, ‘an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.’

52. The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Article 16(3)) already noted obligate governments to desist from directly threatening the health and environment of their citizens. The State is under an obligation to respect the just noted rights and this entails largely non-interventionist conduct from the State for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.

53. Government compliance with the spirit of Articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities. ...

68. The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. As indicated in the preceding paragraphs, however, the Nigerian Government did not live up to the minimum expectations of the African Charter.”

3. Domestic jurisprudence

3.1 Austria

3.1.1 Decision W104 2000178-1 of the Bundesverwaltungsgericht²³⁵

“The following should also be noted: There is undoubtedly a public electricity industry interest in the construction of a 220 kV overhead line, namely in increasing the overall transmission capacity. However, it is not necessary to construct it precisely in this landscape corridor. It may be a particularly short connection between the Austrian and Italian transmission grids, but this is not the only aspect in favour of the need for a line. There are also no indications that the construction of the line is urgently required for reasons of security of supply. On the contrary, Austrian Power Grid (APG), the transmission system operator from whose 220 kV line the project in question would branch off, commented on the project in a letter dated 16 June 2014, stating that following the construction of the Styria line and the first section of the Salzburg line, the project in question ‘no longer poses a direct threat to Austria's security of supply at present’. This makes it clear that increasing security of supply is not a key aspect of the project.

²³⁵ Bundesverwaltungsgericht BVWG 26.08.2014, W104 2000178-1 p.32 translated by myself.

For these reasons, the Federal Administrative Court considers the public interest in preserving the character of the *Kronhofgraben* landscape to outweigh the other public interests in the construction of the pipeline. The balancing of interests under nature conservation law has thus shown that the public interests of nature and landscape conservation carry greater weight than other public interests promoted by the project.”

3.2 Colombia

3.2.1 Future Generations v. Ministry of the Environment and Others (2018)

“ By virtue of what has been said, it can be preached, that the fundamental rights of life, health, the minimum subsistence, freedom, and human dignity are substantially linked and determined by the environment and the ecosystem. Without a healthy environment, subjects of law and sentient beings in general will not be able to survive, much less protect those rights, for our children or for future generations. Neither can the existence of the family, society or the state itself be guaranteed. The increasing deterioration of the environment is a serious attack on current and future life and on other fundamental rights; it gradually depletes life and all its related rights. The inability to exercise the fundamental rights to water, to breathe pure air, and to enjoy a healthy environment is making Colombians sick. It also increases the lack of fresh water and decreases the ability to enjoy a dignified life.

4. Due to multiple simultaneous causes, derived, connected, or isolated, that negatively impact the ecosystem, environmental issues occupy a prominent place on the international agenda, not only of scientists and researchers, but also of politicians, the common people and, naturally, judges and lawyers. Day to day the news, articles and reports of different tiers presenting the gravity of the planetary conditions are abundant. There is a growing threat to the possibility of existence of human beings. These imminent dangers are evident in phenomena such as excessive increase of temperatures, the thawing of the poles, the massive extinction of animal and plant species, the increasingly frequent occurrence of meteorological events and disasters outside margins previously considered normal. There are unusual and unforeseen rainy seasons, permanent droughts, hurricanes or destructive tornadoes, strong and unpredictable tidal waves, draining rivers, increasing disappearance of species, etc.

...

5.2 The protection of fundamental rights not only involves the individual, but implicates the “other.” The neighbor is otherness; its essence, the other people that inhabit the planet, also include the animal and plant species. But in addition, this includes the unborn, who also deserve to enjoy the same environmental conditions that we have.

5.3 The environmental rights of future generations are based on the (i) ethical duty of the solidarity of the species and (ii) on the intrinsic value of nature. “

3.3 Ecuador

3.3.1 Texaco v. Aguinda (2001, 2003)

“7. The colossal damage caused was the result of the catastrophic contamination of the water table, surface water sources, soil, flora and fauna within an area of 3.855 km², equivalent, if comparison may be permitted, to the combined geographical area of the cities of São Paulo, Buenos Aires, Mexico City and Quito. Needless to say, the victim of the damage caused was the local population of over thirty thousand people, poisoned by the abusive and irresponsible actions of a foreign corporation that profits from the extraction and sale of oil, with blatant disregard for nature and for people. Successive generations of this population have been afflicted by a calamity that could have been avoided if measures had been adopted to protect the environment and the people living in it.

8. The enormous disaster and its permanent and untold consequences have been described as the “Amazon Chernobyl”, comparing this scourge with the radiation leak which occurred in the Ukraine several years ago.

9. Demonstrating the extent of the catastrophe is not, strictly speaking, relevant to these recognition proceedings, which are predominantly concerned with formalities, but the facts are nevertheless significant. In comparative terms, the recent oil spill which occurred in the Gulf of Mexico and for which the future (in terms of repair of the damage) is unforeseeable, involved a total of 750 million liters of crude oil. The spillage of residues in Ecuador is close to the shocking total of 60 billion liters. The worst part is that this contamination did not derive from an accident, but from Chevron’s deliberate choice to reduce oil exploration costs, transferring them to the Ecuadorian population. This resulted in damages to the delicate and important Amazonian ecosystem.

10. In the light of this the Ecuadorian court could do nothing but grant the claim for damages filed by the Plaintiffs. It did so, following proceedings which lasted for ten years, having

been commenced in 2003. The court's final ruling was based on a vast body of evidence including (with no exaggeration) over one hundred expert reports."

3.4 Germany

3.6.1 Climate protection ruling German Constitutional Court decision of 24 March 2021

"1. The protection of life and physical integrity under Art. 2(2) first sentence of the Basic Law encompasses protection against impairments of constitutionally guaranteed interests caused by environmental pollution, regardless of who or what circumstances are the cause. The state's duty of protection arising from Art. 2(2) first sentence of the Basic Law also encompasses the duty to protect life and health against the risks posed by climate change. It can furthermore give rise to an objective duty to protect future generations.

2. Art. 20a of the Basic Law obliges the state to take climate action. This includes the aim of achieving climate neutrality.

a. Art. 20a of the Basic Law does not take absolute precedence over other interests. In cases of conflict, it must be balanced against other constitutional interests and principles. Within the balancing process, the obligation to take climate action is accorded increasing weight as climate change intensifies.

b. If there is scientific uncertainty regarding causal relationships of environmental relevance, a special duty of care imposed upon the legislator by Art. 20a of the Basic Law – also for the benefit of future generations – entails an obligation to take account of sufficiently reliable indications pointing to the possibility of serious or irreversible impairments.

c. As an obligation to take climate action, Art. 20a of the Basic Law has an international dimension. The fact that no state can resolve the problems of climate change on its own due to the global nature of the climate and global warming does not invalidate the national obligation to take climate action. Under this obligation, the state is compelled to engage in internationally oriented activities to tackle climate change at the global level and is required to promote climate action within the international framework. The state cannot evade its responsibility by pointing to greenhouse gas emissions in other states.

d. In exercising its mandate and prerogative to specify the law, the legislator has formulated the climate goal of Art. 20a of the Basic Law in a constitutionally permissible manner, currently setting out that the increase in the global average temperature should be limited to well below 2°C and preferably to 1.5°C above pre-industrial levels.

e. Art. 20a of the Basic Law is a justiciable legal provision designed to commit the political process to a favouring of ecological interests, partly with a view to future generations.

3. Compatibility with Art. 20a of the Basic Law is required in order to justify under constitutional law any state interference with fundamental rights.

4. Under certain conditions, the Basic Law imposes an obligation to safeguard fundamental freedom over time and to spread the opportunities associated with freedom proportionately across generations. In their subjective dimension, fundamental rights – as intertemporal guarantees of freedom – afford protection against the greenhouse gas reduction burdens imposed by Art. 20a of the Basic Law being unilaterally offloaded onto the future. Furthermore, in its objective dimension, the protection mandate laid down in Art. 20a of the Basic Law encompasses the necessity to treat the natural foundations of life with such care and to leave them in such condition that future generations who wish to carry on preserving these foundations are not forced to engage in radical abstinence.

Respecting future freedom also requires initiating the transition to climate neutrality in good time. In practical terms, this means that transparent specifications for the further course of greenhouse gas reduction must be formulated at an early stage, providing orientation for the required development and implementation processes and conveying a sufficient degree of developmental urgency and planning certainty.

5. The legislator itself must set out the necessary provisions specifying the overall emission amounts that are allowed for certain periods. As regards the method by which the legal framework for the allowed emission amounts is adopted, the legislative process cannot be replaced by a reduced form of parliamentary involvement in which the Bundestag merely approves the Federal Government's ordinances. This is because it is precisely the special public function of the legislative process that makes the adoption of parliamentary legislation necessary here. It is true that having parliamentary legislation in areas of law that are constantly subject to new developments and knowledge can in some cases be detrimental to the protection of fundamental rights. This notion draws on the concept of dynamic fundamental rights protection (foundationally, see BVerfGE 49, 89 <137>). However, this concept cannot be used here as an objection against the requirement for parliamentary legislation. The challenge is not to protect fundamental rights by ensuring that the legal framework keeps pace with new developments and knowledge. The challenge is to create a framework that makes further developments aimed at protecting fundamental rights possible in the first place."

3.5 The Netherlands

3.5.1 Urgenda Foundation v. The State of the Netherlands (2019)

“Dangerous climate change

Urgenda and the State both endorse the view of climate science that a genuine threat exists that the climate will undergo a dangerous change in the coming decades. There is a great deal of agreement on the presence of that threat in climate science and the international community. In that respect and briefly put, this comes down to the following.

The emission of [GHG], including CO₂, is leading to a higher concentration of those gases in the atmosphere. These [GHG] retain the heat radiated by the Earth. Because over the last century and a half since the start of the industrial revolution, an ever-increasing volume of [GHG] is being emitted, the Earth is becoming warmer and warmer. In that period, the Earth has warmed by approximately 1.1oC, the largest part of which (0.7oC) has occurred in the last forty years. Climate science and the international community largely agree on the premise that the warming of the Earth must be limited to no more than 2oC, and according to more recent insights to no more than 1.5oC. The warming of the Earth beyond that temperature limit may have extremely dire consequences, such as extreme heat, extreme drought, extreme precipitation, a disruption of ecosystems that could jeopardise the food supply, among other things, and a rise in the sea level resulting from the melting of glaciers and the polar ice caps. That warming may also result in tipping points, as a result of which the climate on Earth or in particular regions of the Earth changes abruptly and comprehensively. All of this will jeopardise the lives, welfare and living environment of many people all over the world, including in the Netherlands. Some of these consequences are already happening right now.

Protection of human rights based on the ECHR

The European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) requires the states which are parties to the convention to protect the rights and freedoms established in the convention for their inhabitants. Article 2 ECHR protects the right to life, and Article 8 ECHR protects the right to respect for private and family life. According to the case law of the European Court of Human Rights (ECtHR), a contracting state is obliged by these provisions to take suitable measures if a real and immediate risk to people’s lives or welfare exists and the state is aware of that risk.

The obligation to take suitable measures also applies when it comes to environmental hazards that threaten large groups or the population as a whole, even if the hazards will only

materialise over the long term. While Articles 2 and 8 ECHR are not permitted to result in an impossible or disproportionate burden being imposed on a state, those provisions do oblige the state to take measures that are actually suitable to avert the imminent hazard as much as reasonably possible. Pursuant to Article 13 ECHR, national law must offer an effective legal remedy against a violation or imminent violation of the rights that are safeguarded by the ECHR. This means that the national courts must be able to provide effective legal protection.

[...]

Each country is thus responsible for its own share. That means that a country cannot escape its own share of the responsibility to take measures by arguing that compared to the rest of the world, its own emissions are relatively limited in scope and that a reduction of its own emissions would have very little impact on a global scale. The State is therefore obliged to reduce [GHG] emissions from its territory in proportion to its share of the responsibility. This obligation of the State to do ‘its part’ is based on Articles 2 and 8 ECHR, because there is a grave risk that dangerous climate change will occur that will endanger the lives and welfare of many people in the Netherlands.

[...]

The Court reiterates that it is not its task to determine what exactly should have been done in the present situation to reduce the impact of the plant’s activities upon the applicants in a more efficient way. However, it is within the Court’s jurisdiction to assess whether the Government approached the problem with due diligence and gave consideration to all the competing interests. In this respect the Court reiterates that the onus is on the State to justify, using detailed and rigorous data, a situation in which certain individuals bear a heavy burden on behalf of the rest of the community (see *Fadeyeva*, cited above, § 128). Looking at the present case from this perspective, the Court notes that the Government did not present to the Court any relevant environmental studies or documents informative of their policy towards the plant and the air pollution emanating therefrom that had been affecting the applicants during the period concerned.

...

Conclusion

In short, the essence of the Supreme Court’s judgment is that the order which the District Court issued to the State and which was confirmed by the Court of Appeal, directing the State to reduce [GHG] by the end of 2020 by at least 25% compared to 1990, will be allowed to stand. Pursuant to Articles 2 and 8 ECHR, the Court of Appeal can and may conclude that

the State is obliged to achieve that reduction, due to the risk of dangerous climate change that could have a severe impact on the lives and welfare of the residents of the Netherlands.”

3.5.2 Milieudefensie/Friends of the Earth Netherlands v. Royal Dutch Shell (2021)

4.4.10. From the Urgenda ruling it can be deduced that Articles 2 and 8 ECHR offer protection against the consequences of dangerous climate change due to Co2 emissions induced global warming.⁴¹ The UN Human Rights Committee, which decides on violations of the ICCPR, determined the same as regards Articles 6 and 17 ICCPR.⁴² In a case on the right to life as enshrined in Article 6 ICCPR, the UN Human Rights Committee considered as follows: “Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”⁴³ In 2019, the UN Special Rapporteur on Human Rights concluded the following: “There is now global agreement that human rights norms apply to the full spectrum of environmental issues, including climate change.”⁴⁴ RDS’ argument that the human rights invoked by Milieudefensie et al. offer no protection against dangerous climate change therefore does not hold. The serious and irreversible consequences of dangerous climate change in the Netherlands and the Wadden region, as discussed under (4.4. (3)), pose a threat to the human rights of Dutch residents and the inhabitants of the Wadden region.

...

4.4.27. The goals of the Paris Agreement are derived from the IPCC reports. The IPCC reports on the relevant scientific insights about the consequences of a temperature increase, the concentrations of greenhouse gases that give rise to that increase, and the reduction pathways that lead to a limitation of global warming to a particular temperature. Therefore, the goals of the Paris Agreement represent the best available scientific findings in climate science, which is supported by widespread international consensus. The non-binding goals of the Paris Agreement represent a universally endorsed and accepted standard that protects the common interest of preventing dangerous climate change. The court follows this reasoning in its interpretation of the unwritten standard of care. The court assumes that it is generally accepted that global warming must be kept well below 2°C in 2100, and that a temperature rise of under 1.5°C should be strived for. The court also assumes that this requires a limitation of the global concentration of greenhouse gases of up to 450 ppm in 2100 and that a maximum greenhouse gas concentration of 430 ppm must be pursued. The court notes that in doing so it does not formulate a legally binding standard for the prevention

of dangerous climate change in the Netherlands and the Wadden region. The court includes this broad consensus about what is needed to prevent dangerous climate change – viz. achieving the goals of the Paris Agreement – in its answer to the question whether or not RDS is obliged to reduce the Shell group’s CO₂ emissions via its corporate policy. policy.

4.4.28. The court establishes that tackling dangerous climate change needs immediate attention. Given the current concentration of greenhouse gases in the atmosphere (401 ppm in 2018), the remaining carbon budget is limited. This applies to both 430 ppm as a limit for a global warming of up to 1.5°C and 450 ppm for a global warming of up to 2°C. The longer it takes to achieve the required emissions reductions, the higher the level of emitted greenhouse gases, and consequently, the sooner the remaining carbon budget runs out. At unchanged emission levels, the carbon budget will have been used up within twelve years. As has been described by the IEA in its World Energy Outlook 2020 (see 2.4.11), the next ten years will be crucially important for preventing dangerous climate change. This also follows from the conclusion of the UNEP (of 2019) (see 2.4.6). The sooner reductions are started, the more time is available before the remaining carbon budget runs out. The imperativeness for the Netherlands to reduce CO₂ emissions is even greater, because so far the temperature rise in the Netherlands has developed about twice as fast as the global average, with serious and irreversible consequences and risks for the human rights of Dutch residents and the inhabitants of the Wadden region (see 4.4 (3.) and (4.)).

...

4.4.40. The parties agree that the world faces a twin challenge: dangerous climate change must be curbed by reducing CO₂ emissions while meeting the global energy demand of the rapidly growing world population. However, the importance of access to reliable and affordable energy, as pointed out by RDS, and the Shell group’s role in it, have no bearing on RDS’ reduction obligation. That interest must always be served within the context of climate targets. The court explains this as follows.

4.4.41. The UN Sustainable Development Goals (UNSDG)⁷⁷ have the object, inter alia, to ensure access to affordable, reliable, sustainable and modern energy for all. The court includes the UNSDG in its interpretation of the unwritten standard of care, as this UN Resolution represents a widely endorsed international consensus. The COP in which the UNSDG were adopted states under 31 and 32:

“31. We acknowledge that the United Nations Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change. We are determined to address decisively the threat posed by climate change

and environmental degradation. The global nature of climate change calls for the widest possible international cooperation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change. We note with grave concern the significant gap between the aggregate effect of parties' mitigation pledges in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 degrees Celsius, or 1.5 degrees Celsius above pre-industrial levels.

32. Looking ahead to the twenty-first session of the Conference of the Parties in Paris, we underscore the commitment of all States to work for an ambitious and universal climate agreement. We reaffirm that the protocol, another legal instrument or agreed outcome with legal force under the Convention applicable to all parties shall address in a balanced manner, inter alia, mitigation, adaptation, finance, technology development and transfer and capacity-building; and transparency of action and support.”

3.6 Pakistan

3.6.1 Leghari v. Federation of Pakistan (2015)

“11. Climate Change is a defining challenge of our time and has led to dramatic alterations in our planet’s climate system. For Pakistan, these climatic variations have primarily resulted in heavy floods and droughts, raising serious concerns regarding water and food security. On a legal and constitutional plane this is clarion call for the protection of fundamental rights of the citizens of Pakistan, in particular, the vulnerable and weak segments of the society who are unable to approach this Court.

12. Fundamental rights, like the right to life (Article 9) which includes the right to a healthy and clean environment and right to human dignity (Article 14) read with constitutional principles of democracy, equality, social, economic and political justice include within their ambit and commitment, the international environmental principles of sustainable development, precautionary principle, environmental impact assessment, inter and intragenerational equity and public trust doctrine. Environment and its protection has taken a center stage in the scheme of our constitutional rights. It appears that we have to move on. The existing environmental jurisprudence has to be fashioned to meet the needs of something more urgent and overpowering i.e., Climate Change.

...

20. On a jurisprudential plane, a judge today must be conscious and alive to the beauty and magnificence of nature, the interconnectedness of life systems on this planet and the interdependence of ecosystems. From Environmental Justice, which was largely localized and limited to our own ecosystems and biodiversity, we have moved on to Climate Justice. Our environmental jurisprudence from Shehla Zia case to Imrana Tiwana case (referred to above) has weaved our constitutional values and fundamental rights with the international environmental principles....

Climate Justice 21. Enter Climate Change. With this the construct of Environmental Justice requires reconsideration. Climate Justice links human rights and development to achieve a human-centered approach, safeguarding the rights of the most vulnerable people and sharing the burdens and benefits of climate change and its impacts equitably and fairly. Climate justice is informed by science, responds to science and acknowledges the need for equitable stewardship of the world's resources.²³⁶ The instant case adds a new dimension to the rich jurisprudence on environmental justice in our country. Climate Change has moved the debate from a linear local environmental issue to a more complex global problem. In this context of climate change, the identity of the polluter is not clearly ascertainable and by and large falls outside the national jurisdiction. Who is to be penalized and who is to be restrained? On the global platform the remedies are adaptation or mitigation. In case of Pakistan, adaptation is largely the way forward. Adaptation is a response to global warming and climate change, that seeks to reduce the vulnerability of social and biological systems to relatively sudden change and thus offset the effects of global warming.⁵ Adaptation is especially important in developing countries since these countries are predicted to bear the brunt of the effects of global warming.⁶ Adaptation is the capacity and potential for humans to adapt (called adaptive capacity) and is unevenly distributed across different regions and populations, and developing countries generally have less capacity to adapt. Mitigation consists of actions to limit the magnitude or rate of long-term climate change. Climate change mitigation generally involves reductions in human (anthropogenic) emissions of greenhouse gases (GHGs). Mitigation may also be achieved by increasing the capacity of carbon sinks, e.g., through reforestation.” ...

3.7 United States of America

²³⁶ Mary Robinson Foundation- Climate Justice.

3.7.1 Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc. (2000)

“Laidlaw contends first that FOE lacked standing from the outset even to seek injunctive relief, because the plaintiff organizations failed to show that any of their members had sustained or faced the threat of any "injury in fact" from Laidlaw's activities. In support of this contention Laidlaw points to the District Court's finding, made in the course of setting the penalty amount, that there had been "no demonstrated proof of harm to the environment" from Laidlaw's mercury discharge violations. 956 F. Supp., at 602; see also *ibid.* ("[T]he NPDES permit violations at issue in this citizen suit did not result in any health risk or environmental harm."). The relevant showing for purposes of Article III standing, however, is not injury to the environment but injury to the plaintiff. To insist upon the former rather than the latter as part of the standing inquiry (as the dissent in essence does, *post*, at 199-200) is to raise the standing hurdle higher than the necessary showing for success on the merits in an action alleging noncompliance with an NPDES permit. Focusing properly on injury to the plaintiff, the District Court found that FOE had demonstrated sufficient injury to establish standing. [...]"²³⁷

We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons "for whom the aesthetic and recreational values of the area will be lessened" by the challenged activity. *Sierra Club v. Morton*, 405 U. S. 727, 735 (1972)."²³⁸

E. Special procedures

1. Special Rapporteur on the human right to a clean, healthy and sustainable environment

1.6 Framework principles on human rights and the environment

“Framework principle 1

States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.

Framework principle 2

States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.”

²³⁷ Laidlaw p 181.

²³⁸ *Ibid* 188.

1.7 2019 Report to the Human Rights Council (A/HRC/40/55)

“IV. Human rights obligations relating to clean air

57. As the previous mandate holder made clear, States have obligations to protect the enjoyment of human rights from environmental harm (A/HRC/25/53). The foreseeable adverse effects of poor air quality on the enjoyment of human rights give rise to extensive duties of States to take immediate actions to protect against those effects. In a joint statement issued in 2017, a group of United Nations experts said ‘a threat like this can no longer be ignored. States have a duty to prevent and control exposure to toxic air pollution and to protect against its adverse effects on human rights.’²³⁹

58. The framework principles on human rights and the environment clarify the three categories of State obligations: procedural, substantive, and special obligations towards those in vulnerable situations. Therefore, the framework principles can be operationalized in the context of air pollution in order to respect, protect and fulfil human rights.

...

60. With respect to substantive obligations, States must not violate the right to breathe clean air through their own actions; must protect the right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil the right. States also must avoid discrimination and retrogressive measures.”

The most important points, that can also be seen in the relevant terms in Annex

1.8 2019 Report to the General Assembly

“63. The framework principles on human rights and the environment clarify three categories of State obligations: procedural, substantive, and special obligations towards those in vulnerable situations. The framework principles can be operationalized in the context of climate change in order to respect, protect and fulfil human rights.

64. Pursuant to international human rights law, States have procedural obligations to:

(a) Provide the public with accessible, affordable and understandable information

²³⁹ Office of the United Nations High Commissioner for Human Rights, 'Toxic air pollution: UN rights experts urge tighter rules to combat invisible threat' (8 February 2017) <<https://www.ohchr.org/en/press-releases/2017/02/toxic-air-pollution-un-rights-experts-urge-tighter-rules-combat-invisible>> accessed 01 September 2024.

- regarding the causes and consequences of the global climate crisis, including incorporating climate change into the educational curriculum at all levels;
- (b) Ensure an inclusive, equitable and gender-based approach to public participation in all climate-related actions, with a particular emphasis on empowering the most affected populations, namely women, children, young people, indigenous peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other potentially at-risk communities;
 - (c) Enable affordable and timely access to justice and effective remedies for all, to hold States and businesses accountable for fulfilling their climate change obligations;
 - (d) Assess the potential climate change and human rights impacts of all plans, policies and proposals, including both upstream and downstream effects (i.e. both production- and consumption-related emissions);
 - (e) Integrate gender equality into all climate actions, enabling women to play leadership roles;
 - (f) Respect the rights of indigenous peoples in all climate actions, particularly their right to free, prior and informed consent;
 - (g) Provide strong protection for environmental and human rights defenders working on all climate-related issues, from land use to fossil fuels. States must vigilantly protect defenders from harassment, intimidation and violence.

65. With respect to substantive obligations, States must not violate the right to a safe climate through their own actions; must protect that right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil that right. States also must avoid discrimination and retrogressive measures. These principles govern all climate actions, including obligations related to mitigation, adaptation, finance, and loss and damage.

66. Human rights obligations are reinforced by international environmental law, as States are obliged to ensure that polluting activities within their jurisdiction or control do not cause serious harm to the environment or peoples of other States or to areas beyond the limits of national jurisdiction. Given the foreseeability of increasing climate impacts, this well-established ‘no harm’ rule of customary international law is being violated as a result of [GHG] emissions, which, regardless of where they are emitted, are contributing, cumulatively, to adverse effects in other States, including small island developing States. The *Urgenda case* in the Netherlands is an important precedent, as the Court relied on international human rights law to hold the Government of the

Netherlands accountable for fulfilling commitments the Government itself says are necessary to prevent dangerous climate change.”

...

70. In 2018, the Committee on Economic, Social and Cultural Rights warned States that a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of their obligation to respect, protect and fulfil all human rights for all. States must, therefore, dedicate the maximum available financial and material resources to shift to renewable energy, clean transport and agroecological farming; halt and reverse deforestation and soil deterioration; and increase adaptive capacity, especially in vulnerable and marginalized communities ...

74. A failure to fulfil international climate change commitments is a prima facie violation of the State’s obligations to protect the human rights of its citizens. “...

1.9 “Right to a healthy environment: good practices” Report to the Human Rights Council 2020²⁴⁰

“III. Good practices in the implementation of the right to a safe, clean, healthy and sustainable environment

A. Legal recognition

9. In the present report, the Special Rapporteur focuses on the implementation of the right to a safe, clean, healthy and sustainable environment. The legal recognition of this right can itself be considered a good practice, whether by means of constitutional protection, inclusion in environmental legislation or through ratification of a regional treaty that includes the right.

10. In cooperation with the Vance Center for International Justice, the Special Rapporteur prepared an updated list of States that legally recognize the right to a safe, clean, healthy and sustainable environment (see annex II). There are 110 States where this right enjoys constitutional protection. Constitutional protection for human rights is essential, because the constitution represents the highest and strongest law in a domestic legal system. Furthermore, the constitution plays an important cultural role, reflecting a society’s values and aspirations.

11. The right to a healthy environment is explicitly included in regional treaties ratified by 126 States. This includes 52 States that are parties to the African Charter on Human and

²⁴⁰ HRC, ‘Right to a healthy environment: good practices ‘ (30 December 2019) UN Doc A/HRC/43/53.

Peoples' Rights, 45 States that are parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 16 States that are parties to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and 16 States that are parties to the Arab Charter on Human Rights. As at 1 December 2019, five States had ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement); this recent treaty requires, however, 11 ratifications to enter into force. Ten States adopted the non-binding Declaration on Human Rights of the Association of South-East Asian Nations.

12. It is also important that legislation be enacted and implemented to respect, protect and fulfil the right to a safe, clean, healthy and sustainable environment. There are 101 States where this right has been incorporated into national legislation. Especially good practices can be seen in Argentina, Brazil, Colombia, Costa Rica, France, the Philippines, Portugal and South Africa, where the right to a healthy environment serves as a unifying principle that permeates legislation, regulations and policies. 13. In total, more than 80 per cent of States Members of the United Nations (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment. The Special Rapporteur has collected the texts of the constitutional and legislative provisions that recognize this right.”

1.10 “The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals” (A/77/284, 2022)

“(a) Incorporate the right to a clean, healthy and sustainable environment at all levels (global, regional and national), including in a legally binding global instrument, the Universal Declaration of Human Rights, post-2020 global biodiversity framework, the European Convention on Human Rights and national constitutions, legislation and policies;

(b) Acknowledge that the Goals are built on a robust foundation of human rights law, establishing legally binding obligations;”

2. Special Rapporteur on the promotion and protection of human rights in the context of climate change

2.1 “Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation” (A/77/226)

“Recommendations with respect to bridging the mitigation gap

89. The Special Rapporteur maintains that all of the recommendations made by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in his report to the General Assembly in 2019 with respect to mitigation action are still relevant and should be considered as recommended in the present report. In addition, the below recommendations should be considered.

90. With respect to mitigation, the Special Rapporteur on the promotion and protection of human rights in the context of climate change recommends that the General Assembly:

...

(d) Establish an international human rights tribunal to hold accountable Governments, business and financial institutions for their ongoing investments in fossil fuels and carbon intensive industries and the related human rights effects that such investments invoke;

...

97. The Special Rapporteur also recommends that the General Assembly encourage all Member States to include youth representatives in national parliaments to highlight climate change concerns.

98. The Special Rapporteur further recommends that the General Assembly encourage all States to give standing to children and young people, including indigenous children and young people international, national and subnational court systems.”

X.