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SYSTEMIC INTEGRATION IN THE ENVIRONMENTAL JURISPRUDENCE OF REGIONAL HUMAN RIGHTS COURTS

A COMPARATIVE PERSPECTIVE

(PhD Thesis)

Ferenc Deák Doctoral School of Law

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RECOMMENDATION

I have had the pleasure of working with Enikő over several years, having first met her during the third year of her law studies. Even at that early stage, she displayed an outstanding interest in international law, particularly in human rights law, combined with a remarkable enthusiasm for exploring complex legal issues beyond the requirements of the curriculum. This passion has accompanied her until today, consistently evident in her academic work and engagement with contemporary scientific debates in public international law. This unwavering dedication and intellectual curiosity were ultimately crowned by the prestigious Diploma of Excellence of the René Cassin Foundation in International and Comparative Human Rights Law in 2023.

The dissertation aims at examining the environmental jurisprudence of regional human rights courts from a special point of view, i.e. the perspective of systemic integration. It strives to evaluate the role of other sources of public international law, especially of international environmental law, in the evolution of the international human rights jurisprudence.

Environment-related issues have started to appear in the jurisprudence of regional human rights courts decades ago. They are an excellent example of the so-called living instrument method, essentially meaning that also circumstances and changes in the society may be taken into account during the interpretation of the human rights treaty, which were non-existent during the making of the given text.

The connection between human rights and the environment became evident decades ago. Some scholars even hinted that human rights are impossible to be interpreted if there is no right to a healthy environment.[*] When we look at the development of the right to a healthy environment and its appearance in the framework of the regional human rights systems (in the African, then in the Inter-American and in a different sense in the European), it becomes obvious that although we have witnessed a significant change and development recently, the states are not yet ready to accept this right in a fully binding human right. Nevertheless, certain elements of acceptance have

[*] E.g. Dinah Shelton

already appeared, as we can see, for instance, in the UNGA Resolution that recognised the right to a clean, healthy and sustainable environment.

The question of the systemic interpretation is relevant in all three regional systems, although admittedly in different forms and partly under different procedures. Hence, it is a legitimate objective of the dissertation to not only concentrate on the European system with its clear living instrument method, but also on the other two relevant regional human rights systems, which have a different textual and hence legitimacy-related background, not only as to the text of the Banjul Charter, but also the first advisory opinion of the Inter-American Court of Human Rights or its protocol.

It is of utmost importance that when assessing the situation and status of the right to a healthy environment in these three regional human rights systems, we clearly define the legal circumstances, as done in the present dissertation. Only after defining this framework can we turn our attention to the jurisprudence and draw the consequences on the given court's attitude. The dissertation encompasses both the substantial and the procedural aspects, and aims at finding the interrelations also with the universal level, let it be in the field of human rights or the environment.

As these two fields are clearly intensely developing and intertwining fields of international law, but rooted partly in soft law documents, it is essential to assess the jurisprudence of the influential regional human rights courts in order to understand the development of these fields properly. The present dissertation deals with the issue in a way that it comprises all the necessary methods, albeit focusing on the role of jurisprudence, not idealising it, but rather assessing it in a comprehensive, comparative and critical manner.

Budapest, 24 September 2025

Dr. Anikó Raisz, Ph.D., D.E.A.

Supervisor

I. Introduction: Motivation and Relevance of the Research, Methodological Approaches, and Structure

The aim of this dissertation is to examine and compare the evolution of the environmental jurisprudence in the case law of regional human rights courts from the perspective of systemic integration as a method of treaty interpretation. The intersection of human rights and the environment is an expanding field of research, with a growing case law at various – domestic, regional, and international – levels, and a multitude of scholarly contributions addressing its legal, ethical, and practical dimensions.

In addition, the environmental case law of regional human rights courts has been the subject of scientific works from several perspectives; yet, it has not been analysed comprehensively from the perspective of systemic integration. However, treaty interpretation, particularly systemic integration, is crucial in the evolution of the environmental jurisprudence of human rights courts, primarily because it allows courts to take into consideration the relevant rules of public international law to establish certain standards that cannot explicitly be deduced from the text of international human rights treaties. The thesis, therefore, seeks to fill this gap in legal scholarship by examining the possibilities and the limits of the interpretation of human rights in light of other sources of law, particularly international environmental legal norms.

The evolving jurisprudential landscape gives rise to several central research questions in the topic, namely: 1. To what extent has systemic integration influenced the interpretation and expansion of substantive and procedural human rights obligations in environmental cases? 2. What are the discernible patterns or divergences in the approach of different courts towards systemic integration in environmental cases? 3. What are the potential implications of the courts' use of systemic integration for the future of environmental human rights protection at the regional and international levels? The author believes that the examination of the courts' approaches to the relevant rules of international environmental law may also have broader implications for the evolution of public international law as well, especially for the doctrine of the sources of public international law.

Namely, Article 38 of the Statue of the International Court of Justice provides an authoritative, yet non-exhaustive categorisation of the sources of public international

law (international conventions, international custom, general principles of law and the subsidiary means for interpretation) but does not refer to soft law documents that are frequently referenced by human rights courts in their environmental jurisprudence. Therefore, the thesis also aims to address the question of whether international environmental standards developed by human rights courts could be defined as soft law or whether we can experience the formulation of customary law regarding rights-based environmental protection.

The relevance of the topic is manifold. The environmental jurisprudence of human rights courts is one of the most dynamically evolving fields, which is shown by the relatively high number of pending cases and recently adopted judgments that can already be considered as milestones in human rights litigation. The development of case law sheds light on the critical role courts can play in establishing standards in frameworks that were originally not designed to address environmental crises. This point also raises the need to clarify the limits of the research, as the analysis focuses on the jurisprudence of regional human rights courts, without extending to other international or domestic judicial bodies addressing environmental matters. The limitation primarily stems from the authoritative weight of human rights courts, as they interpret binding human rights treaties and provide binding judgments, thus establishing obligations for States. In addition, the focus on human rights courts helps to maintain the conceptual and doctrinal coherence of the dissertation. Environmental issues are addressed by a wide variety of international tribunals, yet their mandates, applicable law, and interpretative rules may differ to such an extent that a comparative analysis across these fora would undermine the objective of doctrinal consistency.

As noted above, the primary aim of the dissertation is to examine how regional human rights courts have developed their environmental jurisprudence through the interpretative method of systemic integration. The dissertation adopts a predominantly doctrinal legal research methodology, combined with elements of comparative legal analysis of the three courts' jurisprudence. In doing so, the research critically engages with the case law of these courts, relevant treaty provisions, and scholarly commentary. Given the high number of cases relevant to the present research, the author inevitably limited the scope of the analysed cases to those that explicitly, or, on certain occasions, implicitly apply, reference, or engage with the method of systemic integration. Thus, the analysed cases were selected upon the following criteria: (i) their

relevance to the development of the environmental jurisprudence of the court; (ii) the extent to which the judgment engages with the interpretative technique of systemic integration, primarily in an explicit way; and (iii) the impact of the case for cross-regional analysis, and the development of future case law.

Although the thesis examines the case law of human rights courts, the work of the commissions in two human rights systems – the Inter-American and the African human rights systems – cannot be neglected, as they significantly complement the jurisprudence of the courts. Therefore, the analysis will briefly reflect on the adjudicatory function of the commissions and their environmental case law. In addition, the analysis cannot strictly be limited to environmental cases, as it is embedded in the courts' broader jurisprudence to demonstrate how the courts have embraced systemic integration and built on the sources of other fields of public international law, such as international humanitarian law or international criminal law.

The environmental jurisprudence of human rights courts is rooted in the broader context of the international articulation of the relationship between human rights and the environment. Thus, the analysis is framed by the present stage of the recognition of the interconnection of human rights and the environment, as discussed in Part II. This section first examines the theoretical and normative foundations of the interrelationship between human rights and the environment, starting from different religious teachings on the moral responsibility of humans towards the protection of the environment, followed by an overview of the different theoretical approaches embraced in the normative framework of international environmental law recognising human rights considerations, until the recognition of the right to a clean, healthy and sustainable environment by the United Nations General Assembly in 2022. The second subsection reflects on current challenges in the field of human rights and the environment, primarily focusing on four issues, namely: (i) the recognition of the right to a healthy environment at the international level, (ii) the recognition of non-humans as rights holders, (iii) the recognition of non-State actors' responsibility for the violations, and (iv) effective response to planetary crises, such as climate change, migration, sea level rise, or the mass destruction of the environment.

Part III constitutes the core of the dissertation, as it encompasses the analysis of the environmental case law of human rights courts. The first subsection is dedicated to the

role and interpretation of systemic integration in public international law in general, and in international human rights law specifically. This subsection is followed by three units, each dedicated to the analysis of systemic integration in the environmental jurisprudence of human rights courts, in particular, the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court of Human and Peoples' Rights. The structure of each of the three subsections follows a similar pattern. First, the courts' general approach to systemic integration is presented, with an analysis of the landmark judgments in which the courts significantly considered relevant sources of international law. The focus of this analysis is on the courts' interpretative methods, rather than the substantive or procedural standards established therein. Following this, the analysis turns to the environmental jurisprudence of the courts, starting with a brief overview of the normative framework of each regional human rights system.

Regarding the European jurisprudence, particular attention is dedicated to evaluating the ongoing endeavours to recognise the right to a healthy environment in an additional protocol to the European Convention on Human Rights. Given the complexity of environmental protection in human rights law, the Court deduced substantive and procedural standards from other rights enshrined in the Convention. Therefore, this subsection will be divided into two main parts centred around substantive and procedural standards to enhance readability and structure. The Court's extensive case law necessitates additional structuring according to the rights invoked. Thus, substantive environmental standards are examined in the case law on the right to life, the right to respect for private and family rights, and other rights, including the prohibition of inhuman or degrading treatment, the right to liberty and security, the freedom of expression, and the protection of property. Furthermore, procedural environmental standards are divided according to the three pillars of participatory and procedural environmental rights, such as access to information, participation in decision-making, and access to justice in environmental matters.

In comparison with the European human rights system, the Inter-American regime recognises the right to a healthy environment; thus, the analysis starts with addressing the justiciability of this right in the context of other economic, social and cultural rights. The Inter-American environmental jurisprudence is centred around the interpretation of the right to property in indigenous cases; thus, this right is at the centre

of the analysis of the substantive jurisprudence. The Inter-American jurisprudence on procedural environmental rights touches upon several rights, including the right to life and the freedom of expression; however, given the limited number of case laws, these issues are elaborated in the same section. This is followed by the examination of recently adopted judgments and advisory opinions of the Inter-American court, placing emphasis on the challenges of interpreting the right to a healthy environment.

The third subsection in Part III is dedicated to the African human rights jurisprudence. Considering that the African human rights system provides a solid normative framework for the protection of the environment, including the explicit recognition of the right to a healthy environment, it is first presented before the analysis of the relevant jurisprudence.

Finally, Part IV summarises the key findings based on the comparative analysis of the environment of the three regional human rights courts, provides concluding remarks, and reflects on the significance of the research and its potential future directions.

II. HUMAN RIGHTS AND THE ENVIRONMENT IN PUBLIC INTERNATIONAL LAW

II.1. Theoretical and Normative Foundations of the Interrelationship between Human Rights and the Environment

The concept of the protection of the environment as a moral responsibility is rooted in various philosophical considerations.[1] At the core, philosophical discussions are primarily centred around the ethical relationship between human beings and their natural environment as the starting point for humans' responsibility for safeguarding the environment. Scholarship identifies two major concepts of environmental philosophy that support the duty to protect the environment. The first approach, anthropocentrism, values nature for the benefits it provides to humans, thus, this viewpoint suggests that the environment should be protected because of its value in maintaining or enhancing the quality of life for humans. On the other hand, ecocentrism affirms the intrinsic value of nature and recognises the need for its protection regardless of its usability for humans, thus considering humans as a component of the environment but not the centre of it.[2]

Furthermore, human-nature relations have also been at the centre of different religious teachings. Judeo-Christian doctrine originates humans' moral obligations towards nature from the Creation, when God entrusted humans to take care of the non-human world.[3] In parallel with the growing attention to ecological considerations, the Roman Catholic Church has reflected on humans' role in the protection of the environment in light of Christian teachings.[4] The first encyclical expressly dedicated to the issue of

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[1] See: Armstrong, S. J. and Botzler, R. (2003) *Environmental Ethics: Divergence and Convergence, 3rd edition.* New York: McGraw-Hill; Bosselmann, K. (1995) *When Two Worlds Collide: Society and Ecology*. Auckland: REVP Publishing; DesJardins, J. R. (2013) *Environmental Ethics: An Introduction to Environmental Philosophy, 5th edition.* Belmont: Wadsworth.

[2] Hajjar Leib, L. (2011) Human Rights and the Environment. Philosophical, Theoretical and Legal Perspectives. In: Fitzmaurice, M. Merkouris, P. and Okowa, P. (eds.) *Queen Mary Studies in International Law, volume 3.* Leiden: Martinus Nijhoff Publishers, pp. 26–40. See also: Gagnon Thompson, S. C. and Barton, M. A. (1994) 'Ecocentric and Anthropocentric Attitudes toward the Environment', *Journal of Environmental Psychology*, 14(2), pp. 149–150.

[3] Bándi, Gy. (2020) 'A Teremtés védelme és az emberi jogok', *Acta Humana*, 8(4), p. 9. See also: Shelton, D. (2007) 'Nature in the Bible', *GWU Legal Studies Research Paper No. 371*, p. 63.

[4] For instance, *Gaudium et Spes*, the Pastoral Constitution on the Church in the Modern World, adopted in 1965 at the Second Vatican Council recognised that created earthly goods shall be considered common and shared for the use of all human beings and peoples. Furthermore, in *Redemptor Hominis*, John Paul II reflected on the role of humans as "masters" and "guardians" in protecting the nature created by God. In the encyclical *Caritas in Veritate*, Pope Benedict XVI reiterated that the natural environment is God's gift to everyone, and in using it, everyone has a responsibility towards the poor, future generations, and humanity as a whole. See: Pastoral Constitution on the Church in the Modern World, Promulgated by Pope Paul VI, 7 December 1965 [Online]. Available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-

the environment ("our common home") was *Laudato Si'* of Pope Francis, published in 2015. The encyclical contemplates humans' role in the ecological crisis and offers a comprehensive vision on it, integrating human rights concerns with ecocentric considerations. The encyclical draws attention to the major environmental challenges of our time, such as pollution and climate change, the depletion of natural resources, loss of biodiversity, decline in the quality of human life and the breakdown of society, and global inequality,[5] while recognising the role of human rights in addressing such challenges. Remarkably, the encyclical embraces the human right of access to safe drinking water and the right to a life consistent with humans' inalienable dignity.[6] The impact of the encyclical extends well beyond Catholic circles and extends to the legal field as well.[7] For instance, it was welcomed by the European Parliament in 2015[8] and the President of the United Nations General Assembly (UNGA) in 2017.[9][10]

Teachings of other religions also articulate their position regarding the role of humans in the protection of the natural environment. Islamic teachings highlight humans' role as guardians of the environment, as they are the only creatures with reason and will.[11]

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ii_const_19651207_gaudium-et-spes_en.html (Accessed: 12 May 2025); Redemptor Hominis. Encyclical letter of John Paul II, 4 March 1979 [Online]. Available at: https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_04031979_redemptor-hominis.html (Accessed: 12 May 2025); Caritas in Veritate. Encyclical letter of Benedict XVI, 29 June 2009 [Online]. Available at: https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html (Accessed: 12 May 2025). See also: Bándi, Gy. (2024) 'A teremtésvédelem egyetemlegessége', in: Komáromi, L. et al. (eds.) *Munus et dilectio: Ünnepi kötet Kuminetz Géza 65. születésnapja alkalmából. Xenia*. Budapest: Pázmány Press, pp. 75–83.

[5] Laudato Si'. Encyclical letter of Pope Francis, 24 May 2015 [Online]. Available at: https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (Accessed: 12 May 2025), paras. 20–52.

[6] Laudato Si', ibid., para. 30.

[7] See: Silecchia, L. A. (2016) 'Laudato Si' and Care for Our Common Home: What does it mean for the legal profession?', *Seattle Journal of Environmental Law*, 6(1), pp. 1–12.

[8] European Parliament resolution of 14 October 2015 on Towards a new international climate agreement in Paris (2015/2112(INI)) (2017/C 349/12), 17 October 2017.

[9] 'Statement by Peter Thomson, the President of the UN General Assembly, at the official announcement of The Laudato Si' Challenge at the Pontifical Academy of Sciences', *United Nations* [Online]. Available at: https://www.un.org/pga/71/2017/05/05/official-announcement-of-the-laudato-si-challenge/ (Accessed: 12 May 2025).

[10] In addition, it is also worth mentioning that in 2023, Pope Francis published the encyclical *Laudate Deum*, focusing on the climate crisis, where the Pope drew attention on the weakness of international politics and reflected on progress and failures of the international community in the field. See: Laudate Deum. Encyclical letter of Pope Francis [Online]. Available at: https://www.vatican.va/content/francesco/en/apost_exhortations/documents/20231004-laudate-deum.html (Accessed: 12 May 2025). For a comparative overview of the two mentioned encyclicals of Pope Francis, see: O'Neill, W. (2024) 'Re-enchanting the World: Pope Francis's Critique of the "Technocratic Paradigm" in Laudato Si' and Laudate Deum', *Theological Studies*, 85(2), pp. 240–261.

[11] Dien, M. I. (1997) 'Islam and the Environment: Theory and Practice', *Journal of Beliefs & Values. Studies in Religion & Education*, 18(1), pp. 47–49.

Furthermore, as Judge Christopher Weeramantry pointed out in his Separate Opinion to the Gabčíkovo-Nagymaros Project case, the protection of fauna and flora and the principle of not causing harm to others have been long-standing values of Buddhist teachings,[12] embracing articulated ecocentric values as well. The approaches of certain religious teachings to the environment were summarised in the Assisi Declarations, adopted in 1986 by the representatives of the five world religions – Buddhism, Christianity, Hinduism, Islam and Judaism, also known as the "Assisi Declarations on Nature".[13] The messages contained in the declarations underpin the interconnectedness of religious teachings and environmental concerns by highlighting the common points in religious traditions of safeguarding the planet as a common inheritance.

From the normative perspective, the connection between human rights and environmental protection has been recognised since the early stages of the development of the international environmental legal framework.[14] The United Nations (UN) Conference on the Human Environment, held in Stockholm in 1972, was the first world conference to address the environment as a central issue and produced the Stockholm Declaration and Action Plan for the Human Environment. The Stockholm Declaration is one of the earliest documents recognising the interrelationship between human rights and the environment, by proclaiming in Principle 1 that

> '[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears

[12] Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 101–104.
[13] The Assisi Declarations. Messages on Humanity and Nature from Buddhism, Christianity, Hinduism, Islam & Judaism, 29 September 1986 [Online]. Available at: http://www.arcworld.org/downloads.html (Accessed: 12 May 2025).
[14] This work focuses on the sources of international environmental law adopted in the period after the establishment of the current international human rights framework. International agreements adopted before 1945 did not reflect on human rights, and primarily focused on boundary waters, navigation, fishing rights, and occasionally different elements of the natural environment. See: Brown Weiss, E. (2011) 'The Evolution of International Environmental Law', *Japanese Yearbook of International Law*, vol. 54., pp. 2–4. See also: Sands, P. (2021) 'Origin and History', in: Rajamani, L. and Peel, J. (eds.) *The Oxford Handbook of International Environmental Law, 2nd edition.* Oxford: Oxford University Press, p. 50.; Bodansky, D. and van Asselt, H. (2024) 'How We Got Here: A Brief History', in: *The Art and Craft and International Environmental Law, 2nd edition.* Oxford: Oxford University Press, p. 32.; Kiss, A. and Shelton, D. (2004) 'Origins and Evolution of International Environmental Law', in: *International Environmental Law, 3rd edition*. Leiden: Brill/Nijhoff, p. 39.

a solemn responsibility to protect and improve the environment for present and future generations.'[15]

The declaration of a human right in relation to the environment was remarkably forward-looking at the time, as in 1972, there was no binding or other non-binding human rights document explicitly referring to the environment, primarily because international environmental law did not reach such a development stage in the 1950s and 1960s, the time of the creation of the major human rights instruments, that would justify the inclusion of environmental concerns in the international human rights framework.[16]

The development of the framework of human rights and the environment reached a milestone in 1992 with the organisation of the UN Conference on Environment and Development in Rio de Janeiro (also referred to as "the Earth Summit"). The conference produced both hard law and soft law documents. The first category is marked by two multilateral treaties, the UN Framework Convention on Climate Change (UNFCCC)[17] and the Convention on Biological Diversity (CBD).[18] The latter instrument significantly built on the World Charter for Nature, adopted in 1982, which recognises the intrinsic value of nature, noting in the Preamble that '[e]very form of life is unique, warranting respect regardless of its worth to man […]'.[19] The second group of "Rio instruments" were soft law documents, including the Rio Declaration on Environment and Development, Agenda 21, and the Declaration on the principles of forest management.[20] The Rio Declaration stands out among these sources for its profound contribution to the development of a human rights-based approach to environmental protection,[21] primarily for establishing the three procedural and participatory environmental rights in Principle 10, namely: (i) the right to access to information concerning the environment, (ii) the right to participate in decision-

[15] Declaration of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972, A/CONF.48/14/Rev.1, Principle 1.
[16] Ebbesson, J. (2022) 'Getting it Right: Advances of Human Rights and the Environment from Stockholm 1972 to Stockholm 2022', *Environmental Policy and Law*, 52(2), p. 80.
[17] United Nations Framework Convention on Climate Change, New York, 9 May 1994, UNTS vol. 1771, p. 107.
[18] Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, UNTS vol. 1760, p. 79.
[19] World Charter for Nature, A/RES/37/7, 48th plenary meeting of the UN General Assembly, 28 October 1982.
[20] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992, A/CONF.151/26/Rev.1 (Vol. I).
[21] Although, as pointed out below, recent discussions also evolve around the relevance of the UNFCCC and the CBD in human rights doctrine.

making processes, and (iii) the right to effective access to judicial and administrative proceedings.[22] The commitment to the enforcement of these rights was reaffirmed at the subsequent Johannesburg World Summit on Sustainable Development in 2002[23] and the Rio+20 Conference on Sustainable Development in 2012,[24] while in 2010, the United Nations Environmental Programme (UNEP) Governing Council adopted the Bali Guidelines on the implementation of Principle 10 of the Rio Declaration in national legislations.[25]

In addition to the universal level framework for participatory and procedural rights, the text of Principle 10 has been a source of inspiration for the adoption of international conventions at the regional level. So far, two such conventions have been adopted: the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the Aarhus Convention)[26] was concluded under the aegis of the United Nations Economic Commission for Europe (UNECE) in 1998, and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement)[27] was adopted with the support of the Economic Commission for Latin America and the Caribbean (ECLAC) in 2018.

In the meantime, the interlinkages of human rights and the environment attracted scholarly attention. Dinah Shelton identified four principal and complementary approaches to characterise the relationship between human rights and the environment. These are the following: (i) international environmental law incorporates and utilise human rights guarantees necessary to ensure effective environmental protection, (ii) human rights law interprets internationally guaranteed human rights including an environmental dimension, (iii) international environmental law and international

[22] Report of the United Nations Conference on Environment and Development, ibid. Annex I, Principle 10.
[23] Report of the World Summit on Sustainable Development, Johannesburg, 26 August – 4 September 2002, A/CONF.199/20, para. 128.
[24] United Nations Conference on Sustainable Development, Rio de Janeiro, 20–22 June 2012, Annex, A/CONF.216/16, para. 43.
[25] Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, UNEP, 2010.
[26] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, United Nations Economic Commission for Europe, 25 June 1998, UNTS vol. 2161, p. 447.
[27] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Economic Commission for Latin America and the Caribbean, 4 March 2018, UNTS vol. 3388 C.N.195.2018. TREATIES-XXVII.18. and C.N.196.2018. TREATIES-XXVII.18.

human rights law elaborate a new right to a healthy environment, and (iv) international environmental law articulates ethical and legal duties of individuals that include environmental and human rights considerations.[28]

The first approach focuses on the guarantees of procedural rights, such as freedom of expression, freedom of assembly, freedom of association, and the right to take part in public affairs, established in Articles 19, 21, 22, and 25 of the International Covenant on Civil and Political Rights (ICCPR).[29] The second approach builds on substantive rights. Rights enshrined in Articles 2 (the right to life), 17 (the right to private and family life), 27 (the right to culture) of the ICCPR, and Articles 11 (the right to an adequate standard of living) and 12 (the right to the enjoyment of the highest attainable standard of physical and mental health) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) may be impaired by the deterioration of the environment, that is to say, according to this approach, the environment is a precondition or a sine qua non for the realisation of substantive human rights.[30]

The first two approaches highlight the viability of using human rights law to address environmental protection. Namely, human rights law offers international legal procedures and sophisticated legal and extra-legal mechanisms through UN treaty bodies at the universal level and regional human rights courts at the regional levels for individuals to redress the harm attributable to States. In contrast with the fragmentation of international environmental law, human rights law constitutes a self-contained regime in public international law,[31] following a different logic from the reciprocal and universal nature of international law, positioning the individual as the ultimate beneficiary of the obligations established in human rights treaties.[32] However, the use of human rights law for environmental protection also has its limits, primarily owing

[28] Shelton, D. (2006) 'Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized', *Denver Journal of International Law & Policy*, 35(1), p. 130.
[29] International Covenant on Civil and Political Rights, 16 December 1966, UNTS vol. 999, p. 171.
[30] International Covenant on Economic, Social and Cultural Rights, 16 December 1966, UNTS vol. 993, p. 3.
[31] Self-contained regimes are considered a subcategory of lex specialis within the law of State responsibility, regimes where a special set of rules have priority over the secondary rules in the general law of State responsibility. See: ILC, 'Fragmentation of international law: difficulties arising from the diversification and expansion of international law: report of the Study Group of the International Law Commission', finalised by Martti Koskenniemi, A/CN.4/L.682, 13 April 2006, paras. 161–164. See also: Szalayné Sándor, E. (2024) 'Regional Human Rights Protection Systems - Introduction', in: Raisz, A. (ed.) *Children's Rights in Regional Human Rights Systems*. Miskolc–Budapest: Central European Academic Publishing, pp. 23–28.
[32] Simma, B. and Pulkowski, D. (2006) 'Of Planets and the Universe: Self-contained Regimes in International Law', *European Journal of International Law*, 17(3), pp. 524–529.

to its anthropocentric nature, State-centred focus, and individualistic character, inter alia, which will be elaborated below. Nonetheless, human rights law remains one of the most viable avenues through which environmental issues can be effectively addressed.

The third approach, the formulation of a new human right to a healthy environment,[33] had long been a solution only in national constitutions, and, to a limited extent, in regional human rights law, as discussed below.[34] Therefore, the adoption of UNGA Resolution 76/300 on 28 July 2022[35] marked a significant milestone in the advancement of environmental rights at the international level, as it was the first time the UNGA explicitly recognised a self-standing right to a clean, healthy and sustainable environment. Notwithstanding the importance of the Resolution for human rights adjudication, the discussion about the possibilities of recognising the right to a healthy environment in a binding form remains open and therefore will be addressed below. At this point, it is worth noting that the need of recognising the right to a healthy environment at the international level had already been pointed out in the literature decades before it came to fruition in the normative framework.

Last, the fourth approach considers environmental protection as a matter of human responsibilities rather than human rights. This approach exceeds the limits of human rights law as it allows for the integration of ecocentric standards,[36] which came to the fore of discussions of rights-based environmental protection in recent years.

While Shelton's categorisation represents a broader scholarly perspective, the UN approaches the theoretical relationship between human rights and the environment within its framework, as established in a report of the Office of the High Commissioner

[33] The denomination of substantive environmental rights might differ, legal texts may refer to certain qualities of the environment, such as "adequate", "clean", "healthy", "productive", "harmonious", or "sustainable". Scientific literature tends to use the term "the right to a healthy environment", also extending it to different denominations of the right. See: May, J. R. and Daly, E. (2014) 'Textualizing environmental constitutionalism', in: *Global Environmental Constitutionalism.* Cambridge: Cambridge University Press, pp. 64–72.

[34] For an overview of the status of recognition of the right to a healthy environment at the constitutional and regional levels, see: Boyd, D. (2018) 'Catalyst for Change. Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment', in: Knox, J. H. and Pejan, R. (eds.) *The Human Right to a Healthy Environment.* Cambridge: Cambridge University Press, p. 17.

[35] UNGA, The human rights to a clean, healhy and sustainable environment, A/RES/76/300, 28 July 2022.

[36] Shelton, 2006, ibid., p. 132.

for Human Rights (OHCHR) in 2011.[37] The report identifies two key issues, namely, the question of the nature of the relationship between human rights and the environment, and the question of whether the international community should recognise a new human right to a healthy environment. Regarding the first issue, the report distinguishes three different approaches prevalent in the UN human rights framework. The first approach regards the environment as a precondition to the enjoyment of human rights, and recognises that environmental degradation can affect the realisation of rights, such as the right to life, food and health. UN treaty bodies embraced this approach. For instance, in General Comment No. 36, the UN Human Rights Committee (UN HRC) pronounced that the degradation of the environment may give rise to direct threats to life or prevent people from enjoying their right to life with dignity protected under Article 6 of the ICCPR.[38] Furthermore, in General Comments Nos. 12, 14 and 15, the UN Committee on Economic Social and Cultural Rights (UN CESCR) also addressed the connection between environmental hygiene and the rights to adequate food, the right to the highest attainable standard of health, and the right to water, deduced from Articles 11 and 12 of the ICESCR.[39]

In this context, it is also worth noting that the UN CESCR has started developing a General Comment on Sustainable Development and the Covenant, which is expected to reflect on the overarching central concern in considering sustainable development and economic, social and cultural rights, reflecting on the sustainable use of natural resources, environmental degradation and biodiversity loss, climate change, gender equality, vulnerable groups, private actors, extraterritorial obligations, remedies and accountability, as well as the interrelationship between sustainable development and key concepts in the ICESCR.[40] The General Comment may recognise that the right to a clean, healthy and sustainable environment is implicit in economic, social and

[37] OHCHR, 'Analytical Study on the Relationship between Human Rights and the Environment', A/HRC/19/34, 16 December 2011, paras 6–9.
[38] CCPR, General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life (30 October 2018) CCPR/C/GC/36, para 62.
[39] CESCR, General Comment No. 12 (1999) on article 11 of the International Covenant on Economic, Social and Cultural Rights, on the right to adequate food (12 May 1999) E/C.12/1999/5.; CESCR, General Comment No. 14 (2000) on the right to the highest attainable standard of health (11 August 2000) E/C.12/2000/4.; CESCR, General Comment No. 15 (2002) on articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, on the right to water (11 November 2002) E/C.12/2002/11.
[40] See: 'General Comment on Sustainable Development and the International Covenant on Economic, Social and Cultural Rights', *OHCHR* [Online]. Available at: https://www.ohchr.org/en/treaty-bodies/cescr/general-comment-sustainable-development-and-international-covenant-economic-social-and-cultural (Accessed: 11 May 2025).

cultural rights enshrined in the Covenant and strengthen the interpretation of States' obligations in light of environmental degradation and climate change.

The second approach mentioned in the OHCHR report considers human rights as tools to address environmental issues, both procedurally and substantively. This approach integrates Shelton's first two categories and builds on human rights guarantees to achieve adequate levels of environmental protection. By the time of the preparation of the report, procedural environmental rights had already been developed and established in the Rio Declaration and its subsequent reinforcements. On the other hand, the environmental dimensions of certain rights had been partially recognised at the UN level: the abovementioned General Comment No. 36 was adopted in 2019, the same year as the UN HRC adopted its first decision on environmental pollution and its impact on the rights guaranteed in the ICCPR, namely, in *Portillo Cáceres v. Paraguay*.[41] The UN CESCR adopted the abovementioned General Comments in 1999, 2000, and 2003, respectively, which shows that the impact of environmental degradation on human rights was first recognised in connection with social and economic rights in the UN human rights framework. By this time, some regional human rights adjudicatory bodies had developed their environmental jurisprudence, supporting the argument that human rights law can indeed be utilised to address environmental issues, also demonstrating the interconnection between regional and universal human rights protection systems.

The OHCHR report's third approach proposes the integration of human rights and the environment under the concept of sustainable development. The concept of sustainable development was elaborated by the World Commission on Environment in the so-called Brundtland Report in 1987, defining it as a 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs',[42] thereby integrating economic, environmental and social justice. Therefore, this approach aims to address societal objectives in an integrated manner, in which

[41] CCPR, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2751/2016, (20 September 2019) CCPPR/C/126/D/2751/2016.
[42] Report of the World Commission on Environment and Development: Our Common Future (1987), para. I.4.

environmental and human rights issues represent only one component of the complex issue.[43]

As Alan Boyle points out, the OHCHR report represents an attempt from the UN Human Rights Council to codify the law on human rights and the environment.[44] Therefore, this categorisation could be regarded as a summary of the developments in the UN treaty bodies and human rights courts from a theoretical perspective, noting that these approaches are not exclusive but complementary to each other.[45] Furthermore, the different approaches to the interrelation of human rights and the environment were also synthesised by UN Special Rapporteur John H. Knox in the Framework Principles on Human Rights and the Environment in 2018. The 16 principles integrate the mentioned approaches by establishing States' human rights obligations to the protection of the environment, including substantive and procedural guarantees deduced from the rights enshrined in the ICCPR and the ICESCR.[46]

Regarding the central questions of the present dissertation revolving around the interpretation of human rights treaties in regional human rights courts' environmental jurisprudence, the approach that considers human rights as tools to address environmental issues plays a crucial role. This approach is often labelled as "the greening of existing human rights", integrating the expansion theory and the theory of environmental democracy.[47] The expansion theory builds on the interpretation of well-established substantive rights, also referred to as "derivative rights", which allow for the integration of environmental concerns to a certain extent. Critiques often consider this approach as a transitional stage that paves the way to the future recognition of a human right to a healthy environment, as they highlight the limits of this interpretation. Namely, under the "greening" of existing rights, environmental concerns can only be taken into consideration if they interfere with such rights, thus, this approach cannot address the mere deterioration of the environment. Furthermore, the individualistic

[43] Regarding the law on sustainable development, see: Cordonier Segger, M. C. and Khalfan, A. (2004) *Sustainable Development Law: Principles, Practices, and Prospects.* Oxford: Oxford University Press.
[44] Boyle, A. (2012) 'Human Rights and the Environment: Where Next?', *European Journal of International Law,* 23(3), pp. 617–618.
[45] OHCHR, 2011, ibid., para. 7.
[46] UN Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59, 24 January 2018.
[47] Hajjar Leib, 2011, ibid., pp. 71–72.

character of existing rights does not allow for considering the collective aspects of environmental harms, or the collective interest of future generations.[48]

Furthermore, the theory of environmental democracy[49] builds on environmental procedural rights, which, on the one hand, could be deduced from general human rights instruments and international environmental legal instruments, such as the Rio Declaration mentioned above. Considering that procedural environmental rights are explicitly codified in universal and regional instruments, as discussed below, it could be concluded that there is more agreement on the procedural aspects of environmental rights than on the substantive relationship between human rights and the environment,[50] which certainly facilitates the implementation of the former category.

Based on the theoretical and normative framework of the relationship between human rights and the environment, it can be concluded that legal scholarship identifies various approaches to describe the connection between human rights and the environment, and human rights law is currently suitable to address only certain aspects of it. Reinterpretation of existing human rights, advancing environmental protection through different procedures, and the formulation of a new, self-standing environmental right are all crucial and interdependent approaches that have shaped the development of the environmental jurisprudence of human rights adjudicatory bodies.

II.2. Current Challenges in the Field of Human Rights and the Environment

The issue of the protection of the environment significantly challenges the limits of human rights law, as environmental problems extend far beyond the traditionally anthropocentric concepts of human rights doctrine.[51] In this chapter, I identify four categories of challenges environmental protection currently poses to international human rights law, namely: (i) the recognition of the right to a healthy environment,

[48] Chalabi, A. (2023) 'A New Theoretical Model of the Right to Environment and its Practical Advantages', *Human Rights Law Review*, 23(4), pp. 3–5.
[49] The concept of environmental democracy seeks to reconcile two ideals: ensuring environmental sustainability while safeguarding democracy through civil society participation in environmental governance. Participatory and procedural environmental rights, as guaranteed by the Aarhus Convention, are cornerstones of environmental democracy. See: Pickering, J., Bäckstrand, K. and Schlosberg, D. (2020) 'Between environmental and ecological democracy: theory and practice at the democracy-environment nexus', *Journal of Environmental Policy & Planning*, 22(1), pp. 1–4; 6–7. See also: Manson, M. (1999) *Environmental Democracy: A Contextual Approach.* London: Routledge.
[50] Chalabi, 2023, ibid., p. 3.
[51] Redgwell, C. (1998) 'Life, The Universe and Everything: A Critique of Anthropocentric Rights', in: Boyle, A. and Anderson, M. (eds.) *Human Rights Approaches to Environmental Protection*. Oxford: Oxford University Press, p. 71.

(ii) the recognition of non-humans as rights holders, (iii) the recognition of non-State actors' responsibility for the violations, and (iv) effective response to planetary crises, such as climate change, migration, sea level rise, or the mass destruction of the environment.

II.2.1. The Challenge of Recognising the Right to a Healthy Environment

As pointed out above, the recognition of the right to a healthy environment reached a milestone in 2022 with UNGA Resolution 76/300, embracing Resolution 48/13 of the UN Human Rights Council of 2021,[52] the first formal recognition of the right to a healthy environment at the global level. In addition to the explicit recognition of the right, the Resolution notes that it is related to other rights and existing international law, building upon earlier resolutions of the Human Rights Council,[53] the work of special rapporteurs, particularly the Special Rapporteur on human rights and the environment,[54] and other instruments, such as the Universal Declaration on Human Rights (UDHR),[55] the Stockholm Declaration and the Rio Declaration, as relevant milestones in the development of the recognition of the right to a healthy environment.[56] Therefore, UNGA Resolution 76/300 is embedded in the decade-long endeavours to recognise a self-standing environmental right, and its impact certainly extends well beyond its non-binding, soft law nature, as it reflects on the widespread recognition of this right in domestic systems,[57] and, being the plenary organ of the UN, it expresses a consensus among the vast majority of Member States.

At the regional level, the right to a healthy environment has been recognised in various binding and non-binding documents. The first, and so far, only binding and directly enforceable regional human rights treaty that explicitly enshrines the right is the African Charter on Human and Peoples' Rights (African Charter or Banjul Charter),[58] which, in Article 24 provides that "[a]ll peoples shall have the right to a general satisfactory environment". The right to a healthy environment has also been integrated into the Inter-American human rights system with Article 11 of the Protocol of San

[52] UN Human Rights Council, The human right to a clean, healthy and sustainable environment, A/HRC/RES/48/13, 8 October 2021.
[53] See: UNGA, A/RES/76/300, ibid., Recital 6.
[54] See: UNGA, A/RES/76/300, ibid., Recital 17.
[55] UNGA, Universal Declaration on Human Rights, 217 A, 10 December 1948.
[56] See: UNGA, A/RES/76/300, ibid., Recital 1.
[57] Boyd, ibid., 2018, pp. 19–23.
[58] African Charter on Human and Peoples' Rights, Organization of African Unity, 27 June 1981, UNTS vol. 1520, p. 217.

Salvador[59] to the American Convention on Human Rights (ACHR),[60] providing that "[e]veryone shall have the right to live in a healthy environment and to have access to basic public services". In addition, the abovementioned Escazú Agreement also enshrines in Article 1 "the right of every person of present and future generations to live in a healthy environment and to sustainable development".

Furthermore, Article 38 of the Arab Charter on Human Rights also recognises the right to an adequate standard of living and the right to a healthy environment.[61] The Arab Charter, signed under the aegis of the League of Arab States in 2004, is a binding document, which, however, currently lacks an enforcement mechanism.[62] Among the non-binding regional human rights documents, the ASEAN Human Rights Declaration[63] and the Malé Declaration on the Human Dimension of Global Climate Change[64] are worth mentioning for explicitly recognising the right to a healthy environment. The ASEAN Human Rights Declaration, adopted in 2012, within the framework of the Association of Southeast Asian Nations, considers the right to a safe, clean and sustainable environment under the right to an adequate standard of living in Article 28, and integrates environmental considerations into the right to development in Articles 35 and 36. The Malé Declaration, adopted by the Alliance of Small Island States (AOSIS) in 2007, is not a regional human rights treaty of a general nature, but rather a specialised non-binding instrument focusing on one complex environmental

[59] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador, 17 November 1988, in: Compendium of international and regional standards against racism, racial discrimination, xenophobia and related intolerance, E/CN.4/2004/WG.21/5., 13 January 2004, pp. 413–419.

[60] American Convention on Human Rights, "Pact of San José, Costa Rica", Organization of American States, 22 November 1969, UNTS vol. 1144, p. 123.

[61] Arab Charter on Human Rights, League of Arab States, 22 May 2004, [ST/HR/]CHR/NONE/2004/40/Rev.1.

[62] The Arab Human Rights Committee was established in 2009 to oversee the implementation of the Arab Charter on Human Rights. The Committee is responsible for reviewing State reports, submitting annual reports to the Arab League, request information from Arab League bodies and Arab institutions, and interpreting the Arab Charter. However, the Committee does not have an individual petition procedure. Furthermore, in 2014, the establishment of the Arab Court of Human Rights was initiated in the Arab League, however, according to its Statute, the Court would not accept individual petititons. As of May 2025, the Arab Court has not been established. See: Statute of the Arab Court of Human Rights, Resolution No. 7790, E.A (142) C 3, 3 September 2014, Council of the League of Arab States. See also: Almutawa, A. (2021) 'The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights', *Human Rights Law Review*, 21(3), p. 506.

[63] ASEAN Human Rights Declaration, Association of Southeast Asian Nations, 19 November 2012 [Online]. Available at: https://asean.org/asean-human-rights-declaration/ (Accessed: 18 March 2025).

[64] Malé Declaration on the Human Dimension of Global Climate Change, Alliance of Small Island States, 14 November 2007 [Online]. Available at: www.ciel.org/Publications/Male_Declaration_Nov07.pdf (Accessed: 18 March 2025).

crisis, climate change. Despite its non-binding nature, the Declaration is remarkable for noting that

> 'the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights is recognised, in varying formulations, in the constitutions of over one hundred states and directly or indirectly in several international instruments',

which envisages the development of an overarching environmental right at the international level.[65]

In Europe, the right to a healthy environment is recognised in the abovementioned Aarhus Convention, which could be considered both a human rights treaty and an environmental legal treaty, for enshrining participatory and procedural environmental rights. In Article 1, the Convention recognises "the right of every person of present and future generations to live in an environment adequate to his or her health and well being", thus, a self-standing substantive environmental right. However, the phrasing of the substantive environmental right as an objective to which States contribute by guaranteeing participatory and procedural environmental rights suggests that this right is not justiciable under the Convention.[66] Nonetheless, the Aarhus Convention remains the first and so far, only express recognition of the right in a binding international instrument in the European region, which, however, is formally not part of the European human rights system created under the aegis of the Council of Europe. The major regional human rights instrument in Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights or the ECHR)[67] does not contain any reference to the environment, nor is it enshrined in other treaties of the Council of Europe.

Therefore, the European human rights regime remains the only regional human rights system where the right to a healthy environment is not explicitly recognised in the major human rights treaty or an additional protocol. Nonetheless, discussions on the

[65] Magraw, D. and Wienhöfer, K. (2018) 'The Malé Formulation of the Overarching Environmental Human Right', in: Knox and Pejan, 2018, ibid., p. 215.
[66] Barritt, E. (2024) 'The Aarhus Convention and the Latent Right to a Healthy Environment', *Journal of Environmental Law*, 36(1), p. 72. See also: Hey, E. (2015) 'The Interaction between Human Rights and the Environment in the European "Aarhus Space"', in: Grear, A. and Kotzé, L. J. (eds.) *Research Handbook on Human Rights and the Environment.* Cheltenham: Edward Elgar Publishing, p. 357.
[67] Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, 4 November 1950, UNTS vol. 213, p. 221.

possibilities of including such a right in the European human rights system has been on the agenda in the past decades, primarily in the form of an additional protocol to the ECHR, which will be addressed in detail in the next chapter. At this point, it is worth noting that UNGA Resolution 76/300 could be a catalyst for the recognition of the right to a healthy environment in the Council of Europe system, as the document was adopted with wide consensus: 161 votes in favour, zero against, and eight abstentions (none of the current Member States of the Council of Europe).[68]

The widespread recognition of the right to a healthy environment at domestic, regional, and universal levels raise the question whether it already forms part of the customary norms of public international law, which would strengthen its legally binding international status even in the absence of its explicit adoption in a global treaty.[69] International custom, as evidence of a general practice accepted as law, is enshrined in Article 38(1) of the Statute of the International Court of Justice (ICJ), which is widely considered as an authoritative statement of the sources of international law in the doctrine. According to the International Law Commission, to determine the existence of a rule of customary international law, it is necessary to ascertain two constitutive elements: whether there is a general practice and whether that practice is accepted as law *(opinio juris)*, hence legally binding.[70] The consistent and widespread practice of recognising the right to a healthy environment can undoubtedly be observed at the domestic, regional, and universal levels, even if not unanimously.[71] Unanimity, however, is not a criteria for the identification of a customary norm, public international law tends to acknowledge the persistent objector's position in the process of the formation of the customary rule under certain circumstances.[72] Thus, the facts

[68] 'With 161 Votes in Favour, 8 Abstentions, General Assembly Adopts Landmark Resolution Recognizing Clean, Healthy, Sustainable Environment as Human Right', *UN Press* [Online]. Available at: https://press.un.org/en/2022/ga12437.doc.htm (Accessed: 18 March 2025).

[69] Rodríguez-Garavito, C. (2018) 'A Human Right to a Healthy Environment? Moral, Legal, and Empirical Considerations', in: Knox and Pejan, 2018, ibid., p. 160.

[70] ILC, 'Formation and evidence of customary international law', A/CN.4/663, First report on formation and evidence of customary international law, by Sir Michael Wood, Special Rapporteur, 17 May 2013, paras. 28–38.

[71] As of January 2025, 164 States recognise the right to a healthy environment in law, which amounts to 85% of UN Member States. See: Puentes Riaño, A. (2025) 'Healty Environment: A Human Right and Customary International Law', *SDG Knowledge Hub*, 29 January 2025 [Online]. Available at: https://sdg.iisd.org/commentary/guest-articles/healthy-environment-a-human-right-and-customary-international-law/ (Accessed: 18 March 2025).

[72] ILC, 'Draft conclusions on identification of customary international law', A/73/10, 2018, Conclusion 15. See also: Werner, W. (2023) 'The Making of Lawmaking. The ICL Draft Conclusions on the Identification of Customary Law', in: Krisch, N. and Yildiz, E. (eds.) *The Many Paths of Change in International Law.* Oxford: Oxford University Press, pp. 144–148.

that not all UN Member States recognise this right in their domestic laws or that a small minority of them abstained from the adoption of UNGA Resolution 76/300 may not hinder the formulation of a customary norm regarding the right to a healthy environment. Furthermore, the second criteria, *opinio juris*, may also be justified by the growing number of court rulings, laws, and regulations worldwide.[73] In this regard, the impact of UNGA Resolution 76/300 may extend beyond the limits of a soft law document, as it represents the increasing state acceptance of the right as an international legal norm.

Although it is not a formal criteria of the formulation of customary norms to be recognised as such by the ICJ, the Court plays a crucial role in identifying and applying them in its cases. The recently adopted *Advisory Opinion on the Obligations of States in Respect of Climate Change* provided the possibility for the Court to elaborate on the legal character of States' obligations regarding climate change in light of human rights conventions and customary norms. The ICJ was expected to confirm the customary character of the right to a healthy environment, its content, and the obligations deriving from it.[74] The Court examined the relevant international legal framework regarding the right, including the Stockholm and Rio Declarations, regional human rights treaties, and UNGA Resolution 76/300; and concluded that the right to a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, and that the right itself results from the interdependence between human rights and the protection of the environment.[75]

The *Advisory Opinion* itself is groundbreaking on many levels; primarily because it was the first time the World Court addressed the question of climate change in international law,[76] In addition, it introduced important conclusions for international

[73] See: Puentes Riaño, 2025, ibid.
[74] Wewerinke-Singh, M., Garg, A., and Hartmann, J. (2023) 'The Advisory Proceeding on Climate Change before the International Court of Justice', *Questions of International Law*, vol. 102, p. 39.
[75] Obligations of States in Respect of Climate Change, Advisory Opinion, I.C.J. Reports (forthcoming), para. 393. As Péter Kovács points out, the ICJ tends to take into account the tendencies expressed by UNGA resolutions to strengthen their normative position. See: Kovács, P. (2010) *A nemzetközi jog fejlesztésének lehetőségei és korlátai a nemzetközi bíróságok gyakorlatában.* Budapest: Pázmány Péter Katolikus Egyetem, Jog-és Államtudományi Kar, pp. 145–148.
[76] For some early conclusions on the Advisory Opinion, see: Perera, R. (2025) 'The ICJ's Recognition of an Autonomous Right to a Clean and Healthy Environment', *EJIL:Talk!* [Online]. Available at: https://www.ejiltalk.org/the-icjs-recognition-of-an-autonomous-right-to-a-clean-and-healthy-environment/ (Accessed: 24 September 2025); Tigre, M.A. et al. (2025) 'The ICJ's Advisory Opinion on Climate Change: An Introduction', *Verfassungsblog* [Online]. Available at: https://verfassungsblog.de/the-icj-advisory-opinion-on-climate-change/ (Accessed: 24 September 2025). See also: Kecskés, G. and Sulyok, K. (2025) 'Vigyázó szemünket most Hágára vessük –

human rights law through the recognition of the right to a clean, healthy and sustainable environment. Although the Court did not explicitly pronounce the customary nature of the right, Judge Bhandari argued that the Court's conclusion amounted to the recognition of the existence of this right under customary international law.[77] This assessment was also supported by Judge Aurescu, pointing out that the right had been recognised in a wider scope of instruments than those mentioned in the *Advisory Opinion*, also referring to, for instance, the Aarhus Convention, the Arab Charter, the ASEAN Declaration, and a total of 164 States' domestic laws affording at least one form of legal protection.[78] Therefore, it can be concluded that the fact that the ICJ did not explicitly pronounce the customary nature of the right does not prevent its customary status in international law, and thus, the *Advisory Opinion* contributes to strengthening human rights obligations regarding the protection of the environment.

II.2.2. The Challenges of Defining Rights Holders in the Context of Environmental Protection in Human Rights Law

In addition to defining the international legal status of the right to a healthy environment, the features of environmental norms also pose challenges to the interpretation of already existing rights, particularly regarding the scope of rights holders and duty bearers. In the traditional human rights doctrine, the beneficiaries of human rights are individuals or groups of individuals, whereas the duty bearer is the State.[79] The next paragraphs are dedicated to evaluating current endeavours to extend the scope of beneficiaries to include future generations as well as non-humans, and the scope of duty bearers to non-State actors, primarily businesses or corporations.

The idea of incorporating the rights of future generations into human rights law is embedded in the theory of intergenerational justice, which builds on the moral responsibilities shared among different generations. According to the theory proposed by Edith Brown Weiss, each generation holds the planet on trust and is obliged to

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Tanácsadó vélemény az államok klímaváltozással kapcsolatos kötelezettségei tárgyában', *JTI Blog* [Online]. Available at: https://jog.tk.elte.hu/blog/2025/07/vigyazo-szemunket-most-hagara-vessuk (Accessed: 24 September 2025).

[77] Obligations of States in Respect of Climate Change, ibid., Separate Opinion of Judge Bhandari, para. 3.

[78] Obligations of States in Respect of Climate Change, ibid., Separate Opinion of Judge Aurescu, paras. 27–46.

[79] Fellemeth, A. X. (2016) *Paradigms of International Human Rights Law.* Oxford: Oxford University Press, p. 61. See also: Shenin, M. (2013) 'Core Rights and Obligations', in: Shelton, D. (ed.) *The Oxford Handbook of International Human Rights Law.* Oxford: Oxford University Press, p. 536.

bequeath it to future generations in at least as good conditions as they received it, thus conceptualising each generation as both a trustee for the planet with obligations to preserve it and a beneficiary with rights to use it.[80] Reference to intergenerational equity or future generations may be incorporated in certain binding or non-binding documents, including Principle 3 of the Rio Declaration,[81] Article 6 of the Convention on Biological Diversity,[82] Article 3 of the UNFCCC,[83] Articles 1 and 5 of the UNESCO Declaration on the Responsibilities of the Present Generations Towards Future Generations,[84] or the Preamble of the Paris Agreement.[85] Furthermore, the Declaration on Future Generations, adopted recently by the UNGA strengthened the commitments of the international community towards future generations, however, it does not conceptualise future generations as rights holders.[86] So far, the only international document explicitly referring to the rights of future generations is the

[80] Brown Weiss, E. (1990) 'Our Rights and Obligations to Future Generations for the Environment', *American Journal of International Law*, vol. 84, pp. 198–202. See also: Brown Weiss, E. (1989) *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity.* New York: Transnational Publishers, Inc.

[81] Principle 3 of the Rio Declaration reads as follows: 'The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.'

[82] Article 6 of the Convention on Biological Diversity provides that '[e]ach Contracting Party shall, in accordance with its particular conditions and capabilities: […] (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.' Sustainable use is defined in the Preamble of the Convention as 'means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.'

[83] The relevant section of Article 3 of the UNFCCC reads as follows: 'The Parties shaould protect the climate system for the benefit of present and future generations of humankind, on the basis of equity […]'.

[84] Article 1 of the UNESCO Declaration reads as follows: 'The present generations have the responsibility of ensuring that the needs and interests of present and future generations are fully safeguarded.' Furthermore, Article 5 provides the following: '1. In order to ensure that future generations benefit from the richness of the Earth's ecosystems, the present generations should strive for sustainable development and preserve living conditions, particularly the quality and integrity of the environment.

2. The present generations should ensure that future generations are not exposed to pollution which may endanger their health or their existence itself.

3. The present generations should preserve for future generations natural resources necessary for sustaining human life and for its development.

4. The present generations should take into account possible consequences for future generations of major projects before these are carried out.'

See: UNESCO Declaration on the Responsibility of the Present Generations Towards Future Generations, UNESCO, 12 November 1997.

[85] The Preamble of the Paris Agreement acknowledges that climate change is a common concern of humankind, and provides that '[…] Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, […] and intergenerational equity'. See: Paris Agreement, 12 December 2015, UNTS vol. 3156, p. 79.

[86] UNGA, Pact for the Future, A/RES/79/1, 22 September 2024, Annex II.

Maastricht Principles on the Human Rights of Future Generations,[87] which is an expert document signed on 3 February 2023 by current and former members of international and regional human rights treaty bodies and special rapporteurs of the UN Human Rights Council. The Maastricht Principles attempt to give a definition to future generations – those generations that do not yet exist but will exist and who will inherit the Earth, including persons, groups, and Peoples –, and represent the first attempt to elaborate on the implications of regarding future generations as holders of human rights under international law.[88] The legal position of this document is rather tenuous, as it lacks formal legal basis, nonetheless, it could be an important source to understand the current challenges of integrating intergenerational equity in human rights discourses.

Intergenerational equity also plays a central role in discussions around the recognition of the right to a healthy environment. UNGA Resolution 76/300 also recognises that sustainable development and the protection of the environment contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations, and that environmental degradation, climate change, biodiversity loss, desertification and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights.[89] Furthermore, Article 1 of both the abovementioned Aarhus Convention and Escazú Agreement explicitly mention future generations in the context of the right to live in a healthy environment. As concluded above, none of these provisions are directly justiciable, yet they demonstrate that the right to a healthy environment, as well as other, participatory and procedural environmental rights have to be interpreted in the context of intergenerational equity.

The influence of intergenerational equity on international human rights law is tangible: the abovementioned General Comment No. 36 of the UN HRC recognised 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.[90] This reference to future generations has been

[87] Maastricht Principles on the Human Rights of Future Generations, July 2023 [Online]. Available at: https://www.rightsoffuturegenerations.org/the-principles (Accessed: 20 March 2025).
[88] Krajnyák, E. (2024) 'The Voice of Future Generations: Institutional Representation, Lessons Learned and the Way Forward', *European Journal of Legal Studies*, 16(1), p. 17.
[89] UNGA, A/RES/76/300, ibid., Recitals 9 and 14.
[90] CCPR, CCPR/C/GC/36, ibid., para. 62.

quoted in the Committee's decisions in *Ioane Teitiota v. New Zealand*,[91] an inadmissible claim regarding climate migration addressed at a further point in this dissertation, and in *Daniel Billy and Others v. Australia*.[92] In the latter case, the authors explicitly argued the violation of the rights of future generations, which has not been directly addressed by the Committee, although they took into consideration the intergenerational aspect in finding a violation of Article 27 of the ICCPR (the right to culture) for the State's failure to protect the authors' collective ability to transmit their children and future generations their culture, among other aspects.[93]

Furthermore, General Comment No. 26, adopted by the UN Committee on the Rights of the Child in 2023, explicitly recognises the principle of intergenerational equity and the interests of future generations. Namely, the Committee noted that, while the rights of children who are present on Earth require immediate urgent attention, the children constantly arriving are also entitled to the realisation of their human rights to the maximum extent.[94] However, the Committee did not take a stance in the long-standing dilemma about the scope of future generations, namely, whether children are also part of them, or only people yet to be born in the future.[95] Considering the growing number of domestic and international climate change claims involving arguments on the impact of environmental harm on children and future generations,[96] it can be argued that the lack of precise definitions of future generations continue to pose a significant challenge in the enforcement of their rights.[97]

[91] CCPR, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2728/2016 (7 January 2020) CCPR/C/127/D/2728/2016.
[92] CCPR, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 3624/2019 (22 September 2022), CCPR/C/135/D/3624/2019.
[93] Ibid., point 8.14.
[94] UN CRC, General Comment No. 26 on Children's Rights and the Environment, with a Special Focus on Climate Change (22 August 2023), CRC/C/GC/26, para. 11.
[95] Although the abovementioned Maastricht Principles define future generations as 'those generations that do not yet exist but will exist and who will inherit the Earth' in paragraph 1, it was noted above that this document represents the views of experts and it cannot be regarded as a source of public international law. Such sources do not attempt to define the scope of future generations. On the debate regarding the need of protecting future generations in international law, see: Humphreys, S. (2023) 'Against Future Generations', *European Journal of International Law*, 33(4), p. 1061; Wewerinke-Singh, M., Garg, A., and Agarwalla, S. (2023) 'In Defence of Future Generations', *European Journal of International Law*, 34(3), p. 651.
[96] Donger, E. (2022) 'Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization', *Transnational Environmental Law*, 11(2), pp. 264–269.
[97] Nolan, A. (2024) 'Children and Future Generations Rights before the Courts: The Vexed Question of Definitions', *Transnational Environmental Law*, 13(3), pp. 522–523.

Nonetheless, the General Comment was the first UN treaty body to explicitly recognise the right to a clean, healthy and sustainable environment based on UNGA Resolution 76/300, noting that it is implicit in the UN Convention on the Rights of the Child (UN CRC), and is directly linked to the rights to life, survival and development (Article 6), to the highest attainable standard of health (Article 24), to an adequate standard of living (Article 27), and to education (Article 28).[98] The fact that it was the UN Committee on the Rights of the Child to first pronounce the implicit existence of the right to a healthy environment in a UN human rights treaty is certainly a symbolic step, as it draws attention to the vulnerable position of children in environmental harms, particularly in the context of climate change. Additionally, even if the Committee did not attempt to define future generations, it certainly recognised the connection between children and future generations by integrating the principle of intergenerational equity in the interpretation of the UN CRC.

Intergenerational equity as recognised in General Comment No. 26 was explicitly referenced by the Inter-American Court of Human Rights (IACtHR) in *La Oroya v. Peru*, a judgment of 2023 concerning the human rights impacts of large-scale environmental pollution on the local community, including children.[99] The Court further noted that the right to a healthy environment constitutes a universal interest that is owed to present and future generations, and cited the abovementioned Maastricht Principles to support the recognition of intergenerational equity in human rights law.[100] The Court did not explicitly address the question whether children are part of future generations, the extensive consideration of the interests future generations in the case may imply that the Court does not expressly separate the two groups. In addition, the Court made reference to the judgment of the Colombian Supreme Court recognising the environmental rights of future generations *(Future Generations v. Ministry of the Environment and Others)*,[101] which demonstrates the IACtHR's progressive approach to the interpretation of intergenerational equity. However, considering that UN treaty bodies and the other regional human rights court, the European Court of Human Rights (ECtHR) tend to recognise intergenerational equity in the context of climate change,

[98] Convention on the Rights of the Child, 20 November 1989, UNTS vol. 1577, p. 3.
[99] Case of the Inhabitants of La Oroya v. Peru, Judgment of 27 November 2023 (Preliminary Objections, Merits, Reparations and Costs), IACtHR.
[100] ibid., para. 141.
[101] Future Generations v. Ministry of the Environment and Others, Judgment STC 4360-2018 of 5 April 2018, Supreme Court of Colombia, cited in ibid., § 139.

perhaps the most significant contribution of the IACtHR to this discourse is the recognition of the concept of intergenerational equity beyond climate change issues, in the present case, in environmental pollution.

Furthermore, the ECtHR addressed intergenerational equity in the context of the impact of climate change on the enjoyment of human rights. In the judgment of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* adopted in 2024, the Court recognised the importance of intergenerational burden-sharing with regard to present and future generations in the context of climate change, and noted that the legal obligations of States arising under the ECHR extend to those individuals currently alive who, at a given time, fall within the jurisdiction of a given States Party.[102] The Court's approach to recognising the importance of the intergenerational aspect in the context of climate change in this judgment is particularly remarkable because the case did not revolve around children or future generations. Although *Cannavacciuolo and Others v. Italy*, adopted in early 2025 provided the Court with an opportunity to consider the intergenerational approach in the context of environmental degradation, the Court explicitly stated that the aspect of intergenerational burden-sharing is a specific feature of climate change,[103] and thus, the *KlimaSeniorinnen* case remains so far the ECtHR's only judgment recognising intergenerational equity.

Considering the earlier inadmissible cases of the UN Committee on the Rights of the Child[104] and the ECtHR,[105] aiming to integrate intergenerational equity more expressly in the international human rights jurisprudence, and the abovementioned explicit references by these human rights adjudicatory bodies, it can be concluded that intergenerational equity plays an important role in interpreting environmental rights or other human rights relevant for environmental protection. However, so far, the intergenerational aspect of human rights has been recognised in the context of climate change cases at the universal level and in the European human rights system, which represents a narrower interpretation of the original concept, as intergenerational equity

[102] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Application no. 53600/20, Judgment of 9 April 2024, ECtHR, § 420.
[103] Cannavacciuolo and Others v. Italy, Applications nos. 51567/14, 39742/14, 74208/14, 21215/15, Judgment of 30 January 2025, § 220.
[104] CRC, Sacchi and Others v. Argentina and Others CRC/C/88/D/104/2019, CRC/C/88/D/105/2019, CRC/C/88/D/106/2019, CRC/C/88/D/107/2019, CRC/C/88/D/108/2019, , 22 September 2019.
[105] Duarte Agostinho and Others v. Portugal and Others, Application no. 39371/20, Decision of 9 April 2024, ECtHR.

was developed to address environmental issues not limited to climate change. The IACtHR's approach shows that there is room for development in human rights law regarding the extension of intergenerational considerations to the problems of environmental degradation. On the other hand, all the above examples also show that in international human rights law, at present, there is no consensus about the recognition of the rights of future generations and their standing before adjudicatory bodies.

In addition to the discussions revolving around the intertemporal scope of human rights law, recent initiatives aim at extending the scope of rights holders to non-humans. The theory of the rights of nature stems from the ecocentric approach to environmental protection that recognises the inherent value of nature, and envisages nature or natural elements as rights holders similar to the status of humans in human rights law.[106] UN human rights instruments, including soft and hard legal sources, as well as the work of UN treaty bodies do not address environmental protection beyond anthropocentrism. Although the rights of nature are not directly justiciable in regional human rights systems, the ecocentric approach may be reflected in the jurisprudence to a limited extent. For instance, in the abovementioned *La Oroya* judgment, the IACtHR pronounced that States are obliged to protect nature not only for its utility for human beings but also for its importance for other organisms with whom we share the planet.[107] Furthermore, the Court referred to the Colombian future generations' case in which the Supreme Court recognised the Colombian Amazon forest as a subject of rights. Although the legal status of nature was not at the centre of the complaint, the IACtHR explicitly cited the section where the Colombian Supreme Court pronounces that '[t]he 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'.[108]

[106] Stone, C. D. (1972) 'Should Trees have Standing? – Toward Legal Rights for Natural Objects', *Southern California Law Review*, 45(2), pp. 457–459. See also: Nash, R. F. (1989) *The Rights of Nature: A History of Environmental Ethics.* Wisconsin: Wisconsin University Press; Tănăsescu, M. (2022) *Understanding the Rights of Nature. A Critical Introduction.* New York: Columbia University Press; Tahyné Kovács, Á. (2024) 'On the Phenomenon of the Rights of Nature', in: Szabó, M., Gyeney, L. and Láncos, P. L. (eds.) *Hungarian Yearbook of International Law and European Law 2024.* The Hague: Eleven International Publishing, pp. 305–332.
[107] La Oroya v. Peru, ibid., § 118.
[108] Future Generations v. Ministry of the Environment and Others, ibid., cited in La Oroya v. Peru, ibid., § 139.

The ECtHR has not explicitly addressed the rights of nature either, yet the ecocentric concept to environmental protection appears in the Preamble of the draft additional protocol by 'taking into account the intrinsic value of Nature and the paramount importance of the duties and obligations of present generations towards the environment and future generations', and by pronouncing the principle of *in dubio pro natura*, which proposes that in case of doubt, all matters must be resolved in a way most likely to favour the protection and conservation of nature.[109]

Currently, the ECtHR's jurisprudence is strongly anthropocentric; in the absence of any right specifically designed to provide general protection of the environment, the Court can only find a violation of any right if the deterioration of the environment has a harmful effect on the exercise of a right guaranteed in the Convention.[110] However, the integration of the ecocentric approach should not necessarily mean the recognition of the rights of nature as it is the case is certain domestic legal frameworks.[111] Under the current international legal framework for human rights protection, the recognition of the nature as a right holder similar to humans is not feasible, nor substantively or procedurally. On the other hand, this does not imply that certain elements of the ecocentric approach cannot be integrated in human rights adjudication. Natalia Kobylarz proposes that ecological minimum standards can be integrated in the ECtHR's jurisprudence though its "fair balance" review, when assessing the proportionality of the measures employed by the State in the context of environment-related cases.[112] This way, due consideration could be given to the concept of sustainable development and sustainable use of natural resources, and the principles

[109] Parliamentary Assembly, Recommendation 2211 (2021), 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe' [Online]. Available at: https://pace.coe.int/en/files/29501/html (Accessed: 22 April 2025), Preamble; Article 4.
[110] See, for instance, Kyrtatos v. Greece, Application no. 41666/98, Judgment of 22 May 2003, ECtHR, § 52.
[111] The first country in the world to attribute legal rights to nature was Ecuador. The Constitution of Ecuador recognises the rights for nature in Chapter 7, Articles 71–74. See: Tănăsescu, M. (2013) 'The Rights of Nature in Ecuador: The Making of an Idea', *International Journal of Environmental Studies*, 70(13), p. 846; Espinosa, C. (2019) 'Interpretive Affinities: The Constitutionalization of Rights of Nature, Pacha Mama, in Ecuador', *Journal of Environmental Policy & Planning*, 21(5), p. 608. Other examples may include the recognition of the legal personality of the Urewera forest and the Whanganui river in New Zealand or of Mar Menor in Spain. See: Tănăsescu, M. (2025) 'The Rights of Nature Go from Theory to Reality', *Current History*, 124(858), p. 21. For an overview of the status of domestic laws concerning the rights of nature, see: Eco Jurisprudence Monitor [Online] Available at: https://ecojurisprudence.org/dashboard/?map-style=political (Accessed: 31 March 2025).
[112] Kobylarz, N. (2022) 'Balancing its way out of strong anthropocentrism: integration of 'ecological minimum standards' in the European Court of Human Rights' 'fair balance' review', *Journal of Human Rights and Environment*, 13(0), p. 40.

of intergenerational equity, the principle of precaution and the principle of *in dubio pro natura*.

II.2.3. The Challenges of Defining Duty Bearers of Human Rights Violations for Environmental Problems

Under international human rights law, States are the duty bearers who hold the principal responsibility for ensuring the rights enshrined in human rights conventions. Moreover, individual petitions may only be brought against States either before UN treaty bodies or regional human rights courts, even if the human rights violations were not directly attributable to the State. This is because under human rights law, States' obligations may not merely extend to the requirement of non-interference by public authorities with people's rights (negative obligations) but they also require States to put a stop to third-party breaches of human rights (positive obligations).[113]

The role of businesses as duty bearers under human rights law has been elaborated in various soft law documents at the universal level. The key source is the UN Guiding Principles on Business and Human Rights (UNGP),[114] which was endorsed by the Human Rights Council in its resolution 17/4 in 2011.[115] The Guiding Principles is the implementation of the 2008 'Protect, Respect and Remedy' Framework[116] developed by John Ruggie, the mandate holder of the Special Representative of the Secretary-General 'on the issue of human rights and transnational corporations and other business enterprises'. The Framework rests on three pillars: (a) the State duty to protect against human rights abuses by third parties through appropriate regulation and adjudication; (b) the corporate responsibility to respect human rights in accordance

[113] Shelton, D. and Gould, A. (2013) 'Positive and Negative Obligations', in: Shelton, D., 2013, ibid., p. 562.

[114] The Guiding Principles is primarily outstanding for its universal acceptance – the Human Rights Council endorsed it unanimously – and its impact on the development of other 'business and human rights' instruments, such as the development of the EU's corporate social responsibility strategy, the revised version of the OECD's Guidelines for Multinational Enterprises, and the UN Global Compact. See: Addo, M. K. (2014) 'The Reality of the United Nations Guiding Principles on Business and Human Rights', *Human Rights Law Review*, 14(1), pp. 141–145.

[115] UN Human Rights Council, Human Rights and transnational corporations and other business enterprises, 6 July 2011, A/HRC/RES/17/4. See also: Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, 21 March 2011, A/HRC/17/31 Annex.

[116] UN Secretary General's Special Representative for Business and Human Rights, Protect, Respect and Remedy: a Framework for Business and Human Rights, 7 April 2008, A/HRC/8/5.

with the concept of due diligence; and (c) access to effective judicial or non-judicial remedy.[117]

This approach was embraced by the Guiding Principles as well, which, as its name suggests, transformed the respective elements of the Framework into principles under each pillar. The first pillar – the State duty to protect human rights – incorporates States' positive obligations under human rights law, which essentially require that States take appropriate steps to prevent, investigate, punish, and redress human rights abuses by third parties through effective policies, legislation, regulations, and adjudication.[118] The second pillar – the corporate responsibility to respect – is the core added value of the Guiding Principles, as it pronounces the responsibility of business enterprises to respect human rights through negative and positive obligations, requiring them to avoid infringing on the human rights of others and to address (prevent or mitigate) adverse human rights impacts that are linked to their operations (also referred to as due diligence).[119]

Third, as part of their positive obligations to protect against business-related human rights abuse, States must provide access to effective remedy in case of such abuses.[120] This pillar is strongly connected to the first two: first, it is part of States' positive obligations under their responsibility to protect against abuses of human rights by third parties in the first pillar, and second, effective remedies are provided for cases when corporations do not comply with their responsibility to respect human rights under the second pillar. Given that ensuring access to remedies is the responsibility of the State, petitions claiming the violation of their rights by private actors could primarily be adjudicated at the domestic level. However, a certain controversy could be observed in the connection between the second and third pillars of the Guiding Principles: namely, the second pillar does not provide binding legal obligations for corporations – considering that it is a soft law document –, yet it recognises that victims should have access to a legal remedy.[121]

[117] A/HRC/17/31, ibid., para. 6.
[118] A/HRC/17/31, ibid., Annex, I.
[119] HRC/17/31, ibid., Annex, II. See also: A/HRC/8/5, ibid., paras. 56–64.
[120] HRC/17/31, ibid., Annex, III. On the interpretation of due diligence in the UNGP, see: Bonnitcha, J. and McCorquodale, R. (2017) 'The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights', *European Journal of International Law*, 28(3), p. 899.
[121] Bilchitz, D. (2016) 'The Necessity for a Business and Human Rights Treaty', *Business and Human Rights Journal*, p. 209.

The key points of the Guiding Principles has also been explicitly or implicitly embraced by human rights adjudicatory bodies. First, General Comment No. 24 of the UN CESCR, adopted in 2017. The General Comment reinforced States' obligations to ensure the compliance of corporate activities with internationally recognised human rights norms and standards.[122] Furthermore, the three pillars of business and human rights has been integrated in practice of human rights adjudicatory bodies. By now, States' responsibility for third-party breaches of human rights has been extensively recognised in environmental cases, which appears as the State's failure to comply with their positive obligations under human rights conventions.[123] Although human rights claims cannot be brought directly against businesses at the international level, the fact that States can be hold responsible for the degradation of the environment negatively effecting human rights attributable to businesses show that human rights law provides the effective legal remedies required by the Guiding Principles.

However, currently there is no binding legal instrument that explicitly addresses the role of businesses in human rights violations, which may fill several gaps in the international soft law-based framework governing business and human rights. First, a binding convention can clarify States' extraterritorial obligations, which is particularly relevant to address the operation of transnational companies.[124] Second, inconsistencies may occur in State practice stemming from the soft law nature of the Guiding Principles. A binding treaty would harmonise standards and provide guidance on their implementation. Furthermore, it would strengthen States' obligations to effectively address business activities' interference with human rights, as soft law documents do not create legally binding obligations for States. This gap may soon be bridged by the adoption of international legally binding instrument on transnational corporations and other business enterprises with respect to human rights as proposed by the Human Rights Council in 2014.[125] The treaty would strengthen the normative

[122] CESCR, General Comment No. 24 (2017) on State obligations in the context of business activities, (23 June 2017) E/C.12/GC/24.
[123] See, for instance, Tătar v. Romania, Application no. 67021/01, Judgment of 27 January 2009, ECtHR; Cordella and Others v. Italy, Application no. 54414/13, Judgment of 24 January 2019, ECtHR; Pavlov and Others v. Russia, Application no. 31612/09, Judgment of 11 October 2022, ECtHR. Furthermore, the abovementioned judgment in La Oroya, the IACtHR made explicit reference to the Guiding Principles. See: La Oroya v. Peru, ibid., § 110.
[124] See: CESCR, E/C.12/GC/24, ibid., III.C.
[125] UN Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, 14 July 2014, A/HRC/RES/26/9.

framework of corporate responsibility for human rights violations, and therefore, could be a point of reference for human rights courts when assessing States' positive obligations in environmental cases.

II.2.4. The Challenges of Addressing Planetary Crises through Human Rights Law

The 21st century is defined by interrelated environmental challenges that threaten the well-being of millions of people around the world. Unlike previous environmental challenges that were often localised, these crises are systemic and interconnected, and require collective responses from the international community. The triple planetary crisis, as referred to in the UN system, embraces the three main interlinked issues humankind currently faces, namely: climate change, environmental pollution and waste, and biodiversity loss.[126] The increasing recognition of the interdependence between human rights and the environment allows for using human rights law to address environmental problems, however, owing to the individual complaint mechanisms, the focus has largely been on individual or group harm rather than systemic environmental problems.

Therefore, in the author's opinion, one of the greatest challenges of human rights law in the present century is to address environmental problems in a systemic and comprehensive manner, with the aim of producing systemic impact that extends beyond the individual case. Such attempts can be observed particularly in connection with climate change through the so-called human rights based climate change litigation.[127] The term "climate change litigation" encompasses a wide range of cases in which petitioners aim to enforce climate commitments and hold States or non-State actors liable for their share in contributing to the negative impacts of climate change.[128] Recent years have witnessed the emergence of climate change litigation before UN treaty bodies and regional human rights courts, alleging the violation of the rights enshrined in the respective human rights conventions.

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[126] See: 'Guterres at Stockholm+50: "End the suicidal war against nature"', *United Nations* [Online]. Available at: https://unric.org/en/guterres-at-stockholm50-end-the-suicidal-war-against-nature/ (Accessed: 31 March 2025). See also: 'What is the triple planetary crisis?', *UNFCCC* [Online]. Available at: https://unfccc.int/news/what-is-the-triple-planetary-crisis (Accessed: 31 March 2025).

[127] Savaresi, A. and Auz, J. (2019) 'Climate Change Litigation and Human Rights: Pushing the Boundaries', *Climate Law*, 9(3), pp. 245–249.

[128] Setzer, J. and Higham, C. (2024) *Global Trends in Climate Change Litigation: 2024 Snapshot.* London: Grantham Research Institute on Climate Change and the Environment, p. 7.

The climate change litigation was significantly boosted by the adoption of the Paris Agreement in 2015, a legally binding international treaty under the UNFCCC framework. The treaty sets three global goals that Parties undertake to pursue, namely (a) to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, (b) to increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production, and (c) to make finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.[129]

The relevance of the Paris Agreement for human rights adjudication is established by a preambular reference to States' respective human rights obligations. The recital provides that

> "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".[130]

Although the treaty is legally binding, the preamble may not create rights or obligations on its own. Yet, the preamble determines the interpretation of the operative provisions, implying that Parties should recognise an obligation to comply with their respective human rights obligations when carrying out climate-change-related actions under the Paris Agreement.[131]

The explicit recognition of the importance and applicability of human rights law and climate change may further enhance the use of international human rights instruments in challenging the enforcement of the Paris Agreement, particularly because the Paris Agreement did not provide a dispute settlement mechanism. The mechanism established in Article 15 of the treaty provides for an expert-based, facilitative, transparent, non-adversarial and non-punitive body, the Paris Agreement

[129] Paris Agreement, ibid., Article 2.
[130] Paris Agreement, ibid., Preamble.
[131] Mayer, B. (2016) 'Human Rights in the Paris Agreement', *Climate Law*, 6(1–2), pp. 113–114.

Implementation and Compliance Committee.[132] Therefore, the recognition of the relevance of human rights in the Paris Agreement opened new pathways for litigants seeking guarantees of State compliance through contentious mechanisms. While scientific discussions evolve around the legal nature of the Paris Agreement's preambular reference to human rights,[133] the case law examples below shows that climate change issues can be considered also by human rights bodies, although not necessarily on the basis of the mentioned recital.

One of the first cases of international human rights based climate change litigation after the adoption of the Paris Agreement was the abovementioned *Sacchi et al. v. Argentina et al.* before the UN Committee on the Rights of the Child, in which the petitioners, sixteen children filed a claim against Argentina, Brazil, France, Germany, and Turkey alleging that they violated their rights to life (Article 6), health (Article 24), culture for indigenous children (Article 30), and that they failed to make the best interests of children a primary consideration in their climate actions (Article 3) under the UN CRC.[134] The Committee did not assess the merits of the case, as it found the petition inadmissible for the failure to exhaust domestic remedies. Exhaustion of domestic remedies is a fundamental rule in any international human rights proceeding, which can be a significant hurdle in cases that require immediate solutions, such as the climate crisis.

The comparative example of *Duarte Agostinho and Others v. Portugal and Others* in the ECtHR's jurisprudence shows that the exhaustion of domestic remedies remains

[132] Paris Agreement, ibid., Article 15. See also: Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on the third part of its first session, Katowice, 2–15 December 2018, Modalities and procedures for the effective operation of the committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement, FCCC/PA/CMA/2018/3/Add.2, 20/CMA.1; Report of the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement on its fourth session, Sharm el-Sheikh, 6–20 November 2022, FCCC/PA/CMA/2022/10/Add.3, 24/CMA.4.

[133] See: Knox, J. H. (2018) 'The Paris Agreement as a Human Rights Treaty', in: Akande, D. et al. (eds.) *Human Rights and 21st Century Challenges. Poverty, Conflict, and the Environment.* Oxford: Oxford University Press, pp. 323–347; Boyle, A. (2018) 'Climate Change, the Paris Agreement and Human Rights', *International & Comparative Law Quarterly*, 67(4), pp. 759–777; Adelman, S. (2018) 'Human Rights in the Paris Agreement: Too Little, Too Late?', *Transnational Environmental Law*, 7(1), pp. 17–36; Mayer, B. (2024) 'Is the Paris Agreement a Human Rights Treaty?', in: Zahar, A. (ed.) *Research Handbook on the Law of the Paris Agreement.* Cheltenham: Edward Elgar Publishing, pp. 215–239.

[134] Sacchi et al. v. Argentina et al., ibid., Communication to the Committee on the Rights of the Child, 23 September 2019. See: Suedi, Y. (2022) 'Litigating Climate Change before the Committee on the Rights of the Child in Sacchi v Argentina et al.: Breaking New Ground?', *Nordic Journal of Human Rights*, 40(4), pp. 560–561. See also: Kecskés, G. and Lux, Á. (2023) 'There is no plan(et) B – environmental "crossroads' of children's rights"', *Hungarian Journal of Legal Studies*, 64(1), pp. 4–31.

an important procedural requirement in other human rights procedures as well. In this case, six young people filed an application against 33 States, claiming that States' failure to take adequate measures regarding climate change amounted to a violation of their rights to life (Article 2), private and family life (Article 8), property (Article 1 of Protocol 1), the prohibition of torture, inhuman or degrading treatment (Article 3) and the prohibition of discrimination (Article 14) under the ECHR. The Court noted that the applicants were under the jurisdiction of Portugal and found their respective claim inadmissible for non-exhaustion of domestic remedies, and concluded that no jurisdiction had been established for the other respondent States.[135]

So far, the only case in which the violation of human rights were found in the context of climate change in the UN human rights framework was *Daniel Billy et al. v. Australia* decided by the UN Human Rights Committee in 2022.[136] The authors of the claim, indigenous people of the Torres Strait Islands, argued that the State failed to implement an adaptation programme to ensure the long-term habitability of the islands, mitigate the impact of climate change, and provide effective domestic remedies for their claims.[137] The Committee recognised the petitioners' vulnerability to the adverse effects of climate change as their lives and cultures were highly dependent on the availability of the limited natural resources and location.[138] Regarding the merits, the Committee concluded that the State's failure to implement adequate adaptation and mitigation measures did not reach the threshold of a violation of the right to life (Article 6) but of the right to private and family life (Article 17) and the rights of minorities (Article 27) under the ICCPR.[139]

Regarding the right to life, the Committee concluded that the insufficiency of the adaptation measures taken by the State did not represent a direct threat to the petitioners' right to life with dignity, however, the Committee also acknowledged that without robust national and international efforts, the effects of climate change may

[135] Duarte Agostinho and Others v. Portugal and Others, ibid.
[136] See: Lentner, G. M. and Cenin, W. (2023) 'Daniel Billy et al v Australia (Torres Strait Islanders Petition): Climate Change Inaction as a Human Rights Violation', *Review of European, Comparative & International Environmental Law*, 33(1), pp. 136–143; Luporini, R. (2023) 'Climate Change Litigation before International Human Rights Bodies: Insights from Daniel Billy et al. v. Australia (Torres Strait Islanders Case), *The Italian Review of International and Comparative Law*, 3(2), pp. 238–259.
[137] CCPR/C/135/D/3624/2019, ibid., para. 2.7.
[138] CCPR/C/135/D/3624/2019, ibid., para. 7.10.
[139] CCPR/C/135/D/3624/2019, ibid., paras. 8.8 and 9.

expose individuals to a violation of this right in the future.[140] On the other hand, the Committee recognised that the State failed to discharge its positive obligation to implement measures to protect the livelihood of the petitioners. Considering that the authors depended on natural resources and the health of their surrounding ecosystems, which also constituted components of the traditional indigenous way of life, the Committee also recognised that the adverse impacts of climate change – particularly sea level rise – on their private life and home also affects their cultural identity. Therefore, the Committee also found a violation of the right of indigenous peoples to enjoy their territories and natural resources that they traditionally used for their subsistence and cultural identity. As mentioned above, the Committee also considered the petitioners' collective ability to transmit their children and future generations their culture and traditions falling under Article 27 of the ICCPR.[141]

For the purposes of the present analysis, the Committee's decision is primarily remarkable for being the first occasion for a human rights body – and, in this scope, the first UN treaty body – to find a violation of human rights for inadequate climate policies, which also confirmed the relevance of human rights law in climate change issues. Although the decisions of human rights treaty bodies are non-binding in nature, Thomas Buergenthal points out that the Committee endows its decisions with a normative and institutional legitimacy carrying the justifiable expectation of compliance.[142] This conviction is based on Article 2(3)(a) of the ICCPR, according to which States undertake to 'ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity'. In the decision regarding *Daniel Billy et al. v. Australia*, the Committee established, pursuant to the abovementioned Article 2(3)(a) of the ICCPR, that the State Party was obligated to '[…] provide adequate compensation, to the authors for the harm that they have suffered; engage in meaningful consultations with the authors' communities in order to conduct needs assessments; continue its implementation of measures necessary to secure the communities' continued safe existence on their respective islands; and monitor and review the effectiveness of the measures implemented and resolve any

[140] CCPR/C/135/D/3624/2019, ibid., para. 8.7.
[141] CCPR/C/135/D/3624/2019, ibid., para. 8.14.
[142] Buergenthal, T. (2001) 'The U.N. Human Rights Committee', *Max Planck Yearbook of United Nations Law*, 5(1), pp. 376–377.

deficiencies as soon as practicable. The State party is also under an obligation to take steps to prevent similar violations in the future.'[143]

In addition to its potential impact at the global level, the Committee's decision is also remarkable for establishing the threshold of the violation of the right to life and the right to respect for private and family life. In light of the Committee's views, the adverse impacts of climate change currently do reach the threshold of the violation of the right to life, however, the Committee did not exclude this possibility for the future. This argumentation is in line with the Committee's approach expressed earlier in *Ioane Teitiota v. New Zealand*, in which the petitioner claimed that the State had violated his right to life by denying him asylum in New Zealand based on his assertions that climate change and sea level rise had forced him to migrate from his country of origin, Kiribati.[144] The Committee, while recognising that climate change is likely to render Kiribati uninhabitable, it concluded that in a timeframe of 10 to 15 years could allow for the State to take adequate adaptation measures, and thus did not find a violation of the right to life.[145] However, in contrast with the Torres Strait Islanders' petition, Teitiota did not claim a violation of any other right, such as the right to private and family life, for which the threshold is relatively lower, as it does not require a threat to life but to the home and livelihood. Nonetheless, the Committee's approach to not finding a violation of the right to life was contested in dissenting opinions in both cases. In the *Teitiota* case, Committee members Vasilka Sancin[146] and Duncan Laki Muhumuza[147] disagreed with the majority decision, highlighting that the State Party's failure to present evidence of proper assessment of the petitioner's access to safe drinking water constituted a violation of the State's positive obligations under Article 6 of the ICCPR.

The above decisions, regardless of whether UN treaty bodies found a violation of human rights or not, underscore the evolving tendency of human-rights-based climate change litigation at the international level. However, as pointed out above, climate

[143] CCPR/C/135/D/3624/2019, ibid., para. 11.
[144] Behrman, S. and Kent, A. (2020) 'The Teitiota Case and the Limitations of the Human Rights Framework', *Questions of International Law*, 75, pp. 25–39.
[145] CCPR/C/127/D/2728/2016, ibid., 9.12.
[146] CCPR/C/127/D/2728/2016, ibid., Annex 1. Individual opinion of Committee member Vasilka Sancin (dissenting).
[147] CCPR/C/127/D/2728/2016, ibid., Annex 2. Individual opinion of Committee member Duncan Laki Muhumuza (dissenting).

change is only one element of the so-called triple planetary crisis, along with pollution and biodiversity loss. Given the complexities of global environmental challenges and the current limits of international human rights law elaborated above, developments in other fields of public international law may also be relevant for addressing certain aspects of the triple planetary crisis, particularly in the law of the sea, international humanitarian law and international criminal law. A detailed analysis of these developments would exceed the scope of this work, they will therefore be outlined only briefly.

Sea level rise, as one of the most severe consequences of climate change, has been considered a threat to the enjoyment of human rights in the abovementioned cases before the UN HRC, although it was not deemed imminent or foreseeable. However, both decisions had been adopted before the International Tribunal for the Law of the Sea (ITLOS) issued its *Advisory Opinion on Climate Change and International Law* on 21 May 2024,[148] which marks the first advisory opinion on climate change published by an international court. The request, initiated by the Commission of Small Island States (COSIS) in 2022, is embedded in the series of advisory opinions focusing on States' obligations requested from the ICJ,[149] as mentioned above, and the IACtHR,[150] which were adopted in mid-2025.[151] The ITLOS *Advisory Opinion* addressed States' obligations under the United Nations Convention on the Law of the Sea (UNCLOS)[152] on the one hand to preserve and protect oceans from the deleterious effects of climate change, including ocean warming and sea level rise, and ocean acidification, and, on the other hand, to protect and preserve the marine environment in relation to the mentioned climate change impacts on the sea.[153] Regarding the

[148] Case No. 31., Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion of 21 May 2024, ITLOS.
[149] UNGA, Resolution on Request for an Advisory Opinion of the ICJ on the Obligations of States in Respect of Climate Change, A/RES/77/276, 29 March 2023.
[150] Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023 [Online]. Available at: https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/ (Accessed: 22 April 2025).
[151] For some preliminary analysis, see: Bodansky, D. (2023) 'Advisory Opinions on Climate Change: Some Preliminary Questions', *Review of European, Comparative & International Environmental Law*, 32(2), pp. 185–192; Mayer, B. (2023) 'International Advisory Proceedings on Climate Change', *Michigan Journal of International Law*, 44(1), pp. 41–116.
[152] United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982, UNTS vol. 1833, p. 3.
[153] For some early conclusions on the ITLOS Advisory Opinion, see: Silvernman-Roati, K. and Bonnemann, M. (2024) 'The ITLOS Advisory Opinion on Climate Change', *Verfassungsblog* [Online].

protection of the marine environment, the ITLOS referred to the recent Agreement under the UNCLOS on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (often referred to as the BBNJ Agreement) adopted in June 2023.[154] These sources may strengthen States' responsibilities for sea level rise and could support litigants' claims also in human rights adjudication at the international level.

Furthermore, all the three climate change petitions submitted to UN human rights treaty bodies – *Sacchi*, *Teitiota*, and *Daniel Billy* – pointed out displacement as a potential result of the adverse effects of climate change. While the binding international framework for refugee law does not recognise climate change or environmental disasters as a ground for refugee status,[155] recent endeavours focus on integrating climate change in the intersection of international refugee law, disaster law, and human rights law.[156] However, as it can be concluded from the UN treaty bodies' approach, States' primary responsibility under international human rights law in respect of climate change is the implementation of adequate adaptation and mitigation measures to prevent displacement. This issue also shows that other fields of public

Available at: https://verfassungsblog.de/the-itlos-advisory-opinion-on-climate-change/ (Accessed: 10 April 2025). See also: Desierto, D. (2024) '"Stringent Due Diligence", Duties of Cooperation and Assistance to Climate Vulnerable States, and the Selective Integration of External Rules in the ITLOS Advisory Opinion on Climate Change and International Law', *EJIL:Talk!* [Online]. Available at: https://www.ejiltalk.org/stringent-due-diligence-duties-of-cooperation-and-assistance-to-climate-vulnerable-states-and-the-selective-integration-of-external-rules-in-the-itlos-advisory-opinion-on-climate-change-and-inte/ (Accessed: 10 April 2025).

[154] Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, C.N.203.2023.TREATIES-XXI.10 of 20 July 2023 (Opening for Signature).

[155] Convention relating to the Status of Refugees, Geneva, 28 July 1951, UNTS vol. 189, p. 137, Article 1(A)(2): 'As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.' See: Sritharan, E. S. (2023) 'Climate Change-related Displacement and the Determination of Refugee Status under the 1951 Refugee Convention', *Lexonomica*, 15(1), pp. 1–32. See also: Kecskés, G. (2016) 'Environmental Migrants: A Term and Global Challenge to Learn?', in: Rixer, Á. (ed.) *Migrants and Refugees in Hungary.* Budapest: Károli Gáspár Református Egyetem, p. 129.

[156] International human rights law is embraced in the major legal sources governing international disaster law, such as the International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters (Articles 4 and 5), as well as the United Nations Office for Disaster Risk Reduction's Sendai Framework for Disaster Risk Reduction 2015–2030 (Article 19(c)). See: ILC, 'Draft Articles on the Protection of Persons in the Event of Disasters', Yearbook of the International Law Commission, 2016, vol. II, Part Two; UNDRR, 'Sendai Framework for Disaster Risk Reduction 2015-2030', A/CONF.224/L.1. See also: Aronsson-Storrier, M. (ed.) (2024) *Research Handbook on Disasters and International Law. Second edition.* London: Edward Elgar Publishing.

international law may have a strong impact on the development of the environmental jurisprudence in international human rights adjudication.

Building on the interrelationship of human rights and the environment – particularly on the recent recognition of the right to a clean, healthy and sustainable environment –, the need to address the consequences of mass environmental degradation in a systemic manner was also raised in the context of international criminal law.[157] The current framework of international criminal law, the Rome Statute, allows for the consideration of large-scale and intentional destruction of the environment only in the context of war crimes,[158] thereby excluding the possibility to address massive environmental destruction in peacetime. Recent scholarly endeavours focus on extending the scope of the Rome Statute to these issues, in the form of a fifth international crime, ecocide. In 2021, the Independent Expert Panel for the Legal Definition of Ecocide proposed the amendment of the Rome Statute with the recognition of the crime of ecocide, that is defined as '[…] unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread of long-term damage to the environment being caused by those acts'.[159] The proposal of an independent environmental crime as a crime under the Rome Statute may face significant hurdles from States Parties, as the definition raises several questions about the gravity threshold, intentionality, and scope of actions. Nonetheless, these examples show that the growing recognition of environmental rights and the role of the environment in the context of international human rights law has a strong impact on the development of other fields of public international law.

[157] Sziebig, O. J. (2024) 'The Crime of Ecocide through Human Rights Approach. The "Universal" Right to a Healthy Environment as a Driving Force Calling for Ecocide Legislation', *Acta Humana*, 12(2), pp. 80–83. For a comprehensive overview on the concept of ecocide, see: Zsigmond-Sziebig, O. J. (2025) *Ecocide – An Evolving Legislative Concept in the Light of Care for Creation*. Budapest: L'Harmattan.

[158] Article 8(2)(b)(iv) of the Rome Statute concerns the act of '[i]ntentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated'. See: Rome Statute of the International Criminal Court, Rome, 17 July 1998, UNTS vol. 2187, p. 3. For a comprehensive analysis on the protection of the environment in international criminal law, see: Kecskés, G. (2025) 'The Protection of the Environment under the Rome Statute', in: Béres, N. (ed.) *The ICC at 25: Lessons Learnt.* Miskolc-Budapest: Central European Academic Publishing, pp. 375–388.

[159] Independent Expert Panel for the Legal Definition of Ecocide (2021) 'Commentary and Core Text' [Online]. Available at: https://www.stopecocide.earth/legal-definition (Accessed: 10 April 2025). See also: Branch, A. and Minkova, L. (2023) 'Ecocide, the Anthropocene, and the International Criminal Court', *Ethics & International Affairs*, 37(1), pp. 51–79.

Considering the recency of these developments, their impact on international human rights adjudication is yet to be seen.

III. SYSTEMIC INTEGRATION IN THE ENVIRONMENTAL JURISPRUDENCE OF REGIONAL HUMAN RIGHTS COURTS

III.1. The Principle of Systemic Integration: General Considerations

III.1.1. Systemic Integration as a Treaty Interpretation Method in Public International Law

As noted in the previous chapter, the environmental jurisprudence of human rights adjudicatory bodies has been developed notwithstanding that there is little to no reference to the environment in binding international human rights treaties, with the exception of the Protocol of San Salvador to the ACHR and the Banjul Charter. This can be explained primarily by the parallel development of international environmental law, which was boosted by the abovementioned UN Conference on Environment and Development held in Rio de Janeiro in 1992. Further milestones, such as the adoption of the Paris Agreement in 2015, also have a strong impact on human rights adjudication, as briefly pointed out above in the context of recent climate change litigation. These examples show that international human rights adjudicatory bodies may take into account other legal sources in addition to the human rights treaty they are formally bound to interpret, to establish certain standards that cannot directly be deduced from a human rights treaty.

The gap between these two fields of public international law – international human rights law and international environmental law – could be bridged though applying different treaty interpretation methods reflected in Article 31 of the Vienna Convention on the Law of Treaties (VCLT).[160] These treaty interpretation methods include textual, teleological, historical, and systematic interpretation. Textual interpretation is

[160] Article 31 of the VCLT reads as follows:
'1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.'
See: Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, UNTS. vol. 1155, p. 331.

expressed as interpreting in accordance with the ordinary meaning of the terms of the treaty, whereas teleological interpretation seeks to identify the intended effect of the lawmakers through considering its object and purpose. Furthermore, historical interpretation relies on the circumstances prevailing at the time of the adoption of the law, with a particular attention on the *travaux préparatoires.*[161] Historical interpretation is expressed in Article 32 of the VCLT, providing that

> '[r]ecourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable'.[162]

However, considering that international environmental law did not reach the stage of development that would bring a significant impact on lawmakers at the time of the adoption of binding human rights treaties – with the exception of the Banjul Charter, which was adopted in 1981, a few decades after the adoption of the UDHR, the ICCPR, the ICESCR, the ECHR and the ACHR –, textual, teleological and historical interpretation may play a limited role in developing environmental jurisprudence under these treaties. Thus, systemic interpretation – or the principle of systemic integration – is particularly important in this regard, as it requires the interpreter to consider the treaty in the context of other rules and principles of international law. Furthermore, as noted by the International Law Commission (ILC) in its report about fragmentation in international law from 2006, the principle of systemic integration plays a key role in addressing the fragmentation of international law that stems from the emergence of new "self-contained regimes" that operate with specific rules and principles that are applicable as *lex specialis*.[163] This interpretation, therefore, allows for international human rights bodies to take into account the development in another field of public international law, i.e. international environmental law, that could be relevant for human rights adjudication. Accordingly, this section examines the

[161] Ammann, O. (2020) 'The Interpretative Methods of International Law: What Are They, and Why Use Them?', in: *Domestic Courts and the Interpretation of International Law*. Leiden: Brill, pp. 192–197.
[162] See: VCLT, ibid., Article 32.
[163] ILC, Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, 18 July 2006, A/CN.4/L.70, pp. 7–11.

principle of systemic integration, focusing on its status within public international law and, more specifically, within international human rights law.

The principle of systemic integration is enshrined in Article 31(3)(c) of the VCLT, providing that '[t]here shall be taken into account, together with the context: […] any relevant rules of international law applicable in the relations between the parties.'[164] The provision reflects customary international law,[165] and has long been part of deliberations during the codification of the law of treaties.[166] Between 1950 and 1956, the Institut de Droit International (IDI) devoted four sessions to discussing the problems of interpreting treaties. In 1950, Alfred Verdross proposed a fundamental rule of interpretation at the Bath Session, according to which any treaty provision should be interpreted in light of general international law, pointing out that this rule had already been recognised by the Permanent Court of International Justice (PCIJ).[167] Verdross also suggested two additional principles complementary to this rule, namely (i) interpretation based on the general principles of law recognised in Article 38(1)(c) of the Statute of the ICJ,[168] and (ii) the principles underlying the matter to which the text refers.[169] Furthermore, in 1952, at the Sienna Session, Max Huber proposed that the true intention of the parties is reached through a process similar to "concentric

[164] See: VCLT, ibid., Article 31.
[165] Merkouris, P. (2020) 'Principle of Systemic Integration', *Max Planck Encyclopedias of International Law* [Online]. Available at: https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2866.013.2866/law-mpeipro-e2866#law-mpeipro-e2866-bibItem-237 (Accessed: 12 April 2025).
[166] Merkouris, P. (2015) Article 31(3)(c) VCLT and the Principle and Systemic Integration: Normative Shadows in Plato's Cave. In: Fitzmaurice, M. and Okowa, P. (eds.) *Queen Mary Studies in International Law, vol 17*. Leiden: Brill, pp. 25–41.
[167] Institut de Droit International, Annuaire, Tome 43, 1950, I., Observations de M. A. von Verdross, pp. 455–456.
[168] Statute of the International Court of Justice, San Francisco, 24 October 1945. Article 38 of the Statute provides the following.
'1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. international custom, as evidence of a general practice accepted as law;
c. the general principles of law recognized by civilized nations;
d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.'
Although the Statute names the sources the ICJ shall apply in the disputes, the sources names in this provision are traditionally accepted as the sources of public international law. See: Pellet, A. (2012) 'Article 38', in: Zimmermann, A. et al. (eds.) *The Statute of the International Court of Justice: A Commentary. 2nd Edition.* Oxford: Oxford University Press, pp. 731–870.
[169] See: Institut de Droit International, ibid., p. 456.

circles"; the first and closest circle being the intention of the parties, the second circle being the text of the treaty, the next circle being general international law, and last, the general principles of law recognised by civilised nations. The concept of taking into account general principles as an interpretative background was proposed at the Grenada Session, the last session dedicated to treaty interpretation. According to the text – with Hersch Lauterpacht as rapporteur –, '[…] the terms of the provisions of the treaty shall be interpreted in their entire context, in good faith and in light of the principles of international law'.[170]

The challenges of treaty interpretation were also discussed in the ILC in the 1960s. Building on the conclusions of the Institut, the Commission opted for broadening the scope of "general principles" to "general rules" of international law in force at the time of its conclusion, upon the proposal of Special Rapporteur Humphrey Waldock.[171] This formulation allowed for the interpreter to consider all the relevant rules established in treaties or customary law. However, the term still remained vague; Antonio de Luna, for instance, pointed out that the word "general" may not imply the consideration of regional rules.[172] As a result of discussions, the Drafting Committee proposed the following text: '[t]here shall be taken into account, together with the context: […] any relevant rules of international law applicable in the relations between the parties'.[173]

The ILC's Draft Articles formed the basis of the work of the two sessions of the Vienna Conference on the Law of Treaties held between 26 March to 24 May 1968 and 9 April to 22 May 1969. The VCLT was adopted on the last day of the second session, and opened for signature on 23 May 1969 with the text referred to above.[174] Based on the drafting history of the adopted text, it can be concluded that the provision represents a compromise between different positions and thus, the phrasing remained vague. Therefore, the interpretation of each term in Article 31(3)(c) shall be examined in order to understand the concept of systemic integration in public international law. These terms are the following: "rules", "relevant", "applicable", and "parties".

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[170] Institut de Droit International, Annuaire, Tome 46, 1956, II., L'interprétation des traités, p. 359.
[171] ILC, Summary record of the 769th meeting, 1964, vol. I., A/CN.4/SR.769, pp. 309–310.
[172] ILC, ibid., p. 310.
[173] ILC, Summary record of the 873rd meeting, 1966, vol. I(2), A/CN.4/SR.883, p. 267.
[174] See: Vienna Convention on the Law of Treaties [Online]. Available at: https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en (Accessed: 12 April 2025).

The first interpretative question arises in connection with the scope of rules, particularly to determine which norms are to be considered as "rules" under Article 31(3)(c) of the VCLT. The abovementioned report of the ILC concludes that rules of international law in general, as phrased in the VCLT, cover all the sources of international law, including customary law, general principles and, if applicable, other treaties.[175] Although certain authors suggest a narrower understanding of the scope of "rules" under the VCLT,[176] the ICJ's jurisprudence supports a broader understanding of it. The Court confirmed the customary nature of Article 31 of the VCLT and thus its applicability in disputes involving States which are not parties to it, and made particular reference to Article 31(3)(c).[177] Furthermore, in the *Oil Platforms* case, the Court addressed the relationship between a bilateral treaty concluded between the United States of America and Iran, and customary international law on the use of force, and noted that the Court cannot accept that the bilateral treaty

> '[…] was intended to operate wholly independently of the relevant rules of international law on the use of force, so as to be capable of being successfully invoked, even in the limited context of a claim for breach of the Treaty, in relation to an unlawful use of force. The application of the relevant rules of international law relating to this question thus forms an integral part of the task of interpretation entrusted to the Court […]'.[178]

The Court thus applied the general rules of international law to the conduct of the United States, the destruction of Iranian oil platforms, and concluded that those measures could not be justified under the bilateral treaty.[179] The Court's approach to systemic integration has been subject of discussion in separate opinions, particularly by Judge Thomas Buergenthal, who embraced a narrow understanding of the provision and argued that the Court's jurisdiction was limited to those rules that the parties had submitted to it, regardless of whether these relevant rules were proclaimed in the

[175] ILC, A/CN.4/L.70, p. 14.
[176] For instance, Georg Schwarzenberger proposed the exclusion of international agreements from the scope of Article 31(3)(c), as they already fall under Article 31(3)(a), namely, under '[…] any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions'. See: Schwarzenberger, G. (1968) 'Myths and Realities of Treaty Interpretation: Articles 27-29 of the Vienna Draft Convention on the Law of Treaties', *The Virginia Journal of International Law*, 9(1), pp. 1–19.
[177] See, for instance, Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994, p. 21, para. 41.; Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999, p. 1059, para. 18; Certain Questions of Mutual Assistance in Criminal Matters (Djibouti/France), I.C.J. Reports 2008, p. 219, para. 112.
[178] Oil Platforms (Islamic Republic of Iran/United States of America), Judgment, I.C.J. Reports 2003, p. 182, para. 41.
[179] Oil Platforms, ibid., p. 218, para. 125.

Charter of the United Nations or deemed to be of a *jus cogens* nature.[180] On the other hand, Judge Bruno Simma noted that the case would have provided the Court with an opportunity to declare the customary international law on the use of force, and advocated for a wider use of general international law in the judgment.[181]

These examples show that the scope of rules under Article 31(3)(c) of the VCLT is subject to discussion. The narrow understanding suggests the limitation of the scope of rules and their applicability before the ICJ, while broader approaches may also include a wider scope of legal sources, primarily those established in Article 38 of the Statute of the ICJ. Moreover, some authors argue that judicial decisions and teachings may also be taken into consideration for the identification of rules under systemic integration.[182] This approach may not imply that such subsidiary means are to be considered as "rules of international law", yet, judicial decisions and scientific discussions may significantly contribute to the identification of rules that shall be taken into account in the adjudication process. Furthermore, contemporary discussions raise the argument that Article 38 of the ICJ Statute may not reflect legal reality, as other sources or quasi-sources of international law not enumerated there may have a growing importance in the jurisprudence, including the documents adopted by certain organs of certain international organisations and other soft law sources.[183] As elaborated above, this is particularly the case with the intersection of human rights and the environment, which is reflected in general comments of UN human rights treaty bodies, preambles, or UNGA Resolutions. Therefore, this work embraces a broader understanding of Article 31(3)(c) of the VCLT, and assesses the role of other international treaties, customary law, general principles, as well as soft law, judicial decisions and legal scholarship relevant for the adjudication.

The selection of "relevant" rules may also be subject to discretion and shall be identified on a case-by-case basis. Nonetheless, authors tend to agree that the term "relevant" refers to rules 'touching on the same subject matter as the treaty provisions

[180] Oil Platforms, ibid., Separate Opinion of Judge Buergenthal, pp. 270–289.
[181] Oil Platforms, ibid., Separate Opinion of Judge Simma, pp. 324–361.
[182] Gardiner, R. (2008) *Treaty Interpretation.* Oxford: Oxford University Press, p. 268. See also: Merkouris, 2015, p. 20.
[183] See, for instance, Guzman, A. T. and Meyer, T. L. (2010) 'International Soft Law', *Journal of Legal Analysis*, 2(1), pp. 218–219; Fox, H. (2007) 'Time, History, and Sources of Law Peremptory Norms: Is There a Need for New Sources of International Law?', in: Craven, M., Fitzmaurice, M. and Vogiatzi, M. (eds.) *Time, History and International Law.* Leiden: Brill, pp. 119–139.

[…] being interpreted'.[184] Furthermore, relevance may also be approached from its intertemporal aspect, as proposed by Humphrey Waldock in the ILC in 1964, suggesting the consideration of 'general rules of international law in force at the time of its conclusion'.[185] Although this phrase was omitted from the final text of Article 31 of the VCLT, the intertemporal perspective is apparent in other provisions of the Treaty, such as in Article 30 ('Application of successive treaties relating to the same subject matter'), 53 ('Treaties conflicting with a peremptory norm of general international law ("jus cogens")'), 62 ('Fundamental change of circumstances'), or 64 ('Emergence of a new peremptory norm of general international law ("jus cogens")').[186] Thus, it can be concluded that "relevance" under Article 31(3)(c) primarily refers to the subject matter and the temporal scope of the applicable rules.

Applicability is similarly vague and less elaborated in the doctrine. In the author's view, its understanding is strongly connected to the parties, that is, the applicability of a rule shall be determined in light of whether it concerns the parties. However, the scope of "parties" may also be subject to discussions. Campbell McLachlan suggests four possible understandings of the term under Article 31(3)(c), namely: (i) all parties to the interpreted treaty should be parties to the treaty relied upon via Article 31(3)(c); (ii) that all parties to the dispute should be parties to the other treaty; (iii) if a treaty is not in force between all members of the treaty under interpretation, it can be considered under Article 31(3)(c) only if the rule contained therein is customary international law; and (iv) the complete identity of parties is not required as long as the treaty can express the common intentions or the common understanding of all the parties.[187] Given the vagueness of the provision and the different possible interpretations, the author proposes to consider the broadest interpretation of "parties" in order to include the widest scope of sources possible for purposes of the analysis.

Furthermore, it shall be noted that the content of the principle of systemic integration as a customary norm and Article 31(3)(c) of the VCLT may not be identical, although there might be a significant overlap between the two concepts. While the term "systemic integration" is equally used for the VCLT provision and customary

[184] Gardiner, 2008, p. 260.
[185] ILC, A/CN.4/SR.769, pp. 309–310.
[186] VCLT, ibid.
[187] McLachlan, C. (2005) 'The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention', *International and Comparative Law Quarterly*, 54(2), pp. 314–315.

international law,[188] and the latter may provide guidance on the interpretation of the former, in the author's view, the customary norm encompasses a broader concept. Namely, the emphasis in the customary norm of systemic integration may not be on limiting the scope of the relevant rules to be considered in the interpretation, but rather on taking into account the normative environment of international obligations, the system in which the norm was established.[189] Therefore, for the purposes of this dissertation, the principle of systemic integration is primarily understood as a customary norm of treaty interpretation and focus on how human rights courts take into account the "system" of international legal norms.

III.1.2. Systemic Integration as a Treaty Interpretation Method in International Human Rights Law

As noted above, international human rights law constitutes a "self-contained regime" within public international law, characterised by specialised rules, legal institutions and jurisprudence vis-à-vis general international law. However, as the ILC's report on the fragmentation of international law highlights, the emergence of new specialised regimes – such as international environmental law – may give rise to normative conflicts and diverging interpretations across adjudicatory bodies.[190] This is particularly evident at the intersection of human rights and environmental protection, where human rights treaties provide little explicit guidance on environmental matters. In this context, the principle of systemic integration plays a key role in reconciling interpretative divergences and developing coherent jurisprudence. While international human rights law is generally regarded as *lex specialis*, the interpretative specificities of human rights treaties must be carefully considered when addressing cross-regime interactions.

International human rights treaties fall within the definition of a treaty for the purposes of the VCLT,[191] and they are governed by the general rules of international law. Although certain human rights treaties, such as the abovementioned ECHR (1950), ICCPR (1966), or ICESCR (1966) were adopted prior to the adoption (1969) and entry

[188] See: Merkouris, 2020.
[189] ILC, A/CN.4/L.70, p. 208.
[190] ILC, A/CN.4/L.70, pp. 10–12.
[191] The preamble of the VCLT defines "treaty" as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. See: VCLT, ibid. See also: Fitzmaurice, M. (2013) 'Interpretation of Human Rights Treaties', in: Shelton, D. (ed.) *The Oxford Handbook of International Law*. Oxford: Oxford University Press, p. 739.

into force of the VCLT (1980),[192] the application of the treaty interpretation methods laid down in Article 31 is not contrary to the non-retroactivity of the VCLT,[193] particularly because of the customary nature of these interpretation methods.[194]

From the perspective of the interpretation of international human rights treaties, it is important to note that all of them draw inspiration from the Universal Declaration of Human Rights and the Charter of the UN. Universal human rights treaties, such as the ICCPR or the ICESCR make reference to these instruments in their preamble, by

> '[…] [r]ecognising that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying […] freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his […] rights […]'

and by

> '[…] [c]onsidering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms […]'.[195]

The preambles of the ECHR,[196] the ACHR,[197] and the Banjul Charter[198] also embrace the heritage of the UDHR, which shows that the objective of upholding human rights laid down in all these conventions derives from a universal value.

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[192] See: VCLT, ibid.

[193] Article 4 of the VCLT pronounced the non-retroactivity of the Convention, by providing that '[w]ithout prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.'

[194] Fitzmaurice, 2013, ibid., pp. 739–740.

[195] See: ICCPR, ibid., Preamble and ICESCR, ibid., Preamble.

[196] 'Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;
Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;
[…]
Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration […]'. See: ECHR, ibid., Preamble.

[197] 'Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights […]'. See: ACHR, ibid., Preamble.

[198] 'Reaffirming the pledge […] to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of African and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights […]'. See: Banjul Charter, ibid., Preamble.

However, similar to general international law, the interpretation of human rights is also challenged by fragmentation, particularly from the institutional perspective. On the one hand, the potential for conflict may be caused by the rise of human rights bodies mandated to protect specific human rights, or the human rights of specific groups, particularly at the UN level. On the other hand, the proliferation of human rights regimes may result in the fragmentation of jurisprudence produced by UN treaty bodies or regional human rights courts, which apply and interpret different human rights treaties and may employ different treaty interpretation methods.[199]

Regarding the developing environmental jurisprudence of human rights adjudicatory bodies, fragmentation may appear along all the abovementioned points, as environmental issues touch upon several human rights and may affect certain societal groups differently, and consequently, interpretation of different human rights treaties is performed by various bodies at the universal and regional levels. For instance, UN treaty bodies with the mandate of general (e.g. the UN Human Rights Committee) and specialised human rights protection (e.g. the UN Committee on the Rights of the Child) interpret different UN human rights treaties, yet, as concluded above, their standards are relatively aligned, as they operate within the same human rights regime, that of the United Nations. On the other hand, regional human rights treaties were concluded within different organisations mandated for different purposes, and thus, their interpretation may reflect the historical, societal, political, or cultural context to a greater extent, even if these treaties share the normative content of the UN human rights treaties.

It can be argued that fragmentation as a principal challenge in international human rights law is particularly apparent in the environmental jurisprudence, given that it was developed through different treaty interpretation methods employed by human rights courts, as analysed below. Notwithstanding the possible divergences, international environmental law serves as a source of inspiration for human rights courts, which can be integrated into the interpretation of human rights treaties through systemic integration. Therefore, the next section is dedicated to an in-depth analysis of the

[199] Payandeh, M. (2015) 'Fragmentation within international human rights law', in: Andenas, M. and Bjorge, E. (eds.) *'Regimes' of International Law.* Cambridge: Cambridge University Press, pp. 297–300.

environmental jurisprudence of human rights courts from the perspective of systemic integration.

III.2. Integration of International Environmental Rules in Human Rights Jurisprudence: The European Court of Human Rights

III.2.1. Systemic Integration in the Jurisprudence of the European Court of Human Rights

Since its establishment in 1959, the ECtHR has developed unique methods for interpreting the ECHR.[200] The "living instrument doctrine"[201] and the underlying evolutive interpretative method aim to adapt the Convention to present-day conditions, for which the Court usually insists on the existence of a European consensus or at least a significant trend in the legislation or practice in the States Parties towards the chosen interpretation.[202]

The evolutive interpretation of the Convention is also corroborated by the recent trend to examine the "relevant legal framework", which may include domestic law, international law and practice, EU law, as well as comparative law.[203] This trend aligns with the principle of systemic integration reflected in Article 31(3)(c) of the VCLT, which requires that relevant rules of international law that are applicable in relations between the Parties shall be taken into account for the interpretation of the treaty. Although the ECtHR undoubtedly embraces the rules of interpretation laid down in the VCLT, explicit references to it can scarcely be found in the judgments,[204] which may be explained by the fact that the norms codified in the VCLT are principally of a customary legal nature.

Nonetheless, the application of the principle of systemic integration has long been part of the ECtHR's jurisprudence. One of the first judgments explicitly referring to Article 31(3)(c) of the VCLT was *Golder v. the United Kingdom*, adopted in 1975, in which

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[200] The Court's methodology also aligns with the general interpretative methods of international law, including systemic interpretation, textual interpretation, teleological interpretation, and to some extent, the historical interpretation. See: Ammann, 2020, ibid., p. 191; 'Cf. McBride, J. (2021) *The Doctrines and Methodology of Interpretation of the European Convention on Human Rights by the European Court of Human Rights*. Strasbourg: Council of Europe, p. 34.

[201] See: Tyrer v. the United Kingdom, App. no. 5856/72, Judgment of 25 April 1978, ECtHR, § 31: 'The Court must also recall that the Convention is a living instrument which, as the Commission rightly stressed, must be interpreted in the light of present-day conditions.'

[202] 'Interpretation of the European Convention on Human Rights: Remarks on the Court's Approach', Intervention of Linos-Alexander Sicilianos at the The Contribution of the European Court of Human Rights to the Development of Public International Law" on the margins of the 59th CAHDI meeting in Prague, 23 September 2020 [Online]. Available at: https://www.coe.int/en/web/cahdi/the-contribution-of-the-european-court-of-human-rights-to-the-development-of-public-international-law (Accessed: 17 April 2025).

[203] Sicilianos, ibid.

[204] Letsas, G. (2010) 'Strasbourg's Interpretive Ethic: Lessons for the International Lawyer', *European Journal of International Law*, 21(3), p. 513.

the Court addressed the guarantees of prisoners' rights of access to a lawyer and the court and respect for their correspondence under Articles 6 and 8 of the ECHR.[205] Beyond its relevance as one of the first cases in the subject matter, the judgment is particularly remarkable for discussing the role of the VCLT in the context of the interpretation of the ECHR. The primary interpretative question that the Court faced was to decide whether the scope of the right to a fair trial encompasses the right of access, which is not expressly mentioned in the text of the Convention. For the interpretation of Article 6, the Court referred to Articles 31–33 of the VCLT, which were not in force at the time of the conclusion of the judgment. Nevertheless, the Court noted that these provisions 'enunciate in essence generally accepted principles of international law', referring to the UDHR and the Statute of the Council of Europe, and concluded that the guarantees of the right to a fair trial extend to the right of access to court in light of the 'universally "recognised" fundamental principles of law'.[206]

The evolutionary interpretation of the ECHR, which is based on examining the object and purpose of the treaty, rather than the intention of the Parties at the time of its adoption, did not receive unanimous support from the Judges. The separate opinion of Judge Sir Gerald Fitzmaurice is particularly worth mentioning, as he elaborated on the counter-arguments based on the intentionalist approach, highlighting that the intention of the States Parties did not extend to the recognition of the right of access to court under Article 6, and, consequently, concluding that the lack of an express provision could not have resulted in imposing obligations on the State.[207] As later observed, deriving unenumerated rights from those expressly recognised in the Convention remains at the centre of current discussions about the Court's jurisprudence, particularly in the context of environmental rights.

Notwithstanding the criticism expressed by certain Judges, the Court continued to apply the interpretative approach established in *Golder* and embraced systemic integration in its subsequent jurisprudence. However, the consideration of other relevant international rules does not always result in extending the scope of rights guaranteed in the ECHR. For instance, in *Johnston and Others v. Ireland*, the ECtHR

[205] See: Zellick, G. (1975) 'The Rights of Prisoners and the European Convention', *The Modern Law Review*, 38(6), pp. 683–689.
[206] Golder v. the United Kingdom, App. no. 4451/70, Judgment of 21 February 1975, ECtHR, §§ 29–30; §§ 35–36.
[207] Golder v. the United Kingdon, ibid., Separate Opinion of Judge Sir Gerald Fitzmaurice, paras. 40–46.

discussed the question of whether the right to divorce can be deducted from the right to marry as enshrined in Article 12, and referred to the applicability of Article 31 of the VCLT in determining the content of the mentioned right. The Court compared Article 16 of the UDHR, which explicitly referred to 'marriage and its dissolution',[208] with the *travaux préparatoires* of Article 12 of the ECHR, which did not include a reference to divorce. The Court dedicated particular attention to the statement of the Special Rapporteur of the Committee on Legal and Administrative Questions, who explicitly noted that the omission of reference to the dissolution of marriage was deliberate. Thus, the Court concluded that the right to divorce cannot be derived from Article 12, and found no violation of the applicants' rights.[209]

Explicit references to Article 31(3)(c) of the VCLT were also made in, for instance, *Loizidou v. Turkey* and *Al-Adsani v. the United Kingdom*. In *Loizidou*, the Court evaluated the extraterritorial obligations of Turkey for the violation of human rights committed on the territory of the Turkish Republic of Northern Cyprus (TRNC), and, based on the abovementioned provision of the VCLT, examined the relevant international practice. In this regard, the Court referred to United Nations Security Council resolutions, the statements of the Committee of Ministers of the Council of Europe and the European Communities declaring the proclamation of the establishment of the TRNC as legally invalid. Furthermore, when assessing the legitimacy of certain acts of the TRNC, the Court considered the ICJ's *Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*,[210] which pronounced that the non-recognition of the State should not result in depriving the people of any advantages derived from international cooperation, and

[208] Article 16(1) of the UDHR reads as follows: 'Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.' Cf. Article 12 of the ECHR: 'Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.' See: Dillon, K. M. (1989) 'Divorce and Remarriage As Human Rights: The Irish Constitution and the European Convention on Human Rights At Odds in Johnston v. Ireland', *Cornell International Law Journal*, 22(1), pp. 63–90.

[209] Johnston and Others v. Ireland, App. no. 9697/82, Judgment of 18 December 1986, ECtHR, §§ 51–54.

[210] Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16.

concluded that the denial of access to the applicant's property and consequent loss of control thereof was imputable to Turkey.[211]

Furthermore, in *Al-Adsani*, the Court reiterated that the ECHR had to be interpreted in the light of the rules set out in the VCLT and that, according to Article 31(3)(c), account is to be taken of the relevant rules of international law applicable between the Parties. In this case, the applicant claimed violations of the prohibition of torture (Article 3) and the right to a fair trial (Article 6), claiming that the courts of the United Kingdom, upholding Kuwait's State immunity, denied him access to a court to pursue a civil claim for torture, thereby failing to provide effective protection against the absolute prohibition of torture.[212]

Regarding the evaluation of State immunity, the Court referred to the European Convention on State Immunity (the Basle Convention),[213] a Council of Europe treaty also ratified by the United Kingdom, the ILC's Report on Jurisdictional Immunities of States and their Property,[214] and concluded that the English courts' decision to afford immunity to Kuwait complied with the relevant provisions of the Basle Convention.[215] Furthermore, the Court examined the growing recognition of the prohibition of torture in other areas of public international law, and referred to the UDHR, the ICCPR, the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment,[216] and the case law of the International Criminal Tribunal for the Former Yugoslavia (ICTY),[217] and concluded that, given that the alleged torture was inflicted outside the jurisdiction of the United Kingdom, the State could not have been found to have violated its obligations carried out by the Kuwaiti authorities.[218]

The abovementioned cases show that the Court has developed a practice of referring to relevant rules and practice in international law, and has built on them for decision-making. It may also be concluded that the Court has placed significant reliance on the

[211] Loizidou v. Turkey, App. no. 15318/89, Judgment of 18 December 1996, ECtHR, §§ 19–23; §§ 45–47.
[212] See: Bates, E. (2003) 'The Al-Adsani Case, State Immunity and the International Legal Prohibition on Torture', *Human Rights Law Review*, 3(2), pp. 193–224.
[213] European Convention on State Immunity (ETS No. 074), Council of Europe, Basel, 16 May 1972.
[214] ILC, 'Draft Articles on Jurisdictional Immunities of States and their Property', A/46/10, para. 28.
[215] Al-Adsani v. the United Kingdom, App. no. 35763/97, Judgment of 21 November 2001, ECtHR, §§ 22–24.
[216] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, UNTS vol. 1465, p. 85.
[217] Al-Adsani v. the United Kingdom, ibid., §§ 25–31.
[218] Al-Adsani v. the United Kingdom, ibid., § 40.

UDHR, which not only served as an inspiration for the adoption of the ECHR – as acknowledged in the preamble – but has also (at least partially) attained the status of customary international law.[219] In addition, the Court has referred to other international human rights treaties ratified by the Respondent States and their interpretation by other tribunals. Other instruments, such as UN Security Council resolutions and statements from international organisations were taken into consideration for contextualising the case.

Against this background, the Court's approach to interpreting Convention provisions in the light of other international texts and instruments was systematised in *Demir and Baykara v. Turkey*, adopted in 2008. The case concerned the annulment, with retrospective effect, of a collective agreement concluded between a trade union and the municipal council, and the prohibition on forming trade unions. To determine whether collective bargaining is a right protected by Article 11 (freedom of assembly and association), the Court examined a broad range of international legal instruments. Among universal instruments, the Court first examined the relevant sources for the right to organise and civil servants, and referred to Article 2 of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise[220] (the right to establish and join organisations), the statements of the Committee of Experts on the Application of Conventions and Recommendations and the ILO Committee on Freedom of Association, Article 22 of the ICCPR (the right to freedom of association), and Article 8 of the ICESCR (the right to form trade unions and join trade unions). Regarding the second issue, collective bargaining and civil servants, the Court cited the relevant articles of ILO Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively,[221] and of ILO Convention No. 151 concerning Protection of the Right to Organise and Procedures

[219] Buergenthal, T. (1997) 'The Normative and Institutional Evolution of International Human Rights', *Human Rights Quarterly*, 19(4), p. 708. See also: Lauterpacht, H. (1948) 'The Universal Declaration of Human Rights', *British Year Book of International Law*, no. 25, p. 364; Hannum, H. (1995) 'The Status of the Universal Declaration of Human Rights in National and International Law', *Georgia Journal of International and Comparative Law*, 25(1–2), pp. 340–351. On customary norms in international human rights law, see: Shabas, W. A. (2021) *The Customary International Law of Human Rights.* Oxford: Oxford University Press.

[220] ILO, Freedom of Association and Protection of the Right to Organise Convention (No. 87), 9 July 1948, UNTS vol. 68, p. 17.

[221] ILO, Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No. 98), 1 July 1949, UNTS vol. 96, p. 257.

for Determining Conditions of Employment in the Public Service,[222] as well as the statements of the ILO Committee of Experts and the General Conference of ILO. The Court noted that the Respondent State ratified all the mentioned international treaties.[223]

Furthermore, the Court examined the relevant European framework for the right to organise and civil servants, including Article 5 of the revised European Social Charter (ESC),[224] Article 12 of the European Union's Charter for Fundamental Rights (CFR),[225] as well as Principle 8 of Recommendation No. R (2000) 6 of the Committee of Ministers of the Council of Europe on the status of public officials in Europe.[226] Concerning the right to bargain collectively and civil servants, the Court examined Article 6 of the European Social Charter and its interpretation by the European Committee of Social Rights, Article 28 of the CFR, and the practice of European States. It should be noted that, in contrast with the universal instruments, Turkey had not ratified the mentioned European instruments at the time of adopting the judgment.[227]

The mentioned documents reflect the evolution of social rights at the international level since the adoption of the Court's landmark judgments on the right to join trade unions in 1975[228] and 1976.[229] In these judgments, the Court did not find a violation of Article 11, concluding that this article did not secure any particular treatment of trade unions, such as the right that the State should conclude any given collective agreement with them. The Court at that time justified this conclusion by referring to the original Social Charter, as the revised version was adopted in 1996, nearly twenty years after the adoption of these judgments, noting that the right of collective bargaining was of a voluntary nature in the Charter, and thus, '[…] the ECHR would

[222] ILO, Convention concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service (No. 151), 27 June 1978, UNTS vol. 1391, p. 185.
[223] Demir and Baykara v. Turkey, App. no. 34503/97, Judgment of 12 November 2008, ECtHR, §§ 37–44.
[224] European Social Charter (revised) (ETS No. 163), Council of Europe, Strasbourg, 3 May 1996.
[225] Charter of Fundamental Rights of the European Union, 2000/C 364/01, 18 February 2000.
[226] Recommendation No. R (2000) 6 of the Committee of Ministers to member states on the status of public officials in Europe, 24 February 2000.
[227] Demir and Baykara v. Turkey, ibid., §§ 45–52.
[228] National Union of Belgian Police v. Belgium, App. no. 4464/70, Judgment of 27 October 1975, ECtHR.
[229] Swedish Engine Drivers' Union v. Sweden, App. no. 5614/72, Judgment of 6 February 1976, ECtHR. See also: Forde, M. (1983) 'The European Convention on Human Rights and Labor Law', *American Journal of Comparative Law*, 31(2), p. 301.

amount to admitting that the 1961 Charter took a retrograde step in this domain'.[230] In *Demir and Baykara*, the Court expressly noted that its earlier case-law should be reconsidered in light of the developments in labour law at the international and national levels, and the respective practice of States in such matters, and concluded that the right to bargain collectively had become one of the essential elements of the "right to form and to join trade unions" under Article 11 and found a violation thereof.[231]

The impact of the judgment in *Demir and Baykara* is manifold;[232] this analysis focuses on its impact on the Court's developing approach to the principle of systemic integration. In this regard, the judgment laid down the Court's approach to the consideration of the relevant international instruments for the interpretation of the ECHR. First, the Court reaffirmed its position on the interpretative value of other international instruments responding to the Government's objection to the reliance on instruments not ratified by Turkey by referring to Article 31(3)(c) of the VCLT. The Court noted that it had never considered the provisions thereof as the sole framework of reference for the interpretation of rights and freedoms, but, based on the aforementioned provision, relevant rules and principles of international law had been taken into account.[233]

The Court named several examples from its case law where the provisions of the ECHR had been interpreted in light of general international law, such as the mentioned UN Convention on the Rights of the Child in *Pini and Others v. Romania*[234] and *Emonet and Others v. Switzerland*,[235] the ILO Forced Labour Convention[236] in *Siliadin v. France*,[237] the ICCPR, the ACHR, the mentioned UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in *Soering v. the*

[230]National Union of Belgian Police v. Belgium, ibid., § 38; Swedish Engine Drivers' Union v. Sweden, ibid., § 39.
[231] Demir and Baykara, ibid., §§ 153–154.
[232] See: Ewing, K. D. and Hendy, J. (2010) 'The Dramatic Implications of *Demir and Baykara*', *Industrial Law Journal*, 39(1), pp. 2–51.
[233] Demir and Baykara, ibid., § 67.
[234] Pini and Others v. Romania, Apps. nos. 78028/01 and 78030/01, Judgment of 22 June 2004, ECtHR, § 139, cited in Demir and Baykara, ibid., § 69.
[235] Emonet and Others v. Switzerland, App. no. 39051/03, Judgment of 13 December 2007, ECtHR, §§ 65–66, cited in Demir and Baykara, ibid., § 69.
[236] ILO, Convention concerning Forced or Compulsory Labour, as Modified by the Final Articles Revision Convention, 28 June 1930, UNTS vol. 39, p. 55.
[237] Siliadin v. France, App. no. 73316/01, Judgment of 26 July 2005, ECtHR, cited in Demir and Baykara, ibid., § 70.

United Kingdom.[238] In addition, the Court noted that it had also used non-binding instruments of the Council of Europe – particularly recommendations and resolutions of the Committee of Ministers and the Parliamentary Assembly –, and the interpretation provided by Council of Europe organs, including the European Commission for Democracy through Law (the Venice Commission), the European Commission against Racism and Intolerance and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[239] In light of these examples, the Court concluded that

> '[…] in searching for common ground among the norms of international law it has never distinguished between sources of law according to whether or not they have been signed or ratified by the respondent State',[240]

and cited examples such as *Marckx v. Belgium*, *Christine Goodwin v. the United Kingdom*, and *Glass v. the United Kingdom*, in which the Court had based its interpretation on international treaties not yet ratified or non-binding at the time. The Court further referred to environmental cases, for instance, *Öneryıldız v. Turkey* and *Taşkın and Others v. Turkey*,[241] which will be discussed in more detail below.

Systemic integration may play a significant role, potentially in all subject matters of the ECHR. Although this case does not aim to provide an exhaustive analysis of the Court's jurisprudence relevant for systemic integration, one further case merits consideration in order to draw conclusions from a broader set of jurisprudence. *Opuz v. Turkey,* adopted in 2009 is a landmark judgment in the context of domestic violence against women, and, from the perspective of systemic integration, remarkable for an extensive consideration of universal and European instruments to reaffirm certain standards regarding the right to life and the prohibition of torture in the context of gender-based violence. In the judgment, the Court examined the relevant practice in the UN, the Council of Europe, the Inter-American human rights system, and domestic laws. Among these sources, the Court attached significant importance to the UN Convention on the Elimination of All Forms of Discrimination against Women

[238] Soering v. the United Kingdom, App. no. 14038/88, Judgment of 7 July 1989, ECtHR, § 88, cited in Demir and Baykara, ibid., § 72.
[239] Demir and Baykara, ibid., §§ 74–75.
[240] Demir and Baykara, ibid., § 78.
[241] Demir and Baykara, ibid., §§ 79–84.

(CEDAW)[242] and the work of the CEDAW Committee, including general recommendations and case law, as well as to the UNGA Declaration on the Elimination of Violence against Women.[243]

Remarkably, the Court also examined the standards of the Inter-American jurisprudence and referred to the key case of *Velazquez-Rodriguez v. Honduras*,[244] which confirmed the responsibility of States on account of their due diligence to prevent human rights violations committed by private persons,[245] and the Belém do Pará Convention, the only regional multilateral treaty to deal solely with violence against women.[246] Notwithstanding the absence of a European consensus on the pursuit of criminal prosecution against perpetrators of domestic violence when the victim withdraws the complaint – as was the situation in the given case –, the Court concluded that there was a duty on domestic authorities to strike a fair balance between a victims Article 2, 3 and 8 rights. Consequently, the Court found a violation of Articles 2 and 3 of the ECHR.[247]

Perhaps the most remarkable aspect of the judgment is finding the violation of Article 14 (the prohibition of discrimination), recognising that domestic violence disproportionately affects women, which was aggravated by the unresponsiveness of the judicial system.[248] By the time of the adoption of *Opuz*, the Court had significantly developed its case law on domestic violence;[249] however, the discrimination aspect had never been at the centre of the discussion. *Opuz* represents a significant change in

[242] Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979, UNTS vol. 1249, p. 13.
[243] UNGA, Declaration on the Elimination of Violence against Women, Resolution 48/104, 20 December 1993, cited in Opuz v. Turkey, App. no. 33401/02, Judgment of 9 June 2009, ECtHR, §§ 72–90.
[244] Case of Velásquez-Rodríguez v. Honduras, Judgment of 29 July 1988 (Merits), IACtHR.
[245] Raisz, A. (2007) 'Transfer of Values as to the Regional Human Rights Tribunals', in: *2nd ESIL Research Forum: The Power of International Law in Times of European Integration*, p. 8. See also: Drucker, L. (1988) 'Governmental Liability for Disappearances: A Landmark Ruling by the Inter-American Court of Human Rights', *Stanford Journal of International Law*, 25(1), pp. 289–322.
[246]Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, Organization of American States, Belém do Pará, June 1994, cited in Opuz v. Turkey, ibid., § 85.
[247] Opuz v. Turkey, ibid., § 153 and § 176.
[248] Londono, P. (2009) 'Developing Human Rights Principles in Cases of Gender-based Violence: *Opuz v. Turkey* in the European Court of Human Rights', *Human Rights Law Review*, 9(4), pp. 665–667.
[249] See, for instance, Kontrová v. Slovakia, App. no. 7510/04, Judgment of 13 June 2006, ECtHR; Branko Tomašić and Others v. Croatia, App. no. 46598/06, Judgment of 15 January 2009, ECtHR. On gender-based violence, see: M.C. v. Bulgaria, App. no. 39272/98, Judgment of 4 December 2003, ECtHR. See also: Hasselbacher, L. (2010) 'State Obligations regarding Domestic Violence: The European Court of Human Rights, Due Diligence, and International Legal Minimums of Protection', *Northwestern University Journal of International Human Rights*, 8(2), pp. 190–215.

this regard, as the Court significantly relied on the standards of international instruments, particularly on the CEDAW and the Belém do Pará Convention, to recognise that the applicant had been discriminated against on account of the authorities' failure to provide equal protection of law.[250] The latter reference deserves particular attention, as cross-references to the Inter-American system are relatively rare in the ECtHR's jurisprudence.[251] The European counterpart of the Belém do Pará Convention, the Convention against Preventing and Combating Violence against Women and Domestic Violence – also known as the Istanbul Convention[252] – was adopted shortly after the judgment in *Opuz*, and was subsequently referenced by the Court.[253] Notwithstanding the adoption of the Istanbul Convention, the Court still tends to consider the Belém do Pará Convention, and occasionally its African counterpart, the Protocol to the ACHPR on the Rights of Women in Africa (the Maputo Protocol).[254] The fact that domestic violence cases are among the rare contexts in which the Court draws on Inter-American and African human rights instruments highlights the particular importance it attaches to cross-regional normative guidance in this area.[255]

Based on the examples discussed in the abovementioned judgments, which illustrate the Court's evolving approach to the consideration of international legal sources, the

[250] Opuz v. Turkey, ibid., §§ 184–191 and § 202.
[251] See: Raisz, 2007, ibid.
[252] Convention on preventing and combating violence against women and domestic violence, CETS No. 210, Council of Europe, Istanbul, 11 May 2011. On the impact of the Istanbul Convention on the ECtHR's jurisprudence, see: McQuigg, R. J. A. (2012) 'What potential does the Council of Europe Convention on Violence against Women Hold as Regards Domestic Violence?', *International Journal of Human Rights*, 16(7), pp. 947–962. See also: McQuigg, R. J. A. (2017) *The Istanbul Convention, Domestic Violence and Human Rights.* London: Routledge; Jones, J. (2018) 'The European Convention on Human Rights (ECHR) and the Council of Europe Convention on Violence Against Women and Domestic Violence (Istanbul Convention), in: Manjoo, R. and Jones, J. (eds.) *The Legal Protection of Women From Violence. Normative Gaps in International Law.* London: Routledge, pp. 139-165.
[253] See, for instance, X. v. Greece, App. no. 38588/21 , Judgment of 13 February 2024, ECtHR, §§ 28–29; X v. Cypurs, App. no. 40733/22, Judgment of 27 February 2025, ECtHR, §§ 84–85; K.M. v. North Macedonia, App. no. 59144/16, Judgment of 4 March 2025, ECtHR, §§ 41–42; N.D. v. Switzerland, App. no. 56114/18, Judgment of 3 April 2025, ECtHR, §§ 33–34.
[254] Belém do Pará Convention, ibid., and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Union, Maputo, 1 July 2003, cited in, for instance, S.M. v. Croatia, App. no. 60561/14, Judgment of 25 June 2020, ECtHR, §§ 188–194; Patrício Monteiro Telo de Abreu v. Portugal, App. no. 42713/15, Judgment of 7 June 2022, ECtHR, § 23.
[255] As of April 2025, reference to the ACHR can be found in 103 judgments, and 26 to the ACHPR in the ECtHR's database. See: HUDOC [Online]. Available at: https://hudoc.echr.coe.int/#{%22fulltext%22:[%22\%22american%20convention\%22%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]} and https://hudoc.echr.coe.int/#{%22fulltext%22:[%22\%22african%20charter\%22%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]} (Accessed: 21 April 2025).

following conclusions can be drawn regarding its interpretative approach to engaging with universal and cross-regional human rights standards. First, the Court confirmed the applicability of the rules of treaty interpretation of the VCLT for the ECHR, and addressed its Article 31(3)(c) for examining the international legal framework in which the ECHR had been created. Regarding the selection of international and European instruments to be taken into account, the Court attached significant importance to instruments reflecting the reality in the international community, rather than focusing on whether the Respondent State was a party to them. Therefore, the Court primarily considered predominantly binding international instruments that denote the evolution of the given subject matter in the international community. Regarding non-binding instruments, the Court showed greater boldness with European instruments, notably with those adopted within the framework of the Council of Europe to determine the existence of the European consensus in the subject area. Furthermore, as domestic violence cases show, there are certain areas where the Court may draw inspiration from other regional human rights instruments, particularly when universal standards reflect shared fundamental values across different legal systems.

III.2.2. Systemic Integration in the Environmental Jurisprudence of the European Court of Human Rights

The environmental jurisprudence of the ECtHR provides a clear example of the evolutive interpretation of the Convention. This approach enabled the Court to develop its environmental case law, even though the ECHR itself does not explicitly mention the protection of the environment. Environmental issues may touch upon various Convention rights, including the right to life (Article 2), the prohibition of torture (Article 3), the right to liberty and security (Article 5), the right to a fair trial (Article 6), the right to respect for private and family life (Article 8), the freedom of expression (Article 10), the freedom of assembly and association (Article 11), the right to an effective remedy (Article 13), and the protection of property (Article 1 of Protocol No. 1).[256]

Given that substantive and procedural rights can clearly be distinguished in the ECHR, this section will build on this division to analyse the substantive and procedural

[256] Environment and the European Convention on Human Rights, Factsheet, April 2024 [Online]. Available at: https://www.echr.coe.int/documents/d/echr/FS_Environment_ENG (Accessed: 21 April 2025).

standards of environmental protection in the Court's jurisprudence. Therefore, particular attention will be dedicated to the environmental jurisprudence under the rights to life and respect for private and family life in substantive, and to Articles 6 and 13 in procedural matters. However, substantive rights, including the right to life, the right to respect for private and family life, the freedom of expression, or the freedom of assembly and association, may also involve a procedural aspect. Thus, the analysis will be structured according to this division.

Although the Convention does not provide protection against the mere deterioration of the environment, as the violation of Article 2 or 8 presupposes the existence of a harmful effect on a person's life or private life,[257] it could be argued – as pointed out by Judge Georgios Serghides – that a sub-right of an environmental character could be derived from Article 8(1)[258] and Article 2(1).[259] However, the Court is limited to interpreting and applying the rights within the frames of the Convention, and even the evolutive interpretation does not allow the Court to create a new human right and apply its guarantees under other Convention rights. Therefore, the adoption of an additional protocol on the recognition of the right to a healthy environment could be the only way to create a formal legal basis for environmental protection under the Convention,[260] which would also demonstrate the Council of Europe's ability to adapt to developmental changes in the context of the triple planetary crisis.[261]

The idea that the ECHR could include the right to a healthy environment first arose in 1999 in Recommendation 1431 (1999) of the Parliamentary Assembly of the Council of Europe, which drew considerable influence from the evolution of international environmental law – including the adoption of the Convention on the Conservation of

[257] Kyrtatos v. Greece, ibid., § 52.
[258] Pavlov and Others v. Russia, ibid.; Kotov and Others v. Russia, Apps. nos. 6142/18 and 13 others, Judgment of 11 October 2022, ECtHR, Concurring opinion of Judge Georgios Serghides, §§ 9–17.
[259] Cannavacciuolo and Others v. Italy, Apps. nos. 51567/14, 39742/14, 74208/14, and 21215/15, Judgment of 30 January 2025, ECtHR, Partly concurring, partly dissenting opinion of Judge Georgios Serghides, § 5.
[260] Pavlov and Others v. Russia, ibid., §§ 18–22. See also: ENNHRI statement ahead of the 100th meeting of the Council of Europe Steering Committee for Human Rights and the 10th meeting of the Council of Europe Drafting Group on Human Rights and Environment (CDDH-ENV) [Online]. Available at: https://ennhri.org/news-and-blog/ennhri-urges-council-of-europe-member-states-to-adopt-a-binding-instrument-on-the-right-to-a-healthy-environment/ (Accessed: 31 July 2024).
[261] The triple planetary crisis refers to climate change, the extent of environmental degradation and loss of biodiversity. See: UNEP (2021) *Making Peace with Nature: A Scientific Blueprint to Tackle the Climate, Biodiversity and Pollution Emergencies*. UNEP: Nairobi.

European Wildlife and Natural Habitats (the Bern Convention)[262] – and the jurisprudence of international courts in environmental matters, especially that of the ICJ. In this document, the Parliamentary Assembly first recommended that the Committee of Ministers call on all governments of Member States to sign and ratify the two environment-related treaties adopted in the 1990s in the framework of the Council of Europe: the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (the Lugano Convention)[263] and the Convention on the Protection of the Environment through Criminal Law (the Strasbourg Convention).[264] Second, Recommendation 1431 called the Committee of Ministers to instruct the appropriate bodies within the Council of Europe to examine the feasibility of (i) developing, possibly through a European charter for the environment, general obligations of states to apply the precautionary principle and promote sustainable development, protect the environment and prevent transfrontier pollution; and (ii) drafting an amendment or an additional protocol to the European Convention on Human Rights concerning the right of individuals to a healthy and viable environment. Third, the Parliamentary Assembly recommended increasing cooperation between the Council of Europe and other international organisations with regard to environmental protection, primarily by improving recourse to international courts and by developing a European charter for the environment.[265]

Recommendation 1431 did not produce the desired results: neither of the two conventions reached the sufficient number of ratifications, and thus, as of April 2025, neither has entered into force.[266] In addition, no significant step was taken to develop a European charter for the environment or an additional protocol recognising the right

[262] Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104), Council of Europe, Bern, 19 September 1979.
[263] Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (ETS No. 150), Council of Europe, Lugano, 21 June 1993.
[264] Convention on the Protection of the Environment through Criminal Law (ETS No. 172), Council of Europe, Strasbourg, 4 November 1998.
[265] Parliamentary Assembly, Recommendation 1431 (1999), 'Future action to be taken by the Council of Europe in the field of environment protection', para. 11 [Online]. Available at: https://pace.coe.int/en/files/16731#trace-2 (Accessed: 22 April 2025).
[266] As of April 2025, the Treaties have not reached the sufficient number of ratifications to enter into force. The Lugano Convention received nine signatures, but no ratifications. The Strasbourg Convention received 13 signatures and one ratification. Both treaties would enter into force with three ratifications. See: Chart of signatures and ratifications of Treaty 150 [Online]. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=150 (Accessed: 22 April 2025); Chart of signatures and ratifications of Treaty 172 [Online]. Available at: https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=172 (Accessed: 22 April 2025).

to a healthy environment. Consequently, the Parliamentary Assembly adopted Recommendation 1614 (2003), which built on the aforementioned Council of Europe conventions, the case law of the ECtHR, the Stockholm Declaration, and the Aarhus Convention that entered into force in the meantime.[267] The Assembly strengthened its position regarding the necessity of the adoption of an additional protocol to the ECHR, and called Member States to recognise a human right to a healthy, viable and decent environment in their constitutions and to safeguard the procedural rights set out in the Aarhus Convention.[268] As a next step, the Parliamentary Assembly adopted Recommendation 1885 (2009), reinforcing the need to draw up an additional protocol to the ECHR.[269]

The Parliamentary Assembly's commitment to recognising the right to a healthy environment was reinforced in 2021 with Resolution 2396 (2021) and Recommendation 2211 (2021). From the perspective of the recognition of the right to a healthy environment, the former is notable for proposing the idea of two separate additional protocols recognising the right to a healthy environment, to the ESC and the ECHR, noting that they are two complementary and interdependent systems with their own specific features.[270] Indeed, the ESC guarantees social and economic rights as a counterpart to the ECHR, which enshrines civil and political rights. As mentioned above, the ECtHR may refer to the Charter or the decisions of its monitoring body, the European Committee of Social Rights (ECSR).[271] Certain rights enshrined in the

[267] The Aarhus Convention was adopted on 25 June 1998 and entered into force on 30 October 2001. See: Aarhus Convention, ibid.

[268] Parliamentary Assembly, Recommendation 1614 (2003), 'Environment and human rights', paras. 9–10 [Online]. Available at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17131&lang=en (Accessed: 22 April 2025).

[269] Parliamentary Assembly, Recommendation 1885 (2009), 'Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment', para. 10 [Online]. Available at: https://pace.coe.int/en/files/17777 (Accessed: 22 April 2025).

[270] Parliamentary Assembly, Resolution 2396 (2021) 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe', para. 10 [Online]. Available at: https://pace.coe.int/en/files/29499/html (Accessed: 22 April 2025).

[271] See, for instance, Demir and Baykara, ibid. On the relationship between the two instruments, see: Akandji-Kombe, J. F. (2010) 'The European Social Charter and the European Convention on Human Rights: Prospects for the Next Ten Years', in: De Schutter, O. (ed.) *La Charte social européenne: une constitution sociale pour l'Europe.* Brussels: Bruylant, pp. 147–165; Deliyanni-Dimitrakou, C. (2022) 'The European Social Charter and the European Convention on Human Rights', in: The Academic Network on the European Social Charter and Social Rights, Angeleri, S. and Nivard, C. (eds.) *The European Social Charter: A Commentary, Vol. 1.* Leiden: Brill, pp. 351–374; Griffith, L. (2020) 'The Council of Europe, the European Convention on Human Rights and the Social Charter', in: McCAnn, G. and Ó hAdhmaill, F. (eds.) *International Human Rights, Social Policy and Global Development. Critical Perspectives.* Bristol: Policy Press, pp. 41–52.

Charter may also be intertwined with the protection of the environment,[272] particularly the right to protection of health (Article 11).[273] The adoption of an additional protocol would complement the complaint mechanisms available in the Council of Europe, as it would enable non-governmental organisations to lodge collective complaints on environmental issues, which is limited in the ECtHR's mechanism that is primarily open for individual complaints under Article 34 of the ECHR.[274] The idea of two separate additional protocols was embraced in Recommendation 2211 (2021), which took the proposal a step further and also provided the proposed text for an additional protocol to the ECHR on the right to a safe, clean, healthy and sustainable environment.[275]

The draft protocol builds on the major international legal sources relevant to the recognition of the right to a healthy environment, particularly the abovementioned Principle 1 of the Stockholm Declaration,[276] and also sets out participatory and procedural environmental rights implicitly inspired by the Aarhus Convention.[277] Furthermore, the protocol would also provide certain principles as interpretative guidance,[278] such as the principles of transgenerational responsibility, equity and solidarity,[279] environmental non-discrimination,[280] the principles of prevention,

[272] Bándi, Gy. (2021) 'Az Emberi Jogok Európai Egyezménye, a Szociális Karta és a környezeti jogok', *Acta Humana*, 9(2), pp. 196–197. See also: Cliza, M. C. and Spătaru-Negură, L. C. (2020) 'Environmental Protection derived from the European Convention for Human Rights and from the European Social Charter', *Lex et Scientia International Journal*, 27(2), pp. 131–133.

[273] See, for instance, No. 30/2005 Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Decision on the merits, 6 December 2006, ECSR; No. 72/2011 International Federation for Human Rights (FIDH) v. Greece, Decision on the merits, 23 January 201, ECSR.

[274] Article 34 of the ECHR reads as follows: 'The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.' Cf. Part IV, Article D(1) of the ESC: 'The provisions of the Additional Protocol to the European Social Charter providing for a system of collective complaints shall apply to the undertakings given in this Charter for the States which have ratified the said Protocol.' See: European Social Charter (revised), ibid.

[275] Recommendation 2211, ibid.

[276] Ibid., Article 6: 'Everyone has the right to a safe, clean, healthy and sustainable environment.'

[277] Ibid., Article 7:

'a. Everyone is entitled to access information relating to the environment held by public authorities, without having to prove an interest.

b. If a project, programme or policy has an impact on the environment and biodiversity, everyone shall be entitled to be consulted in advance in order to be heard by the decision-making bodies regarding the authorisation and development of that project.

c. Everyone has the right of access to justice in matters relating to the environment.

d. Everyone whose rights as set forth in this Protocol are violated shall have an effective remedy.'

[278] Eicke, T. (2022) 'Climate Change and the Convention: Beyond Admissibility', *European Convention on Human Rights Law Review*, 3(1), pp. 11–12.

[279] Recommendation 2211, ibid., 34, Article 2.

[280] Ibid., Article 3.

precaution, non-regression, and *in dubio pro natura*.[281] The protocol would establish a non-derogable right under Article 15 of the ECHR, except for Article 7(b) thereof that provides the right to be consulted in advance in order to be heard by decision-making bodies regarding the authorisation and development of a project, programme or policy affecting the environment.[282]

The additional protocol would significantly contribute to the ECtHR's jurisprudence in several ways.[283] First, the formal recognition of substantive and procedural environmental rights would create an explicit basis for claims related to environmental degradation. As elaborated below, in the absence of any environmental rights in the Convention, the ECtHR sets a high threshold for finding environment-related human rights violations, as it requires an adverse impact on existing rights. However, as pointed out below, certain inconsistencies could be observed within the current environmental jurisprudence of the Court, which is principally because it consists of the case law of various substantive and procedural rights.[284] The fragmentation of the environmental jurisprudence of the Court could be halted by the adoption of the protocol, as it would allow the Court to build a more coherent and consistent approach to environmental protection and establish a minimum severity threshold.[285] Furthermore, the author believes that the recognition of the right to a healthy environment within the ECHR would also contribute to the harmonisation of rights-based environmental protection, as the majority of Council of Europe Member States provide environmental rights in their constitutions.[286] The Court could, therefore, provide a minimum standard for environmental protection on the basis of successful domestic practices.

Notwithstanding the fact that the adoption of the additional protocol would fill an immense gap in the jurisprudence of the ECtHR, which is aimed to be analysed in this

[281] Ibid., Article 4.
[282] Ibid., Article 9 and 7(b).
[283] For a recent analysis of the potential changes in the ECtHR's case law with the adoption of the protocol, see: Kobylarz, N. (2025) 'A World of Difference: Overcoming Normative Limits of the ECHR Framework through a Legally Binding Recognition of the Human Right to a Healthy Environment', *Journal of Environmental Law*, eqae031.
[284] European Network of National Human Rights Institutions, ENNHRI statement, ibid., 34.
[285] See: Kobylarz, N. (2023) 'Anchoring the right to a healthy environment in the European Convention on Human Rights: What concretized normative consequences can be anticipated for the Strasbourg Court in the field of admissibility criteria?', in Antonelli, G. et al. (eds.) *Environmental Law Before the Courts. A US-EU Narrative.* Cham: Springer, pp. 153–199.
[286] Boyd, D. (2013) 'The Status of Constitutional Protection for the Environment in Other Nations', Paper #4, Report of November 2013, David Suzuki Foundation, p. 14.

dissertation, its adoption would still leave certain questions unanswered. As the former President of the ECtHR, Robert Spano pointed out,[287] determining the concept of a safe, clean, healthy and sustainable environment would pose difficult 'definitional, scientific and probative challenges' to the Court, as the judges would be asked to determine for 46 Member States what constitutes a non-degraded, viable and decent environment that is conducive to peoples' health, development and well-being, as set out in Article 1 of the draft protocol. Although it would not be realistic to set up an exact definition of what constitutes a healthy environment, the author argues that the Court could adapt and expand its already existing "proxies" that substitute for a science-based causal inquiry when assessing environmental claims under Article 2 or 8, as identified by Katalin Sulyok.[288]

Furthermore, Spano highlights that claims under the draft protocol would have to be assessed in light of the currently existing admissibility framework, particularly the victim status criteria provided in Article 34 of the ECHR. The Convention indeed establishes a relatively strict requirement for applicants to claim to be a victim of a violation, thereby preventing *actio popularis* claims. However, the ECtHR tends to be scrutinous with group applications, as shown in *Cordella and Others v. Italy*, where the Court did not find the *locus standi* of 19 applicants of the 180, for not residing in the settlement where the steel plant was situated. The applicants complained that the toxic emissions of the steel plant had severely damaged their health and the environment, in violation of their right to life and right to respect for private and family life.[289] On the other hand, the Court showed more flexibility in finding the victim status of the applicant non-governmental organisation (NGO) on behalf of its members in its

[287] Keynote Speech of Robert Spano at the CoE Conference on the Right to a Clean, Healthy, and Sustainable Environment in Practice on 3 May 2023 [Online]. Available at: https://rm.coe.int/coe-speech-environment-spano-final-2787-8240-6407-v-1/1680aae80b (Accessed: 31 July 2024).

[288] The so-called "proxies" help the Court in identifying whether an environmental claim could fall under the scope of the ECHR and reaches the minimum severity threashold. Such proxies could be, the distance between the polluter and the applicant's home; the assessment of whether the pollution was ongoing or only a by-product of previous industrial activity; the occurrence of prior accidents producing large-scale pollution; the lawfulness of the toxic emission under domestic law; exceptional facts bearing on the case/the egregiousness of the circumstances; and the evaluation of whether the state's decision-making process failed to comply with the rule of law/procedural guarantees. See: Sulyok, K. (2021) *Science and Judicial Reasoning. The Legitimacy of International Environmental Adjudication.* Cambridge: Cambridge University Press, pp. 155–159.

[289] Cordella and Others v. Italy, ibid.; §103 and §109. See also: A.A. and Others v. Italy, App. no. 37277/16, Judgment of 5 May 2022, ECtHR; Perelli and Others v Italy, App. no. 45242/17, Judgment of 5 May 2022, ECtHR; Ardimento and Others v. Italy, App. no. 4642/17, Judgment of 5 May 2022, ECtHR; Briganti and Others v. Italy, App. no. 48820/19, Judgment of 5 May 2022, ECtHR.

first climate change judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*[290] analysed below which demonstrates that there is a certain room for manoeuvre for the Court when assessing the direct effect of the impugned measures, although in climate change cases.

In addition, the question of jurisdiction may also arise in the context of environmental protection and climate change. Spano points out that the cross-border and transversal nature of environmental protection requires the application of extraterritorial jurisdiction, which is, however, only exceptionally recognised in the Court's practice under Article 1 of the ECHR, usually in the context of military conflicts.[291] While the *KlimaSeniorinnen* case did not raise substantial issues in connection with extraterritorial jurisdiction, therefore, the question of how the ECtHR would approach transboundary environmental harm and extraterritorial emissions remains open.

Last, it has to be noted that States have demonstrated only limited willingness to formally recognise the right to a healthy environment in a legally binding instrument, although the issue has been on the agenda in the Council of Europe for more than two decades. The problem is intensified by the limited interest in ratifying the Lugano Convention and the Strasbourg Convention, both of which contain provisions that could have laid the foundation of a more consistent and rights-based approach to environmental protection on the European continent.[292] Nonetheless, the Convention on the Protection of the Environment through Criminal Law, adopted on 14 May 2025 in Luxembourg[293] and thus suspending the Strasbourg Convention, may provide an

[290] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., § 537.
[291] On the extraterritorial implications of the climate change cases, see: Keller, H. and Heri, C. (2022) 'The Future is Now: Climate Cases before the ECtHR', *Nordic Journal of Human Rights*, 40(1), pp. 159–160.
[292] However, it should also be seen that the other two environmental conventions adopted under the aegis of the Council of Europe, the Convention on the Conservation of European Wildlife and Natural Habitats and the Landscape Convention both received the required number of ratifications and entered into force within a few years from the time of their adoption. These conventions do not contain references to the ECHR or human rights, thus, their impact on the ECtHR's jurisprudence is not measureable. See: Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104), Council of Europe, Bern, 19 September 1979; Landscape Convention (ETS No. 176), Council of Europe, Florence, 20 October 2000.
[293] CM(2025)52-final – 134th Session of the Committee of Ministers (Luxembourg, 13-14 May 2025) – Council of Europe Convention on the Protection of the Environment through Criminal Law, 14 May 2025. The Convention is expected to open for signature at the end of the year 2025, and enter into force uplon ten ratifications, including at least eight by Member States of the Council of Europe. See: 'Protection of the Environment through Criminal Law' [Online]. Available at: https://www.coe.int/en/web/cdpc/convention-on-the-protection-of-the-environment-through-criminal-law (Accessed: 18 May 2025).

impetus for the recognition of the right to a healthy environment in the Convention system. The new convention builds on a broad scope of international legal sources, including human rights instruments explicitly recognising the right to a healthy environment, such as UNGA Resolution 76/300 and international environmental treaties, which represent an outstanding example of systemic integration in a normative text. While the impact of the Convention cannot be measured yet; considering that it explicitly builds on international environmental law and the environmental case law of the ECtHR, it is anticipated to reinforce the intrinsic link between human rights and the environment and to contribute to the progressive development of customary norms on the protection of the environment through criminal law, and thus serve as an inspiration for other regional or international initiatives, particularly in light of the ongoing discourse revolving around the international recognition of the crime of ecocide.

In this context, the author believes that the adoption of the additional protocol recognising the right to a healthy environment would provide an opportunity for the Court to develop its environmental jurisprudence, even if this potential development may not address all the aspects of environmental protection or climate change. This assumption is primarily based on the case law analysis presented below, which aims to demonstrate the influence of legal sources recognising substantive environmental rights, including the impact of the abovementioned UNGA Resolution, the draft additional protocol to the ECHR, and the cross-fertilisation of the environmental jurisprudence of other human rights forums, primarily the IACtHR on the development of the substantive and procedural standards of the ECtHR's environmental case law.

III.2.2.1. Substantive Environmental Standards in the Jurisprudence of the European Court of Human Rights

As noted above, the Court's environmental jurisprudence can be divided according to substantive and procedural aspects. In terms of the substantive aspect of the protection of the environment, the case law developed under the right to life and the right to respect for private and family life is particularly well-developed. Thus, the analysis will primarily focus on systemic integration within the case law of these two rights, followed by a brief overview of other substantive rights, such as the prohibition of inhuman or degrading treatment, the right to liberty and security, the freedom of expression, and the protection of property.

A. The ECtHR and the Right to Life in the Context of Environmental Matters

The right to life occupies a prominent place in human rights declarations and conventions on both universal and regional levels, as it is guaranteed by all the major human rights documents, including the UDHR (Article 3), the ICCPR (Article 6), the ECHR (Article 2), the ACHR (Article 4), and the ACHPR (Article 4).

In the European Convention, the right to life is contained in Article 2, which provides that

> 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law';

and lays down certain circumstances when the deprivation of life shall not be regarded as inflicted in contravention of this Article. These include the deprivation of life

> '(a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection'.

The provision on the death penalty has lost its relevance in European States by now, since it was abolished in all Council of Europe Member States, which was also confirmed in Protocol No. 13 on the Abolition of the Death Penalty in All Circumstances in 2002, supplementing Protocol No. 6 on the Abolition of Death Penalty, adopted in 1985.[294]

The right to life does not solely concern deaths resulting directly from actions of State authorities but also lays down a positive obligation on States to take appropriate steps to safeguard the lives of those within their jurisdiction.[295] In broad terms, this positive obligation has two aspects: (a) the duty to provide a regulatory framework, and (b) the obligation to take preventive operational measures.[296] The ECtHR has ruled on Article 2 in various cases in the context of environmental protection, including dangerous industrial activities, exposure to nuclear radiation, industrial emissions and health, and natural disasters. Based on the case law examples presented below, it could be

[294] See: Mathieu, B. (2006) *The Right to Life*. Strasbourg: Council of Europe Publishing.
[295] L.C.B. v. the United Kingdom, App. no. 23413/94, Judgment of 9 June 1998, ECtHR, § 36.
[296] Guide on Article 2 of the European Convention on Human Rights. Right to Life (2023), Council of Europe/European Court of Human Rights, p. 6.

concluded that the Court tends to set a high standard for the applicability and the breach of Article 2.

In one of the earliest cases concerning the environmental impact of Article 2, *L.C.B. v. the United Kingdom,* the Court did not find a link between the exposure of the applicant's father to radiation due to the ongoing nuclear tests in the Pacific Ocean and the development of leucaemia in the applicant's infancy, thus, the State's failure to notify the applicant's parents of the risks of the dangerous levels of radiation in light of the information available to the British authorities, and therefore, the Court held no violation of Article 2.[297] Similarly, in the case of the death of the first applicant as an alleged effect of environmental nuisance, the Court found the claim of the applicant's husband and children inadmissible in *Smaltini and Italy,* for not finding a causal link between the harmful emissions and the development of cancer in case of the first applicant.[298] The difficulty of establishing a causal link between the harmful effects and the death of applicants is indicated by inadmissibility decisions, such as in *Murillo Saldias and Others v. Spain* and *Viviani and Others v. Italy* in the context of natural disasters.[299]

A landmark judgment concerning the environmental implications of the right to life was *Öneryildiz v. Turkey,* which concerned a methane explosion in the vicinity of the applicant's dwelling resulting in the death of thirty-nine people, nine of them closely related to the applicant. The applicant argued that no measures had been taken to prevent such an explosion, as both the city council and the respective Ministries failed to compensate the applicant for pecuniary and non-pecuniary damage. After carefully examining the domestic legal framework, the ECtHR considered the relevant instruments of the Council of Europe in the field of the environment and the industrial activities of public authorities and explicitly referred to resolutions and

[297] L.C.B. v. the United Kingdom, ibid., §§ 10–16., §§ 36–41. However, a few years later, the Court found a violation of Article 8 in case of the applicant who himself developed severe health problems as a result of his participation in mustard and nerve gas tests conducted by the British Army he had been member of. However, the violation was found under the procedural aspect of Article 8 for the State's failure to provide an effective and accessible procedure enabling the applicant to have access to all the relevant information to assess the risks he had been exposed to. See: Roche v. the United Kingdom, App. no. 32555/96, Judgment of 19 October 2005, ECtHR, §§ 167–169.

[298] Smaltini v. Italy, App. no. 43961/09, Decision of admissibility of 24 March 2015, ECtHR, §§ 4–5 and §§ 41–61.

[299] See: Murillo Saldias and Others v. Spain, App. no. 76973/01, Decision of admissibility of 28 November 2006, ECtHR; Viviani and Others, App. no. 9713/13, Decision of admissibility of 16 April 2015, ECtHR.

recommendations of the Parliamentary Assembly and the Committee of Ministers, namely Resolution 587 (1975) on problems connected with the disposal of urban and industrial waste, Resolution 1087 (1996) on the consequences of the Chernobyl disaster, and Recommendation 1225 (1993) on the management, treatment, recycling and marketing of waste, and Recommendation no. R (96) 12 on the distribution of powers and responsibilities between central authorities and local and regional authorities with regard to the environment. Furthermore, the Court referred to the abovementioned Lugano Convention on civil liability for damages to the environment and the Strasbourg Convention on environmental protection through criminal law.

The Court recalled that, based on the mentioned documents, the primary responsibility for the treatment of household waste lies with local authorities and that the State is responsible for adopting the necessary measures to punish acts involving the disposal, treatment, and storage of hazardous waste that causes death or serious injury.[300] In light of the trends at the time of the adoption of the judgment illustrated by the relevant international legal framework, the Court assessed the substantive and procedural aspects of Article 2 in the present case. Regarding the substantive aspect, the Court highlighted that the obligations deriving from Article 2 entail the duty of the State to ensure an adequate legislative and administrative framework designed to provide effective protection of human life, which particularly applies in the context of dangerous activities, such as in the present case. After carefully examining the authorities' failure to provide an adequate response to the event, in light of the fact that they ought to have known about the real and immediate risk to the people living near the municipal rubbish tip, the Court pronounced the violation of Article 2 in its substantive aspect. Furthermore, the Court also held that there had been a violation of Article 2 under its procedural limb for the lack of adequate protection by law safeguarding the right to life; a violation of Article 1 of Protocol No. 1; a violation of Article 13 on account of the complaint under Article 2 and Article 1 of Protocol No. 1.[301]

In addition to laying down the fundamental requirements for finding a violation of Article 2 in the context of dangerous industrial activities, the *Öneryıldız* case is relevant from the perspective of the present research as the Court explicitly referred to

[300] Öneryıldız v. Turkey, App. no. 48939/99, Judgment of 30 November 2004, ECtHR, §§ 59–62.
[301] See: Öneryıldız v. Turkey, ibid.

several international legal documents, even if they were non-binding (resolutions and recommendations) or were not yet in force at the time of the adoption of the judgment (the Lugano Convention and the Strasbourg Convention). Given that these documents were embedded in the trends to establish harsher penalties for damage to the environment, the Court considered them as relevant European standards in the field. Although the Court's conclusions in connection with the substantive aspect of Article 2 are in line with its jurisprudence, as it adopted its conclusions of *Guerra and Others v. Italy* regarding Article 8 to Article 2, it also emphasised that the interpretation of the right to life is also supported by 'current developments in European standards'.[302]

Unfortunately, similar events occurred in other cases, such as *Budayeva and Others v. Russia*, *Kolyadenko and Others v. Russia*, and *Özel and Others v. Turkey,* where the Court did not assess the relevant international legal framework nor referred to European standards in the context of States' failure to provide adequate protection against natural disasters but referred to the *Öneryıldız* judgment for finding a violation of Article 2.[303] However, international legal sources on the right to a healthy environment have not been referred to in the context of Article 2 so far, given that these sources have been drafted after the adoption of the mentioned judgments. Furthermore, it has to be seen that the threshold of finding a violation under Article 2 is relatively high, as it involves a direct threat on human life, and thus, such cases are less frequently filed before the ECtHR.

The impact of these judgments, principally the *Öneryıldız* case extends far beyond the individual cases, and even the jurisprudence of the ECtHR, as they were taken into account by the UN Human Rights Committee in the aforementioned *Portillo Cáceres and Others v. Paraguay*,[304] when deciding about the violation of Article 6 of the ICCPR for the State's failure to provide effective protection against the excessive spraying of toxic agrochemicals in the vicinity of the home of the applicant's family. The Committee explicitly referred to the abovementioned ECtHR cases for considering the developments before other international tribunals that had found a

[302] Öneryıldız v. Turkey, ibid., § 90.
[303] See: Budayeva and Others v. Russia, App. no. 15339/02, Judgment of 20 March 2008, ECtHR; Kolyadenko and Others v. Russia, Apps. nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, Judgment of 28 February 2012, ECtHR; Özel and Others v. Turkey, Application nos. 14350/05, 15245/05 and 16051/05, Judgment of 17 November 2015, ECtHR.
[304] Le Moli, G. (2020) 'The Human Rights Committee, Environmental Protection and the Right to Life', *International and Comparative Law Quarterly,* 69(3), pp. 735–752.

violation of the right to life for severe environmental degradation, and pronounced the violation of the right to life as enshrined in the ICCPR.[305] In addition to the importance of the merits of this case, the Committee's reference to the ECtHR's cases also shows the embeddedness of the ECtHR in developing international trends and standards for the environmental implications of human rights.

Furthermore, the violation of the right to life was discussed in the Court's first climate change cases adopted on 9 April 2024.[306] In two cases – *Duarte Agostinho and Others v. Portugal and Others* and *Carême v. France* –, the Court did not find the claims admissible for the non-exhaustion of domestic remedies and incompatibility rationae personae with the provisions of the Convention. The six minor applicants of the *Duarte* case complained of a breach of Articles 2, 3, 8, and 14 of the ECHR for the 32 Respondent States' alleged failure to address the harms caused by climate change. However, the Court did not find the non-exhaustion of domestic remedies justified and thus did not proceed with examining the merits of the case.[307] In addition, the Court rejected the applicant's victim status in *Carême,* given that he did not reside in the municipality that he claimed had been exposed to climate risks.[308] The third case, however, was a major breakthrough in establishing the climate change jurisprudence of the Court: in *Verein KlimaSeniorinnen and Others v. Switzerland,* the Court found a violation of Articles 8 and 6 for the applicant NGO, after having conducted an extensive review of the relevant international legal framework concerning climate change.[309] The essential aspects of the judgment will be analysed under Article 8

[305] CCPR/C/126/D/2751/2016, ibid., para 7.4.
[306] Although earlier climate-related cases did not receive considerable attention in the literature, it should be mentioned that the ECtHR had earlier adopted decisions in climate change litigation cases, however, given that the applicants could not demonstrate a sufficient grade of being affected by the breach of Convention rights, the Court found these applications inadmissible. The major procedural difference between these inadmissibility decisions and those adopted on 9 April 2024 lies in the composition of the Court. Namely, while the decisions in Duarte Agostinho and Carême were adopted by the Grand Chamber, these decisions were taken by a Single Judge and a Committee of 3 Judges. See: Humane Being and Others v. the United Kingdom, App. no. 36959/22, Decision of admissibility of 1 December 2022, ECtHR; Plan B. Earth and Others v. the United Kingdom, App. no. 35057/22, , Decision of admissibility of 1 December 2022, ECtHR; Asociation Instituto Metabody v. Spain, App. no. 32068/23, Decision of admissibility of 5 October 2023, ECtHR. See also: Climate Change, Factsheet, April 2024 [Online]. Available at: https://www.echr.coe.int/documents/d/echr/fs_climate_change_eng (Accessed: 24 April 2025).
[307] See: Duarte Agostinho and Others v. Portugal and 32 Others, ibid.
[308] Carême v. France, App. no. 7189/21, Decision of admissibility of 9 April 2024, ECtHR.
[309] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., § 48.

further on, at this point, the analysis will be limited to the substantive aspect of Article 2.

Under Article 2, the applicants – four women and an environmental association composed of elderly women – complained about the insufficient action taken by Swiss authorities to mitigate the effects of climate change, and argued that the failure of the State to mitigate the effect of increasing temperatures posed a real and serious risk to the lives of the applicants, as the recurring heatwaves had already led to excess mortality among elderly women.[310] The ECtHR referred to a wide range of international legal sources concerning climate change and human rights, which will be analysed in the context of Article 8, however, several of them are explicitly connected to the right to life. These sources include the abovementioned General Comment No. 36 to the ICCPR, and key decisions of the UN HRC in the context of environmental protection: the abovementioned decision in *Portillo Cáceres,* and the two decisions about the human rights impacts of climate change, *Teitiota v. New Zealand* and *Daniel Billy and Others v. Australia.* While the Committee found a violation for severe environmental degradation in the *Portillo Cáceres* case, it did not pronounce a violation of the right to life in the context of climate change in either of the two cases.

As noted above, in the *Teitiota* case, the petitioner claimed a breach of the right to life for the State's authorities' denial of granting him asylum in New Zealand, as the country of his origin, Kiribati, had been negatively affected by climate change. Although the Committee recognised the risks climate change poses to human rights, it did not find that the petitioner had faced a real and imminent risk of arbitrary deprivation of life upon his return to Kiribati.[311] Additionally, in the *Daniel Billy* case, the petitioners, members of indigenous groups in the Torres Strait region claimed that the State's failure to address the imminent risks of climate change amounted to a violation of several rights enshrined in the ICCPR, also including the right to life. While the Committee found a breach of the petitioners' right to enjoy their culture and to be free from arbitrary or unlawful interference with their privacy, family, or home, no violation of the right to life was found.[312] Therefore, based on recent developments

[310] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 312–315.
[311] CCPR/C/127/D/2728/2016, ibid. See also: Behrman and Kent, ibid. See also: Foster, M. and McAdam, J. (2022) 'Analysis of 'Imminence' in Internaitonal Protection Claims: Teitiota v New Zealand and Beyond', *International and Comparative Law Quarterly,* 71(4), pp. 975–982.
[312] CCPR/C/135/D/3624/2019, ibid. See also: Lentner and Ceninc, ibid.

in case law at the international level, it could be concluded that the link between the negative effects of climate change and a real and imminent threat to human life, as the adjudicatory bodies do not consider that the applicants/petitioners had been individually and directly affected by climate change, in contrast with natural disasters or dangerous industrial activities, as presented above.

The ECtHR considered the key findings of these cases and concluded that in order for Article 2 to apply in the *Verein KlimaSeniorinnen* case, a "real and imminent" risk to life shall be determined. However, given the incompatibility rationae personae of the complaint with the provisions of the Convention, the Court did not examine the merits of Article 2 in the given case and proceeded with the analysis of Article 8. Notwithstanding the limited consideration of the right to life in *Verein KlimaSeniorinnen*, the author believes that its primary relevance lies in its embeddedness in international trends as referred to by the Court. The ECtHR, therefore, did not bring a groundbreaking finding when it comes to the analysis of Article 2 in the context of climate change, nonetheless, it supported the recently formulated case law of the UN HRC.

The environmental jurisprudence under the right to life reached a milestone with the adoption of *Cannavacciuolo and Others v. Italy* on 30 January 2025.[313] The judgment addressed the systematic and large-scale pollution phenomenon caused by the mismanagement of hazardous waste in parts of the Campania region in the South of Italy, marking the first time in the Court's jurisprudence to find a violation of the right to life in a case concerning large-scale environmental pollution. The case revolved around the so-called "Terra dei Fuochi" ("Land of Fires") phenomenon on the territory between the province of Naples and the South-Western area of the province of Caserta. The pollution stems from the illegal dumping, burying and/or uncontrolled abandonment of hazardous, special and urban waste, often carried out by criminal organised groups in an area with a population of nearly 2,900,000 inhabitants.

[313] For some early reflections on the judgment from the author, see: Krajnyák. E. (2025) 'Up in Smoke? Victim Status in Environmental Litigation before the ECtHR', *EJIL: Talk!* [Online]. Available at: https://www.ejiltalk.org/up-in-smoke-victim-status-in-environmental-litigation-before-the-ecthr/ (Accessed: 22 April 2025). See also: Hamann, K. (2025) 'Cannavacciuolo and Others v Italy: Towards Applying a Precautionary Approach to the Right to Life', *EJIL: Talk!* [Online]. Available at: https://www.ejiltalk.org/cannavacciuolo-and-others-v-italy-towards-applying-a-precautionary-approach-to-the-right-to-life/ (Accessed: 22 April 2025); Zirulia, S. (2025) 'A New Step in the Greening of the Right to Life. The ECtHR Judgment on the Land of Fires', *Verfassungsblog* [Online]. Available at: https://verfassungsblog.de/right-to-life-echr-pollution/ (Accessed: 22 April 2025).

Scientific studies have identified a causal link between the increase and high rate of cancer mortality – particularly in lung, pleura, larynx, bladder, liver and brain cancers – and the pollution resulting from inappropriate waste management and the existence of illegal rubbish dumps.[314]

The application of the *Cannavacciuolo* case was brought by individuals and five associations (non-governmental organisations, NGOs) alleging the violation of their right to life and respect for private and family life resulting from the large-scale pollution in the area. The Court carefully examined the victim status of all the applicants.[315] It declared only seven individual applicants' claims admissible, striking out the NGOs' and other individuals' claims who have not resided in the municipalities identified in an inter-ministerial decree or who have failed to comply with the six-month time limit.[316]

Regarding the merits of the complaint, the Court first assessed the alleged violation of the right to life. It concluded that such illegal and unregulated dumping of hazardous waste in the present case could be regarded as dangerous activities that pose a risk to human life. Furthermore, the Court noted that the seriousness of the potential harm to human health affecting environmental elements, such as soil, water, and air, is undisputed among the parties.[317] Recognising pollution from toxic waste dumping as a dangerous activity represents an innovative development in the Court's jurisprudence. For the first time, the ECtHR deemed such pollution to meet the threshold of the right to life, which requires a "real and imminent" risk to human life.[318]

The relevant international legal framework examined in the scope of the principle of systemic integration played a significant role in the Court's conclusions of finding the violation of the right to life rather than the right to respect for private and family life. The Court referred to the jurisprudence of the UN HRC, citing General Comment No. 36 to the ICCPR and *Portillo Cáceres v. Paraguay*; the Court of Justice of the European Union (CJEU); and the IACtHR, referring to *Advisory Opinion OC-23/17*

[314] Cannavacciuolo and Others v. Italy, ibid., § 18.
[315] Cannavacciuolo and Others v. Italy, ibid., Annex I.
[316] Cannavacciuolo and Others v. Italy, ibid., § 222, § 249, and § 296.
[317] Cannavacciuolo and Others v. Italy, ibid., § 385.
[318] Before Cannavacciuolo, the Court considered such issues under the right to respect for private and family life, emphasising their impact on well-being rather than their direct threat to life. See, for instance, Brânduşe v. Romania, App. no. 6586/03, Judgment of 7 April 2009, ECtHR; Di Sarno and Others v. Italy, App. no. 30765/08, Judgment of 10 January 2012, ECtHR; Kotov and Others v. Russia, ibid.; Locascia and Others v. Italy, App. no. 35648/10, Judgment of 19 October 2023, ECtHR.

titled "The Environment and Human Rights"[319] and to *La Oroya v. Peru*.[320] As noted above, the violation of the right to life was found both in *Portillo Cáceres* and *La Oroya*; thus, the ECtHR's judgment fits in the tendency of recognising the direct impact of large-scale environmental degradation as a threat to life under international human rights law.

Furthermore, it is remarkable that the ECtHR also referred to the Preamble of the Aarhus Convention,[321] recognising 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.[322] As noted above, the Aarhus Convention is primarily considered as a treaty recognising participatory and procedural environmental rights; however, it also explicitly enshrines the right of every person of present and future generations to live in an environment adequate to his or her health and well-being in the context of the objective of the treaty.[323]

Having found a violation of Article 2, the Court did not consider it necessary to examine the complaint under Article 8. Thus, the judgment provided an opportunity for Judge Serghides to conclude that

> '[…] one aspect of the right to life under Article 2 of the Convention – its protection against environmental pollution and other hazards – encompasses the sub-right to be free from environmental pollution or other environmental hazards that may endanger human life.'[324]

The sub-right of an environmental character had earlier been pronounced in the Judge's concurring opinions to *Pavlov and Others v. Russia* and *Kotov and Others v.*

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[319] The Environment and 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) of the American Convention on Human Rights), Advisory Opinion OC-23/17 of 15 November 2017, IACtHR.

[320] Cannavacciuolo and Others v. Italy, ibid., §§ 179–185.

[321] The Court also referred to Article 5 of the Aarhus Convention regarding the collection and dissemination of environmental information, but, given that the Court did not address procedural issues under other Convention rights, this aspect will not be addressed in the context of procedural standards in the Court's environmental jurisprudence.

[322] Cannavacciuolo and Others v. Italy, ibid., § 181.

[323] Article 1 of the Aarhus Convention reads as follows: 'In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.'

[324] Cannavacciuolo and Others v. Italy, ibid., Partly concurring, partly dissenting opinion of Judge Georgios Serghides, para. 5.

Russia under Article 8. The recognition of a sub-right is particularly relevant in the European human rights system, as it may provide another impetus for adopting a long-discussed additional protocol to the right to a healthy environment, as it highlights persistent and widespread environmental issues across the European continent that continue to threaten public health and human rights.

Furthermore, the severity and systematic nature of the pollution in the "Terra dei Fuochi" area prompted the Court to adopt a pilot-judgment procedure and urge the State to implement a comprehensive strategy of measures to decontaminate the area, along with establishing a monitoring mechanism and an information platform within the time limit of 2 years.[325] The application of the pilot-judgment procedure in the present case constitutes a grundbreaking development in the Court's jurisprudence, as it is the first time the ECtHR has used this approach to address a structural problem of environmental protection.

The *Cannavacciuolo* judgment represents a landmark case in the Court's jurisprudence for various reasons.[326] Concerning systemic integration, the judgment is an outstanding example of how the Court develops its jurisprudence in line with international standards, particularly those established through treaty interpretation. The recognition of systematic and large-scale environmental pollution as a threat to life also raises the standards of human rights protection in the European system, and is expected to shape the Court's future environmental jurisprudence as well.

B. The ECtHR and the Right to Respect for Private and Family Life in the Context of Environmental Matters

[325] Cannavacciuolo and Others v. Italy, ibid., § 501.

[326] Aspects not directly linked with systemic integration and the reference to other relevant international sources are not discussed here. Nevertheless, it should briefly be mentioned that the judgment also confirmed the non-applicability of the locus standi of NGOs established in KlimaSeniorinnen, as discussed below. In Cannavacciuolo, the Court justified the exclusion of the applicant NGOs from the procedure by 'the specific feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context'. However, the questions of what specific feature of climate change justifies distinguishing it from other environmental crises also affecting millions of people, and why protection from large-scale environmental pollution cannot be considered as a common concern of humankind with an intergenerational aspect, remained unanswered. The distinction of the Court's approach to standing in climate change and other environmental cases has been criticised by Judges Frédéric Krenc and Georgios Serghides in their concurring opinions. See: Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 498–499, cited in Cannavacciuolo and Others v. Italy, ibid., §§ 220–222. See also: Cannavacciuolo and Others v. Italy, ibid., Concurring opinion of Judge Frédéric Krenc, paras. 3–4; Partly concurring, partly dissenting opinion of Judge Georgios Serghides, para. 2. See also: Krajnyák, 2025, ibid.

Besides the right to life, environmental issues are the most often interlinked with the right to respect for private and family life, which is also shown by the high number of cases analysed below. The strong linkage between Articles 2 and 8 was even explicitly recognised by the ECtHR, in the abovementioned *Budayeva* case, stating that State's positive obligations under the Articles in question 'largely overlap' in the context of environmental harm,[327] therefore, only those not detailed in the context of Article 2 will be analysed below.

In the framework of Article 8, the Court examines various situations in relation to the protection of the environment, mainly different kinds of pollution, including – but not limited to – noise pollution, emission from vehicles, soil and water contamination, or waste management, as the right to respect for private and family life implies respect for the quality of private life as well as the enjoyment of the amenities of one's home. However, degradation of the environment does not necessarily violate Article 8, only if the environmental factors directly and seriously affect private and family life or the home.[328]

The first successful case in which the ECtHR pronounced a violation of Article 8 in the context of environmental degradation was *López Ostra v. Spain*. The applicant lived a few meters away from a waste-treatment plant which caused nuisance (smells, noise and polluting fumes), rendering her private and family life impossible. The Court held the Spanish local authorities responsible for the inactivity in mitigating nuisance and examined the abovementioned question of a fair balance between individual and community interests, and pronounced that no balance had been struck between the town's economic well-being and the applicant's enjoyment of her rights.[329] Although the Court did not examine international legal sources of environmental protection, the case is remarkable for establishing the environmental jurisprudence under Article 8.[330]

Another judgment from the earliest cases was *Guerra and Others v. Italy*, which concerned environmental risks connected to a chemical factory located in the vicinity

[327] Budayeva and Others v. Russia, ibid., 94, § 133.
[328] *Manual on Human Rights and the Environment.* (2022) Strasbourg: Council of Europe Publishing, p. 35.
[329] López Ostra v. Spain, App. no. 16798/90, Judgment of 9 December 1994, ECtHR, §§ 57–60.
[330] Morrow, K. (2019) 'The ECHR, Environment-based Human Rights Claims, and the Search for Standards', in: Turner, S. J. et al. (eds.) *Environmental Rights: The Development of Standards.* Cambridge: Cambridge University Press, pp. 43–44. See also: Desgagné, R. (1995) 'Integrating Environmental Values into the European Convention on Human Rights', *American Journal of International Law*, 89(2), pp. 263–294.

of the applicants' home. The applicants complained about the pollution and poisoning that the accidents of the factory caused, and the lack of adequate measures from the State, including the authorities' failure to inform the public about the potential risks and about the procedures to be followed in the event of a major accident. In light of the fact that the malfunctioning of the factory had led to serious consequences – for instance, in 1976, owing to an explosion, one hundred and fifty people were admitted to hospital with acute arsenic poisoning – the Court found that there was a direct link between the damage caused and the operation of the factory.[331] From a methodological perspective, the judgment is also relevant because it briefly referred to the work of the Council of Europe in the subject matter of the case, highlighting that Parliamentary Assembly Resolution 1087 (1996) on the consequences of the Chernobyl disaster specifically mentions the right to have access to information, which, in the present case, fell under the scope of the procedural aspect of Article 8.[332]

Furthermore, environmental risks and access to information were subsequently addressed under Article 8 in *Roche v. the United Kingdom*, *Vilnes and Others v. Norway*, and *Brincat and Others v. Malta*. In these cases, the Court found a violation of Article 8 for the State's failure to provide the applicants with adequate information regarding the health risks that they had been exposed to at work.[333] Although access to information in environmental matters primarily falls under the procedural standards of Article 8, in these cases, the Court did not explicitly separate the substantive and procedural aspects of this right.[334] Nonetheless, *Brincat and Others* is remarkable for referring to substantive international standards established by the International Labour Organization, the World Health Organization, and the European Union.[335]

From a methodological point of view, the judgment in the abovementioned *Taşkın and Others v. Turkey* brought a breakthrough for the consideration of international legal sources. The case concerned the granting of permits to operate a goldmine in the vicinity of the applicants' home. The Court analysed the alleged violation of Article 8

[331] Guerra and Others v. Italy, App. no. 14967/89, Judgment of 19 February 1998, ECtHR, §§ 39–63.
[332] Parliamentary Assembly, Resolution 1087 (1996), 'Consequences of the Chernobyl disaster', para. 4, cited in Guerra and Others v. Italy, ibid., § 34.
[333] See: Roche v. the United Kingdom, ibid.; Vilnes and Others v. Norway, Apps. nos. 52806/09 and 22703/10, Judgment of 5 December 2013, ECtHR; Brincat and Others v. Malta, Apps. nos. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11, Judgment of 24 July 2014, ECtHR. In the latter case, the Court also found a violation of Article 2 for the death of certain applicants.
[334] See: Roche v. the United Kingdom, ibid., Dissenting opinion of Judge Boštjan Zupančič.
[335] Brincat and Others v. Malta, ibid., §§ 37–41.

from the substantive and procedural perspectives, and assessed the relevant international legal framework on the right to a healthy environment. The Court referred to Principle 10 of the Rio Declaration that laid down the participatory and procedural environmental rights and to the three pillars of the Aarhus Convention. In addition, the Court also referred to the abovementioned Recommendation 1614 (2003) of the Parliamentary Assembly of the Council of Europe on environment and human rights, explicitly calling the governments of Member States to recognise a human right to a healthy, viable and decent environment in their constitutions.[336]

The importance of this judgment is manifold. First, the fact that the Court relied on the Aarhus Convention that had not been signed or ratified by the Respondent State, and pronounced a violation of Articles 8 and 6 in line with the principles of the Aarhus Convention demonstrates the importance of the principle of systemic integration in the interpretation of the provisions of the ECHR. This approach was later confirmed in the abovementioned *Demir and Baykara* case. Given that the Court also addressed procedural issues in the judgment, the impact of the Aarhus Convention will be discussed in more depth in the subsequent section.

Considering the environmental case law of the ECtHR, the *Taşkın* case is also relevant for being among the first judgments explicitly referring to the effort of the Parliamentary Assembly of the Council of Europe to recognise environmental rights. Recommendation 1614, as mentioned above, called for governments to embrace the right to a healthy environment at the constitutional level. An explicit call for the adoption of an additional protocol recognising the right came in 2009, with the abovementioned Recommendation 1885 (2009); therefore, at the time of the adoption of the *Taşkın* judgment, the ECtHR could only refer to this early attempt.[337] Nonetheless, when assessing compliance with the substantive aspect of Article 8, the Court also gave weight to the fact that the right to a healthy environment had been recognised in domestic law, and pronounced a violation of Article 8.[338]

The Court pronounced the violation of Article 8 in several cases in connection with industrial pollution after *Taşkın* – also including a similar factual background, such as

[336] Taşkın and Others v. Turkey, App. no. 46117/99, Judgment of 10 November 2004, ECtHR, §§ 98–100.
[337] See also: Okyay and Others v. Turkey, App. no. 36220/97, Judgment of 12 July 2005, ECtHR, § 52.
[338] Taşkın and Others v. Turkey, ibid., § 117.

in *Öçkan* and *Lemke*[339] –, in these cases, the Court tends to refer to the *Taşkın* judgment, instead of examining the international legal framework. This approach is prevalent, for instance, in *Giacomelli v. Italy*[340] or *Dubetska v. Ukraine*.[341] In other key judgments concerning industrial pollution under Article 8, however, the Court made reference to its earlier judgments, such as to the *López Ostra* case in *Fadeyeva v. Russia*[342] or to this latter case in *Cordella and Others v. Italy*.[343]

Regarding industrial pollution, the ECtHR adopted a landmark case in *Tătar v. Romania*. The applicants of the case – father and son – complained of the technological processes, involving the use of cyanide in the open air, used by a company in their gold mine operating in the vicinity of the applicants' home. As a result of an accident, nearly 100,000 m^3 of cyanide-contaminated water had been released into the environment, which the authorities had failed to address, and thus, the applicants alleged the violation of their right to respect for private life and home. While the case raised serious procedural issues – primarily access to information and participation in the decision-making process –, it is also significant from the methodological perspective of interpreting substantive standards. Under the relevant international legal framework and practice, the Court referred to the abovementioned Stockholm Declaration, the first, although non-binding document that recognised the link between environmental protection and human rights; the Aarhus Convention and Recommendation 1430 of the Parliamentary Assembly on the implementation of the Aarhus Convention; and the ICJ's judgment in the *Gabčíkovo-Nagymaros* case. The ECtHR further referred to instruments of the European Union, also including references to the precautionary principle.[344] The majority of the references are connected to the procedural aspect of Article 8, however, it is also remarkable that the Court explicitly cited Principle 1 of the Stockholm Declaration that recognises the 'fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being'.[345] Furthermore, the Court also cited from the abovementioned judgment of the ICJ, stating that 'the

[339] See: Öçkan and Others v. Turkey, App. no. 46771/99, Judgment of 28 March 2006, ECtHR, § 6; Lemke v. Turkey, App. no. 173881/02, Judgment of 5 June 2007, ECtHR, § 41.
[340] Giacomelli v. Italy, App. no. 59909/00, Judgment of 2 November 2006, ECtHR, §§ 79–80.
[341] Dubetska and Others v. Ukraine, App. no. 30499/03, Judgment of 10 February 2011, ECtHR, § 107.
[342] Fadeyeva v. Russia, App. no. 55723/00, Judgment fo 9 June 2005, ECtHR, § 97.
[343] Cordella and Others v. Italy, ibid., § 157.
[344] Tătar v. Romania, ibid., II.B.
[345] Tătar v. Romania, ibid.

environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn', which is a citation from the ICJ's *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*.[346]

Although references to other courts could scarcely be found in the ECtHR's jurisprudence,[347] this case is an exception and it reflects the developing environmental jurisprudence of the ICJ as well, and the important role the ICJ plays in the development of international law[348] and in particular, in international environmental law. The *Gabčíkovo-Nagymaros* case is of paramount importance in the development of international environmental law, primarily thanks to the Separate Opinion of Justice Weeramantry.[349] Therefore, the fact that the ECtHR regarded the ICJ's serious consideration of environmental issues as worth implementing in its own jurisprudence also shows that the ECtHR's environmental jurisprudence requires a coherent and defragmented approach. A principled approach is particularly important because the risk that the interpretation of international environmental law is fragmented is imminent, as there is no international forum that is exclusively dedicated to environmental cases.[350]

The conclusion of the Court did not come as a surprise, as it observed – referring to *López Ostra* and *Guerra* – that noise and odour pollution could interfere with a person's private and family life by harming his or her well-being, and, that Article 8 could be applied in environmental issues in case the pollution was directly caused by the State or the responsibility of the State stems from the absence of adequate regulation of private sector activity. Therefore, the Court found that there had been a violation of Article 8, as the Romanian authorities failed to assess the risks that the

[346] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, pp. 241–242, § 29.
[347] Voeten, E. (2010) 'Borrowing and Nonborrowing among International Courts', *The Journal of Legal Studies,* 39(2), p. 549.
[348] Spielmann, D. (2015) 'Fragmentation or partnership? The reception of ICJ case-law by the European Court of Human Rights', in Andenas, M., Bjorge, E. (eds.) *A Farewell to Fragmentation: Reassertion and Convergence in International Law. Studies on International Courts and Tribunals.* Cambridge: Cambridge University Press, pp. 173–190.
[349] Raisz, A. (2022) 'International Environmental Law from a Central European Perspective' in Raisz, A. (ed.) *International Law from a Central European Perspective*. Miskolc-Budapest: Central European Academic Publishing, pp. 277–278.
[350] Raisz, 2022, ibid.

activity of the company might entail and to take appropriate measures in order to protect the rights of those concerned.[351]

In addition to the importance of the Court's finding of a violation in *Tătar*, some conclusions could also be drawn from the judgment that show the limits of the ECtHR's environmental jurisprudence that extend far beyond the applicants' case.[352] For instance, the Court could not assess the damage caused to the environment, even if the disaster resulted in the death of more than one thousand tons of fish in the river Tisza,[353] only to the extent that the rights of the applicants were concerned. The current jurisprudence, therefore, does not provide effective protection for the damage caused to the fauna and flora, as the protection of the environment in human rights law is based on the abovementioned anthropocentric approach. The ECHR in its current form cannot provide a solution to this problem without the adoption of an additional protocol on the right to a healthy environment. The text of the draft additional protocol embraces the ecocentric approach as well, by addressing 'threats of severe damage to the environment or to human, animal or plant health', and referring to biodiversity at several points.[354] However, it also has to be pointed out that the currently available draft additional protocol had not been proposed at the time of the adoption of the *Tătar* judgment, thus, it is already a remarkable achievement that environmental problems could be addressed before the ECtHR to a certain extent.

Furthermore, the ECtHR has a vast jurisprudence on noise pollution, including aircraft noise,[355] rail traffic[356] and road traffic noise.[357] In addition to the serious procedural issues under Article 8 or Article 6, the substantive aspect of environmental protection appeared in *Grimkovskaya v. Ukraine*, which concerned the re-routing of a motorway via the applicant's street in a residential area. The judgment significantly built on the Aarhus Convention when evaluating the applicant's right to participate in public

[351] Tătar v. Romania, ibid., § 125.
[352] Raisz, A. and Krajnyák, E. (2022) 'Protection of the Environment in the European Human Rights Framework: A Central European Perspective', in: Szilágyi, J. E. (ed.) *Constitutional Protection of the Environment and Future Generations.* Miskolc-Budapest: Central European Academic Publishing, pp. 99–101.
[353] UNEP Assessment Mission, Spill of liquid and suspended waste at the Aurul S.A. retreatment plant in Baia Mare, 23 February – 6 March 2000, Report, p. 43.
[354] Recommendation 2211, ibid., Preamble, Article 4.
[355] Powell and Rayner v. the United Kingdom, App. no. 9310/81, Judgment of 21 February 1990, ECtHR.
[356] Bor v. Hungary, App. no. 50474/08, Judgment of 18 June 2013, ECtHR.
[357] Deés v. Hungary, App. no. 2345/06, Judgment of 9 November 2010, ECtHR.

authorities' policymaking and pronounced a violation of Article 8. In addition to the Aarhus Convention, the Court referred to Recommendation 1614 – similar to *Taşkın* –, also including reference to the "human right to a healthy, viable and decent environment".[358] Interestingly, the Court did not refer to the then-recent Recommendation 1885 (2009), which reinforced the Parliamentary Assembly's commitment to the adoption of an additional protocol in the matter.[359]

Although the jurisprudence related to waste collection, management, treatment and disposal is extensive, these cases do not form the primary interest of this research, as the pertinent cases do not tend to focus on sources recognising the right to a healthy environment. However, it should briefly be mentioned that the principle of systemic integration plays an important role in these cases as well, as the ECtHR relied on the key instruments of the European Union regarding waste management. For instance, in *Di Sarno and Others v. Italy,* the Court extensively considered European Union law, including Directive 75/442/EEC on waste,[360] Directive 91/689/EEC on hazardous waste,[361] and Directive 1999/31/EC on the landfill of waste.[362]

Last, the impact of Recommendation 2211 on the ECtHR's jurisprudence is worth examining, as it is the most recent endeavour of the Parliamentary Assembly to adopt a binding protocol to the ECHR recognising environmental rights. Considering the fact that the draft protocol is currently a non-binding document, it has a limited impact on the jurisprudence: for instance, it could be taken into account by the Court as a relevant source of the Council of Europe, but applicants cannot rely on the violation of the right to a healthy environment, nor can judges directly interpret it. Nonetheless, a significant trend could be observed in recently adopted cases, namely, judges' discussions in separate or concurring opinions on the necessity of adopting an additional protocol on the right to a healthy environment.

Pavlov and Others v. Russia falls within the scope of industrial air pollution that raised the alleged violation of Article 8. The twenty-two applicants complained of State

[358] Grimkovskaya v. Ukraine, App. no. 38182/03, Judgment of 21 July 2011, ECtHR, §§ 39–40.
[359] A similar approach can be observed in Ivan Atanasov v. Bulgaria, App. no. 12853/03, Judgment of 2 December 2010, ECtHR, §§ 55– 57.
[360] Council Directive 75/442/EEC of 15 July 1975 on waste, Official Journal of the European Union, 194, 25 July 1975, pp. 39–41.
[361] Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, Official Journal of the European Union, 377, 31 December 1991, pp. 20–27.
[362] Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, Official Journal of the European Union, 182, 16 July 1999, pp. 1–19. See: Di Sarno and Others v. Italy, ibid., §§ 71–74.

authorities' failure to address the long-standing and excessive pollution and to take adequate measures to reduce its effects. The Court significantly built on the abovementioned *López Ostra, Giacomelli, Dubetska,* and *Tătar* judgments for assessing the applicants' victim status, and concluded that the proximity of the applicants' homes to the sources of pollution was one of the factors taken into account by the Court. Even though the applicants in the present case did not live in the immediate vicinity of the plant, the Court found the standing of all the applicants and held a breach of Article 8 in respect of all the applicants.[363] This approach may represent a significant departure from the Court's earlier case law regarding the assessment of the victim status in the *Cordella* case mentioned above.

In addition to the Court's approach to victim status, the judgment is remarkable for the concurring opinion of Judge Georgios Serghides and Frédéric Krenc. Judge Serghides agreed with the Court's conclusion of finding a violation of Article 8 but elaborated on the sources of environmental protection under Article 8 and the relationship between environmental protection and the right to respect for private and family life. Judge Serghides argues that "a sub-right of an environmental character" emerged under Article 8 through a broad, evolutive and dynamic interpretation of the ECHR, supported by the living instrument doctrine and the doctrine of positive obligations. However, the Judge argues that no human right can be created without the adoption of a new protocol, given that the jurisdiction of the Court is limited to interpreting the provisions of the ECHR and its protocols, which raises the need to enact a protocol to the Convention that recognises the right to a healthy environment. Such a protocol would provide a legal basis to consider applications that seek the general protection of the environment or nature.[364]

Furthermore, Judge Krenc supplemented the judgment with international standards relating to the protection of the environment that were regrettably not mentioned in the judgment. The Judge highlighted that reference to international sources (including hard law and soft law) is important as the Convention cannot be interpreted in a vacuum, which supports the author's above arguments on the application of the principle of systemic integration in the development of the ECtHR's jurisprudence. The Judge emphasised that the consideration of international sources is particularly

[363] Pavlov and Others v. Russia, ibid., § 63.
[364] Pavlov and Others v. Russia, ibid., Concurring opinion of Judge Serghides, paras. 9–22.

important in environmental cases such as the present one, as environmental protection is a global issue which is the concern of the whole international community. In addition, the Judge outlined the most important developments at the international level, including the recognition of the right to a clean, healthy, and sustainable environment at the UN level (UNGA Resolution A/76/L.75) that was supported by all Council of Europe Member States, except the Russian Federation, the Respondent State in the present case, who ceased to be a Party to the ECHR in March 2022 and to the ECtHR in September 2022.[365] Nonetheless, the UN Resolution could be regarded as a matter of European consensus in light of the ECtHR's conclusions in the *Taşkın* case. The Judge pointed out that although these international sources do not bind the Court, they could have been at least mentioned, according to the general practice of the Court in previous environmental cases.[366]

The argumentation of this thesis is fully in line with the two concurring opinions of *Pavlov*, as the first one emphasises the need to recognise a protocol on the right to a healthy environment, and the second one points out the relevance of the development of international law. The affirmations of Judge Krenc fully underpin the key arguments of this thesis, namely the importance of international legal sources in the development of the environmental jurisprudence of the ECtHR, without which the Court may not claim to interpret the Convention in light of present-day conditions. The judgment is in line with the Court's jurisprudence and a violation of Article 8 was found even in the case of all the applicants, which would have provided an opportunity for the Court to reflect on the landmark UNGA Resolution. Nonetheless, the two concurring opinions show that the issue of recognising a self-standing substantive right to a healthy environment has been embraced by a few judges of the ECtHR as well.[367]

The Court's role in advancing environmental protection through human rights law was also addressed in connection with *Cangı and Others v. Türkiye* in the partly dissenting

[365] Committee of Ministers, Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, 16 March 2022.
[366] Pavlov and Others v. Russia, ibid., Concurring opinion of Judge Krenc.
[367] It is worth noting that the ECtHR adopted another judgment on the day of the delivery of the *Pavlov* judgment. Kotov and Others v. Russia was initiated by fourteen applicants who complained of the authorities' failure to take measures to minimise or eliminate the effects of the pollution allegedly caused by the operation of a landfill. The case concerned the alleged violation of Articles 8, 11, and 13. From the point of view of the present research, this judgment is remarkable for the concurring opinion of Judge Serghides, which is essentially the same as the one in connection with Pavlov, cross-references are made to each other in both cases. See: Kotov and Others v. Russia, ibid.

opinion of Judge Krenc. The case concerned an alleged violation of Article 6 with respect to six applicants who complained of not having the opportunity to participate in the expert examination procedure connected to the environmental impact assessment concerning the extraction of gold using cyanide leaching at a mine. The Court found Article 6 to be applicable only in respect of those applicants who had lived or owned a property in the close vicinity of the gold mine. The Court pointed out that the applicants who had lived some 200 km away from the plant had failed to demonstrate that they had been directly and personally affected by the mine's operation. This finding arguably departs from the Court's approach established in *Okyay and Others v. Turkey,* where the Court found a violation of Article 6 in connection with proceedings regarding the applicants' exposure to the risks posed by three thermal powerplants, even though they lived 250 kilometres from the site.[368]

Judge Krenc raised significant questions in his partly dissenting opinion, primarily related to the Court's arguably inconsistent approach to victim status. The Judge argues that the Court in this judgment made the applicability of Article 6 conditional on the applicants demonstrating an interference in their daily lives, which is problematic for several reasons. First, according to the Judge, this approach fosters the confusion between procedural and substantive rights, even though Article 6 does not have substantive content. Second, the Judge pointed out that there is a growing trend at domestic courts to accept claims from associations and individuals not directly concerned by the case (in line with the spirit of the Aarhus Convention – the author), which was, however, not taken into by the Court.[369] At this point, it is worth reiterating that international standards, such as the standards of the Aarhus Convention cannot be directly implemented in the interpretation of the ECHR, nor does the author claim that this would be necessary. However, the ECtHR should take into account recent trends and developments and interpret the Convention in light of such conditions, to the extent allowed by its provisions. This approach could be integrated or taken into account when assessing the victim status criteria, in order to develop a coherent jurisprudence on environmental protection.

[368] Okyay and Others v. Turkey, ibid., § 65 and §§ 70–75.
[369] Cangı and Others v. Türkiye, App. no. 48173/18, Judgment of 14 November 2023, ECtHR, Partly dissenting opinion of Judge Krenc.

Although the *Cangı* case primarily concerns the procedural aspect of environmental protection, the separate opinion of Judge Krenc demonstrates that certain inconsistencies in the ECtHR's environmental jurisprudence need to be addressed. Interestingly, the Court dedicated a section to relevant international texts on the right to a healthy environment and referred to Recommendation 1614. This may come as a surprise, as the judgment was adopted on 14 November 2023, more than a year after the adoption of the UNGA Resolution and two years after the draft additional protocol to the ECHR, and no reference was made to any of them. Even though these sources are principally notable for recognising the substantive right to a healthy environment, they all embrace procedural and participatory rights as well.

Furthermore, systemic integration played an outstanding role in the *Verein KlimaSeniorinnen* judgment. Since its adoption in April 2024, climate change litigation cases form a distinct sub-category within the ECtHR's environmental jurisprudence, as the Court adopted its first rulings concerning the alleged human rights violations in the context of climate change. The need to consider climate cases as a sub-category of environmental case law arises from the nature of the new procedural and substantive challenges posed to the Court: defining the victims of climate change, addressing the problem of the non-exhaustion of domestic remedies, or framing extraterritorial jurisdiction are identified as the major procedural challenges, while evaluating future harms and violations, attributing responsibility for future harms, or finding appropriate remedies raise substantial questions.[370] Due to the complexity of climate change cases, including the cases referred to the ECtHR, a thorough analysis would surpass the limits of this work. Therefore, this section will primarily focus on the assessment of the substantive aspects in the selected case, in particular the connection between the right to a healthy environment and protection against the adverse effects of climate change.

Along with the two inadmissibility decisions in *Carême* and *Duarte Agostinho*, the Grand Chamber of the Court adopted its judgment in *Verein KlimaSeniorinnen* on 9 April 2024, in which it clarified its approach to climate change in light of the ECHR. For finding a violation of the positive obligations of Article 8, the Court significantly

[370] Keller and Heri, ibid. On the possibilities of climate change litigation before the ECtHR, see: Pedersen, O.W. (2022) 'Any Role for the ECHR When it Comes to Climate Change?', *European Convention on Human Rights Law Review*, 3(1), p. 17.

relied on the standards of the major climate change treaty, the Paris Agreement,[371] which is also remarkable for being the first global binding environmental treaty to explicitly mention human rights.[372]

In addition to the scrutinous examination of procedural safeguards under Article 8, the Court established important substantive standards of climate change protection, which led to the recognition of a right for individuals to effective protection from serious and adverse effects of climate change on their life, health, well-being and quality of life.[373] Apart from its relevance as the first climate change judgment of the ECtHR, a further innovative feature of the judgment relevant to this study is the Court's extensive use of the relevant international legal sources under the principle of systemic integration. In addition to the UN framework, including the system of the UNFCCC, resolutions adopted by the UN General Assembly and the Human Rights Council, the relevant work of UN human rights treaty bodies, and the Aarhus Convention, the ECtHR referred to materials of the Council of Europe – briefly summarising the endeavours to recognise environmental rights in an additional protocol –, the European Union, and other regional human rights mechanisms, namely the Inter-American system, including the counterpart of the Aarhus Convention, the Escazú Agreement, and the African system. Furthermore, the Court examined domestic case law concerning climate change in France, Germany, Ireland, the Netherlands, Norway, Spain, the United Kingdom, and Belgium.[374] Such an extensive reference to the relevant domestic and international legal sources and case law is outstanding in the practice of the ECtHR, especially in light of the fact that the Court refers to the practice of other jurisdictions to a relatively lesser extent than the IACtHR or the ACtHPR.[375] The then-

[371] The Paris Agreement, adopted within the frames of the UNFCCC at COP21 in 2015, sets three global goals that parties undertake to pursue, namely (a) to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, (b) to increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production, and (c) making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development. See: Paris Agreement, Article 2. The temperature goals of the Paris Agreement are based on the scientific calculations confirmed by the IPCC, the independent expert panel that assesses up-to-date scientific knowledge about climate change, see: https://www.ipcc.ch/reports/ (Accessed: 22 April 2025).
[372] See: Knox, 2018, ibid.
[373] Verein KlimaSeniorinnen and Others v. Switzerland ibid., § 544.
[374] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 133–272.
[375] Raisz, A. (2009) Az Emberi Jogok Európai és Amerikaközi Bíróságának egymásra hatása. Ph.D. dissertation, University of Miskolc, pp. 31–35. For an excerpt of the research results published in English, see: Raisz, 2007, ibid., p. 1.

pending advisory opinions before the IACtHR,[376] the ICJ,[377] and the ITLOS[378], as also mentioned by the ECtHR, could also have an impact on the future development of the Court's climate change case law.[379]

Regarding States' positive obligations in the context of climate change, the Court took into account the commitments undertaken in the UNFCCC and the Paris Agreement regarding the prevention of an increase in greenhouse gas emissions and the consequent rise in global average temperature that has irreversible adverse effects on human rights, particularly on the right to private and family life.[380] The Court explicitly mentioned the obligations undertaken in the Paris Agreement to set up a regulatory framework that must be geared to the specific features of the subject matter and the risks in order to limit the global temperature increase to a maximum of 2°C.[381]

The Court established a test for assessing whether the State remained within its margin of appreciation, under which the Court considers whether the competent authorities at the legislative, executive or judicial levels, have had due regard to the need to: (a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments, (b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies, (c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets, (d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available

[376] Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights, ibid.
[377] UNGA, A/RES/77/276, ibid.
[378] Case No. 31., ITLOS, ibid.
[379] As of September 2025, several climate change cases are pending before the ECtHR. See: Müllner v. Austria, App. no. 18859/21; Greenpeace Nordic v. Norway, App. no. 34068/21; The Norwegian Grandparents' Climate Campaign and Others v. Norway, App. no. 19026/21. Moreover, the Court found the following climate change cases inadmissible: Uricchiov v. Italy and 31 Other States, App. no. 14615/21 and De Conto v. Italy and 32 Other States, App. no. 14620/21; Soubeste and four other applications v. Austria and 11 Other States, Apps. nos. 31925622, 31932/22, 31938/22, 31943/22 and 31947/22; Engels v. Germany, App. no. 46906/22.
[380] Verein KlimaSeniorinnen and Others v. Switzerland ibid., § 546.
[381] Verein KlimaSeniorinnen and Others v. Switzerland ibid., § 547.

evidence, and (e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.[382]

The Court assessed the application of these considerations on the present case, supported by scientific evidence, and concluded that the Respondent State had failed to fulfil its positive obligations under Article 8. However, the Court declared the application of the four individuals inadmissible, and granted victim status only to the applicant association, which received heavy criticism from Judge Tim Eicke in his separate opinion. According to the Judge, recognising the *locus standi* of the NGO for advocating on behalf of its members constitutes a *de facto actio popularis*, which is not allowed under the ECHR. This conclusion was drawn from the fact that the Court did not require that the members on whose behalf the association advocated have to meet the victim status requirements.[383] Although it could be argued that this approach has no precedent in the Court's jurisprudence, it seems that this innovation is justifiable on the grounds of the special features of climate change,[384] namely that climate change has multiple causes and its adverse effects are not the concern any one particular individual but rather a "common concern of humankind", as noted by the ECtHR.[385]

Although this section focuses on the substantive aspects of the ECtHR's case law in environmental protection and climate change, it should be briefly mentioned here that the judgment laid down significant procedural standards as well, for which the Court relied on the standards of the Aarhus Convention. Thus, the Court laid down that information held by public authorities must be made available to the public, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. The public shall have access to the conclusion of the relevant studies in order to enable them to assess the risk to which they are exposed. Second, the Court set out that procedures must be available through which the views of the public and in particular the interests of those affected or at risk of being affected, can be taken into account in the decision-making process.[386]

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[382] Verein KlimaSeniorinnen and Others v. Switzerland ibid., § 550.
[383] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., Separate opinion of Judge Eicke, paras. 22–51.
[384] Letwin, J. (2024) 'Klimaseniorinnen: the Innovative and the Orthodox', *EJIL:Talk!*, 17 April 2024 [Online]. Available at: https://www.ejiltalk.org/klimaseniorinnen-the-innovative-and-the-orthodox/ (Accessed: 3 May 2024).
[385] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., 48, § 489.
[386] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., 48, § 554.

The *Verein KlimaSeniorinnen* judgment undeniably stands as a landmark ruling,[387] as it laid down the ECtHR's approach to certain substantive and procedural aspects of climate change, including the victim status and States' positive obligations regarding mitigation, and it presumably paves the way for future climate litigation before the Court. Furthermore, it brought significant implications regarding the substantive standards of the ECtHR's climate change jurisprudence. First, it implicitly confirmed that the international legal sources of a soft law nature that recognise the right to a healthy environment are also relevant and applicable in the context of climate change, including the UNFCCC and the Paris Agreement. Furthermore, the Court for the first time referred to Recommendation 2211 (2021) of the Parliamentary Assembly of the Council of Europe, which is the most recent endeavour in the Council of Europe to recognise the right to a healthy environment. Second, it is remarkable that the judgment extensively considered the relevant international legal framework and recent developments in the UN and other regional human rights systems, which supports the importance of the principle of systemic integration in developing human-rights-based climate change litigation.[388]

The author believes that *Verein KlimaSeniorinnen* follows the standards of the abovementioned *Daniel Billy* case decided by the UN HRC. The ECtHR referred to the Committee's findings regarding the adverse impact of climate change on the enjoyment of human rights. As pointed out above, the Committee did not find a violation of the right to life under the ICCPR but held that the right to private and family life had been breached due to the State's failure to discharge its positive obligation to implement adequate adaptation measures to protect the authors' home, private life and family.[389] The two conclusions – the ECtHR's judgment in *Verein*

[387] For a rapid analysis on the KlimaSeniorinnen judgment in the context of the other two inadmissibility decisions, see: Milanovic, M. (2024) 'A Quick Take on the European Court's Climate Change Judgments', *EJIL:Talk!,* 9 April 2024 [Online]. Available at: https://www.ejiltalk.org/a-quick-take-on-the-european-courts-climate-change-judgments/ (Accessed: 10 May 2024); Raible, L. (2024) 'Priorities for Climate Litigation at the European Court of Human Rights', *EJIL:Talk!,* 2 May 2024 [Online]. Available at: https://www.ejiltalk.org/priorities-for-climate-litigation-at-the-european-court-of-human-rights/ (Accessed: 10 May 2024). See also the discussion titled 'The Transformation of European Climate Litigation' on Verfassungsblog [Online]. Available at: https://verfassungsblog.de/category/debates/the-transformation-of-european-climate-litigation/ (Accessed: 10 May 2024).

[388] Feria-Tinta, M. (2024) 'The Master Key to International Law: Systemic Integration in Climate Change Cases', *Cambridge International Law Journal,* 13(1), pp. 20–40.

[389] Ibid., 102, § 8.12. See also: Sancin, V. (2024) 'The ECHR and the ICCPR: A Human Rights-Based Approach to the Protection of the Environment and the Climate System', *European Convention on Human Rights Law Review,* 5(2), pp. 193–195.

KlimaSeniorinnen and the Committee's decision in the *Daniel Billy* case – shows that the progressive interpretation of the right to private and family life may embrace climate change issues as well, however, at the current level of climate change, its adverse effects do not reach the threshold of human rights law to fall under the right to life.

C. The ECtHR and Other Substantive Rights in the Context of Environmental Matters

As mentioned above, environmental issues may have implications for other substantive rights, such as the prohibition of inhuman or degrading treatment, the right to liberty and security, the freedom of expression, and the protection of property. These cases lie beyond the core of the ECtHR's environmental case law, nevertheless, they illustrate the broad-ranging effects of environmental issues. Furthermore, they may also offer valuable insights into how the Court engages with other relevant instruments of international law in its interpretative practice.

The prohibition of torture, inhuman or degrading treatment is one of the most fundamental values of democratic societies. It is enshrined in all the major human rights treaties, including the UDHR (Article 5), ICCPR (Article 7), the ECHR (Article 3), the ACHR (Article 5), and the ACHPR (Article 5). In addition to the general framework, several specialised treaties were adopted in the universal and regional framework, namely the mentioned UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,[390] Inter-American Convention to Prevent and Punish Torture,[391] and the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa[392] – although the latter one is a non-binding document adopted by the African Commission on Human and Peoples' Rights.

[390] European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), Council of Europe, Strasbourg, 26 November 1987.
[391] Inter-American Convention to Prevent and Punish Torture, Organization of American States, Cartagena de Indias, 12 September 1985.
[392] Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17–23 October 2002, Banjul.

The prohibition of torture is a *jus cogens* norm in public international law.[393] In the ECHR, it is reflected as a non-derogable right, as expressed in Article 15(2).[394] Based on the text of Article 3, the ECtHR distinguishes three grades, namely, torture, inhuman treatment, and degrading treatment.[395] Article 3 has rarely been alleged in the context of environmental protection, particularly because of the threshold of severity. So far, the Court has found a violation in cases revolving around passive smoking in detention in *Florea v. Romania* and *Elefteriadis v. Romania*. In both cases, the applicants suffered from chronic diseases and were imprisoned with active smokers. The Court examined the conclusions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment, the monitoring body of the aforementioned Council of Europe convention on torture, and concluded that the conditions that the applicants in both cases had been subjected had exceeded the threshold of severity required by Article 3 of the Convention, in violation of the prohibition of inhuman or degrading treatment.[396]

Furthermore, the violation of Article 3 was also invoked in one of the climate change cases, *Duarte Agostinho*. Nonetheless, given that the case was found inadmissible, the Court did not address the merits of the application in the decision.[397] The invocation of Article 3 in connection with climate change or other environmental issues is relatively rare, nevertheless, as Corinna Heri proposes, it may be elaborated in further case law, particularly in the context of climate refugees and non-refoulement.[398]

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[393] ILC, Report of the International Law Commission, Seventy-first session, 29 April–7 June and 8 July–9 August 2019, A/74/10, p. 154. See also: Questions relating to the Obligation to Prosecute or Extradite (Belgium/Senegal), Judgment, I.C.J. Reports 2012, p. 457, para. 99; Prosecutor v. Furundžija, Case no. IT-95-17/1-T10, Trial Chamber, Judgment of 10 December 1998, ICTY, §§ 155–157. For the recognition of the prohibition of torture as a jus cogens norm, see: de Wet, E. (2004) 'The Prohibition of Torture as an International Norm of Jus Cogens and Its Implications for National and Customary Law', *European Journal of International Law*, 15(1), pp. 97–121.

[394] Article 15 of the ECHR reads as follows:

'1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

[…]'

[395] Guide on Article 3 of the European Convention on Human Rights. Prohibition of torture (2024). Council of Europe/European Court of Human Rights, pp. 7–11.

[396] Florea v. Romania, App. no. 37186/03, Judgment of 14 September 2010, ECtHR, §§ 33–34; Elefteriadis v. Romania, App. no. 38427/05, Judgment of 25 January 2011, ECtHR, §§ 35–36.

[397] Duarte Agostinho and Others v. Portugal and Others, ibid., § 68.

[398] Heri, C. (2020) 'The ECtHR's Pending Climate Change Case: What's Ill-Treatment Got to Do With It?', *EJIL: Talk!* [Online]. Available at: https://www.ejiltalk.org/the-ecthrs-pending-climate-change-case-whats-ill-treatment-got-to-do-with-it/ (Accessed: 22 April 2025).

However, at the current state of the Court's jurisprudence, violation of Article 3 seems distant, primarily due to the high threshold of this provision in the European context and the lack of international practice in the matter.[399]

Moreover, certain aspects of environmental protection have appeared in the context of the right to liberty and security. Although the principal issue in the case was related to the detention of the former captain of the ship Prestige, environmental considerations arose, as the ship discharged the 70,000 tonnes of fuel oil it was carrying near the Spanish coast. The oil spill caused an ecological disaster in the marine fauna and flora of the Atlantic Ocean, with effects lasting for several months and reaching the French coast. The applicant complained of the excessively high amount of bail (three million euros) required for his provisional release after he had been detained for 83 days. Thus, the Court had to examine whether the bail set by domestic courts had indeed been excessive in light of the severity of the ecological disaster caused.[400]

The Court examined the relevant international legal framework in force at the time and referred to the relevant articles of the International Convention for the Prevention of Pollution from Ships (MARPOL), adopted under the International Maritime Organization,[401] and the UNCLOS, particularly about the prevention of maritime pollution. Furthermore, the Court cited Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage,[402] and Directive 2005/35/EC on ship-source pollution and the introduction of penalties for infringements.[403] The Court acknowledged the growing and legitimate concern at the international and European level about offences against the environment, and referred to the "hierarchy of responsibilities" peculiar to the law of the sea. Although environmental considerations were one of the factors the Court took into account when

[399] See the arguments elaborated in connection with the Teitiota case. See: CCPR/C/127/D/2728/2016, ibid.
[400] Raisz, A. and Seres, E. L. (2015) 'When Environmental Protection Meets Human Rights: In the Wake of the Prestige', in: Szabó, M., Varga, R. and Láncos, P. L. (eds.) *Hungarian Yearbook of International Law and European Law 2015*. The Hague: Eleven International Publishing, pp. 139–149.
[401] International Convention for the Prevention of Pollution from Ships (MARPOL), as modified by the Protocol of 1978 relating thereto, 2 November 1973, UNTS vol 1340, p. 184.
[402] Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, Official Journal of the European Union, 143, 30 April 2004, pp. 56–75.
[403] Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements, Official Journal of the European Union, 255, 30 September 2005, pp. 11–21. See: Mangouras v. Spain, App. no. 12050/04, Judgment of 8 January 2009, ECtHR, II.B.

assessing the proportionality of the amount of bail – along with the applicant's status as an employee of the ship owner and his foreign nationality –, it was a crucial factor in the decision-making process, as the Court on several occasions emphasised the severity of the ecological consequences of the oil spill. Consequently, the Court found no violation of Article 5(3).[404]

The case was subsequently referred to the Grand Chamber, which similarly found no violation. Nonetheless, it is interesting to note that the Grand Chamber judgment strengthened the emphasis on the increasing tendency in Europe to use criminal law as a means of enforcing environmental obligations. Against this background, the Grand Chamber referred to European and international instruments. Regarding the relevant European legal framework, the Court referred to the abovementioned Strasbourg Convention, noting that it had not entered into force yet, the report on sea pollution of the Committee on the Environment, Agriculture and Local and Regional Affairs of the Parliamentary Assembly of the Council of Europe, and the abovementioned EU Directives and the case law of the CJEU, highlighting that the issue of environmental crime had also been subject of discussion with the EU legal framework as well.[405] In addition, regarding the relevant international legal framework, the Court cited the relevant provisions of the UNCLOS and their interpretation by ITLOS, particularly concerning detention and release of vessels and crews. The ECtHR further referred to the abovementioned MARPOL Convention, and extended the analysis of the international legal framework with reference to the International Convention on Civil Liability for Oil Pollution Damage,[406] also adopted under the aegis of the International Maritime Organization.[407]

The cross-reference to the case law of the ITLOS is particularly remarkable in the Grand Chamber judgment, as the ECtHR relied on the Tribunal's assessment of the

[404] Mangouras v. Spain, ibid., §§ 42–45.
[405] Although EU law is not at the center of the analysis of the present dissertation, at this point, it should be briefly mentioned that the criminalisation of environmental crimes remained on the agenda of EU legislators, which is shown by the recently adopted new Environmental Crime Directive that entered into force on 20 May 2024. The Directive sets out qualified criminal offences, which can encompass conducts comparable to ecocide. The law may also impact the ECtHR's jurisprudence through systemic integration. See: Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC, Official Journal of the European Union, 2024/1203, 30 April 2024.
[406] International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969, UNTS vol. 973, p. 3.
[407] Mangouras v. Spain, App. no. 12050/04, Judgment of 28 September 2010, ECtHR, §§ 33–55.

factors relevant to determining what constitutes a "reasonable bond" under Article 73 of the UNCLOS,[408] namely, the gravity of the alleged offences, the proportionality of the imposed penalties, and the value of the detained vessel.[409] The Grand Chamber also acknowledged the "seldom-seen scale" of the huge environmental damage caused, and the proportionality of the amount of bail with the level of liability occurred (with implications for civil and criminal liability), and concluded that there has been no violation of Article 5(3).[410]

On the other hand, the right to liberty and security may also be intertwined with the issue of freedom of expression, however, in a significantly different context. *Bryan and Others v. Russia* is remarkable for being among the few ECtHR cases addressing the human rights protection of environmental defenders.[411] In this case, activists had been arrested and detained on charges of piracy by Russian authorities, following their protest against Arctic oil production.[412] The Court found the detention of the activists arbitrary and thus pronounced a violation of Article 5. In this context, the Court referred to the UNCLOS, as an international treaty ratified by the Respondent State.[413] Furthermore, regarding freedom of expression, the Court acknowledged that the goal applicants' protest – to draw public attention to the environmental effects of oil drilling and exploitation – should be considered an expression of opinion on a matter of "significant social interest", and found a violation of Article 10 as well.[414]

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[408] The relevant part of Article 73 of the UNCLOS reads as follows:
'[…] 2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.'

[409] Mangouras v. Spain, 2010, ibid., § 47.

[410] The majority's finding significantly divided the Judges, as the conclusion of non-violation was established by ten votes to seven. The seven Judges prepared a joint dissenting opinion, in which they express their disagreement with the majority's conclusions. The Judges, while recognising the disastrous environmental consequences of the oil spill, argued that the high amount of bail was not justified, particularly because of the lack of sufficient assessment of the applicant's personal assets. See: Mangouras v. Spain, 2010, ibid., § 93 and Joint dissenting opinion of Judges Rozakis, Bratza, Bonello, Cabral Barreto, Davíd Thór Björgvinsson, Nicolaou And Bianku.

[411] For other relevant cases, see: Bumbeș v. Romania, App. no. 18079/15, Judgment of 3 May 2022, ECtHR, and Friedrich and Others v. Poland, Apps. nos. 25344/20 and 17 others, Judgment of 20 June 2024, ECtHR. Given that the Court did not make considerable reference to the relevant international legal framework, these cases will not be analysed in the present work.

[412] The protest had involved the activists climbing the platform of the vessel called Arctic Sunrise, which had been sailing under Dutch flag. For the seizure of the vessel, the Netherlands instituted proceedings before the ITLOS, which was also addressed by the ECtHR, concluding that the subject matter of the two complaints were different and thus established its jurisdiction under Article 35 of the ECHR. See: Bryan and Others v. Russia, App. no. 22515/14, Judgment of 27 June 2023, ECtHR, § 47. See also: Case no. 22, The "Arctic Sunrise" Case (Kingdom of the Netherlands v. Russian Federation), Provisional Measures, Order of 22 November 2013, ITLOS.

[413] Bryan and Others v. Russia, ibid., § 32.

[414] Bryan and Others v. Russia, ibid., § 85.

Last, environmental considerations may occasionally emerge in connection with the protection of property enshrined in Article 1 of Protocol No. 1. In this regard, the importance of the relevant international legal framework is already apparent from the text, as it provides that

> '[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. […]'[415]

According to the case law of the Court, the protection of the environment may constitute a public interest under Article 1 of Protocol No. 1. In *Fredin v. Sweden*, as early as 1991, before the major breakthrough in the development of international environmental law (and the first "classical" environmental cases of the ECtHR, such as *López Ostra*), the Court recognised that the protection of the environment was an increasingly important consideration in the society at that time.[416] Furthermore, in *Hamer v. Belgium*, the Court reiterated this view, also noting that none of the articles of the ECHR were specifically designed for the general protection of the environment. However, the protection of the environment as a cause whose defence raises public interest and thus, public authorities, financial imperatives, and certain human rights, such as the right to property, should not be prioritised over considerations regarding the protection of the environment, particularly when the State had legislated in this matter.[417] Against this background, the Court tends not to find a violation of Article 1 of Protocol No. 1 in cases involving proportionate State interference.[418]

In cases involving the protection of property, reference to international environmental instruments can scarcely be found. One of such examples is the relatively recent judgment in *Associations of Communally-owned Forestry Proprietors "Porceni Pleşa" And "Piciorul Bătrân Banciu" (Obştea de Pădure Porceni Pleşa şi Composesoratul Piciorul Bătrân Banciu) v. Romania*, adopted in 2023. In this case, the two applicant associations of forestry proprietors complained of the violation of

[415] Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, Paris, 20 March 1952.
[416] Fredin (no. 1) v. Sweden, App. no. 12033/86, Judgment of 18 February 1991, ECtHR, § 48.
[417] Hamer v. Belgium, App. no. 21861/03, Judgment of 27 November 2007, ECtHR, § 79.
[418] See, for instance, Fredin (no. 1) v. Sweden, ibid.; Hamer v. Belgium, ibid.; Depalle v. France, App. no. 34044/02, Judgment of 29 March 2010, ECtHR; Brosset-Triboulet and Others v. France, App. no. 34078/02, Judgment of 29 March 2010, ECtHR.

their property rights for not having been compensated for the fact that they had been unable to make use of their forests that had been included in the "Natura 2000" network under EU law. Given the issue's strong connection with the EU legal framework, the ECtHR assessed the relevant EU law, including the Habitats Directive – also referenced in *Karin Andersson and Others v. Sweden*[419] and *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*[420] – and the relevant decisions of the European Commission.[421] The Court finally concluded that the State's failure to adopt and publish the methodology for granting State aid more than a decade after the Commission's decision in favour of the owners of Natura 2000 areas constituted a violation of Article 1 of Protocol No. 1, and awarded pecuniary damage corresponding to the value of wood not harvested by the forest owners.[422]

Although the abovementioned cases involving the prohibition of inhuman or degrading treatment, the right to liberty and security, the freedom of expression, and the protection of property are not the centre of discussions surrounding the environmental jurisprudence of the ECtHR, they nonetheless illustrate how the protection of the environment can intersect with other, seemingly non-related rights. These cases not only broaden the scope of the ECtHR's environmental case law but also demonstrate that the significantly relies on a diverse range of international and European instruments.

III.2.2.2. Procedural Environmental Standards in the Jurisprudence of the European Court of Human Rights

From the perspective of systemic integration, the significant difference between the substantive and procedural standards in the ECtHR's environmental jurisprudence lies in the legal nature of the relevant international legal sources. Namely, as noted above, currently there is no legally binding document at the universal or European level enshrining the substantive right to a healthy environment. Thus, in substantive matters, the Court may draw inspiration from non-binding sources, particularly the

[419] Karin Andersson and Others v. Sweden, App. no. 29878/09, Judgment of 25 September 2014, ECtHR, § 33.
[420] O'Sullivan McCarthy Mussel Development Ltd v. Ireland, App. no. 44460/16, Judgment of 7 June 2018, ECtHR, § 66.
[421] Associations of Communally-owned Forestry Proprietors "Porceni Pleșa" And "Piciorul Bătrân Banciu" (Obștea de Pădure Porceni Pleșa și Composesoratul Piciorul Bătrân Banciu) v. Romania, Apps. nos. 46201/16 and 47379/18, Judgment of 28 November 2023, ECtHR, §§ 26–28.
[422] Associations of Communally-owned Forestry Proprietors "Porceni Pleșa" And "Piciorul Bătrân Banciu" (Obștea de Pădure Porceni Pleșa și Composesoratul Piciorul Bătrân Banciu) v. Romania, ibid., §§ 76–90.

Recommendations of the Parliamentary Assembly. On the other hand, regarding procedural environmental matters, there is a legally binding treaty, the aforementioned Aarhus Convention that establishes significant participatory and procedural standards that the ECtHR may directly draw inspiration from.

Named after the Danish city where it was signed on 25 June 1998, the Aarhus Convention represents a significant milestone in environmental democracy,[423] as it promotes public participation and justice in environmental matters in Europe and Central Asia. The Convention entered into force on 30 October 2001, and as of April 2025, it has 47 Parties, including the European Union and other Member States and consultatives of the UNECE. Its Protocol, the Kyiv Protocol on Pollutant Release and Transfer Registers entered into force on 8 October 2009, and has 38 Parties, while the amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms (GMOs) has 32 Parties.[424]

The Aarhus Convention combines different theoretical approaches to the relationship between human rights and the environment: while recognising the general right of present and future generations to live in an environment adequate to his or her health and well-being,[425] the Convention establishes minimum standards for three environmental rights that may be used for improving environmental protection. The three particular rights – that form the three pillars of the Convention – are (i) access to information (Articles 4 and 5), (ii) public participation in decision-making (Articles 6,7 and 8), and (iii) access to justice (Article 9) in environmental matters.

[423] The concept of environmental democracy seeks to reconcile two ideals: ensuring environmental sustainability while safeguarding democracy through civil society participation in environmental governance. Participatory and procedural environmental rights, as guaranteed by the Aarhus Convention, are cornerstones of environmental democracy. See: Pickering, J., Bäckstrand, K., and Schlosberg, D. (2020) 'Between environmental and ecological democracy: theory and practice at the democracy-environment nexus', *Journal of Environmental Policy & Planning*, 22(1), pp. 1–4; 6–7. See also: Sulyok, K. (2023) 'A rule of law revolution in future generations' litigation – intergenerational equity and the rule of law in the Anthropocene in Hungary', *Working Papers, Forum Transregionale Studien*, 2023/14, pp. 8–9. See also: Bándi, Gy. (2021) 'Rationale and Means of Public Participation' in Cordonier Segger, M.C., Szabó, M. and Harrington, A. (eds) *Intergenerational Justice in Sustainable Development Treaty Implementation*. Cambridge: Cambridge University Press, pp. 239.

[424] See: https://unece.org/environment-policy/public-participation/aarhus-convention/status-ratification (Accessed: 15 April 2025).

[425] Aarhus Convention, ibid., Article 1. See also: Etinski, R. (2013) 'Specific Features of Human Rights Guaranteed by the Aarhus Convention', *Zbornik Radova*, 47(2), p. 80.

The first pillar covers both the passive (the obligation of public authorities to respond to public requests for information) and active aspect (collection and dissemination) of information. The Convention embraces a broad definition of "environmental information", as it encompasses a non-exhaustive list of the state of elements of the environment (such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components); factors (such as substances, energy, noise and radiation), activities and measures (including administrative measures, environmental agreements, policies, legislation, plans and programmes) affecting or likely to affect the elements of the environment; and the state of human health and safety, conditions of human life, cultural sites and built structures insofar as they are or may be affected by the state of the elements of the environment.[426] The right of access to information extends to any person without any interest having to be stated,[427] and the information requested shall be provided as soon as possible and at the latest within one month, unless the volume and complexity of the information justify the extension of this period up to two months.[428] The Convention provides a taxative list of grounds for refusal that shall be interpreted in a restrictive way.[429]

The second pillar encompasses various categories of environmental decision-making, including plans, programmes and policies relating to the environment, and executive regulations and/or generally applicable legally binding normative instruments.[430] The Convention differentiates between "the public" and "the public concerned", the former referring to natural or legal persons, their associations, organizations or groups, and the latter meaning the public affected or likely to be affected by, or having interest in, the environmental decision-making, including non-governmental organizations (NGOs).[431]

The third pillar provides access to justice in three contexts: (i) review procedures for information requests, (ii) review procedures to challenge the substantive and procedural legality of any decision, and (iii) administrative or judicial procedures to

[426] Aarhus Convention, ibid., Article 2(3).
[427] Aarhus Convention, ibid., Article 4(1).
[428] Aarhus Convention, ibid., Article 4(2).
[429] Aarhus Convention, ibid., Article 4(3)-(4).
[430] Aarhus Convention, ibid., Articles 7-8.
[431] Aarhus Convention, ibid., Article 2 (4)-(5). See also: Toth, B. (2010) 'Public Participation and Democracy in Practice – Aarhus Convention Principles as Democratic Institution Building in the Developing World', *Utah Environmental Law Review*, 30(2), p. 313.

challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.[432] The third pillar, therefore, underpins the first two pillars and empowers citizens and NGOs to improve environmental protection.[433]

The compliance with the rights provided in the Aarhus Convention are monitored by the Compliance Committee, established by Decision I/7 at the first Meeting of Parties in Lucca on 21-23 October 2002[434] on the basis of Article 15 of the Convention.[435] The Compliance Committee – composed of nine experts acting in their personal capacity – considers (i) submissions by parties on the compliance of another party or on their own compliance, (ii) referrals by the Secretariat of the Convention, and (iii) communications from the public.[436] While the Compliance Committee does not provide a redress mechanism, its rulings constitute soft law. However, considering that the Committee also creates expectations about the future conduct of Parties in cases of non-compliance, it could be argued that the Committee's engagement in legal interpretation that becomes part of the binding law of the Convention transforms the Committee's ruling into 'something more than soft law'.[437] The question of how the law of the Aarhus Convention influences the interpretation of human rights could be observed on the example of the jurisprudence of the ECtHR. Therefore, the next section will be dedicated to analysing the ECtHR's case law with regard to participatory and procedural rights, and the impact of the Aarhus Convention on the development of the Court's jurisprudence.

A. Access to Information in Environmental Matters

Access to information is primarily guaranteed under freedom of expression in Article 10 ECHR, which entails freedom to hold opinions and to receive and impart

[432] Aarhus Convention, ibid., Article 9.
[433] Wates, J. (2005), 'The Aarhus Convention: a Dribing Force for Environmental Democracy', *Journal for European Environmental & Planning Law*, 2(1), p. 6.
[434] UNECE, Report of the first Meeting of the Parties, Addendum, Decision I/7, Review of Compliance, ECE/MP.PP/2/Add.8.
[435] Article 15 reads as follows: 'The Meeting of the Parties shall establish, on a consensus basis optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.'
[436] See: Decision I/7, ibid.
[437] Samvel, G. (2020) 'Non-judicial, Advisory, Yet Impactful? The Aarhus Convention Compliance Committee as a Gateway to Environmental Justice', *Transnational Environmental Law*, 9(2), pp. 233–234.

information. The exercise of these freedoms may be subject to certain limitations in line with the principle of legality and proportionality in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of other, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. In the context of environmental matters, freedom to receive and impart information is of particular relevance, as it lies in the intersection between the ECHR and the Aarhus Convention, as the first pillar of the latter focuses on access to information.

According to the ECtHR's general approach to Article 10, access to information does not entail the right of an individual to access to information held by a public authority nor does it impose a positive obligation on the State to communicate such information to an individual. Such a right or obligation could arise only when the disclosure of the information has been imposed by a judicial order which has gained legal force or where access to information is instrumental for the individual's exercise of his or her right to freedom of expression, in particular the freedom of receive and impart information and where this denial constitutes an interference.[438] In this latter case, the question of whether and to what extent the refusal of information constituted a violation of Article 10 must be assessed on a case-by-case basis, for which the Court laid down four criteria: (a) the aim of the request for information, (b) the nature of the information sought, (c) the role of the applicant, and (d) the availability of the information requested.[439]

In the context of environmental protection, the first criterion requires that the information sought must be part of the public debate on environmental matters, particularly the risks and consequences of the impugned measure on the environment and public health.[440] Thus, the information is necessary for the exercise of the freedom of expression.

Concerning the nature of the information sought, the Court considered the protection of the environment and public health a matter of general concern that, under certain

[438] Magyar Helsinki Bizottság v. Hungary, App. no. 18030/11, Judgment of 8 November 2016, ECtHR, §156.
[439] Magyar Helsinki Bizottság v. Hungary, ibid., §§ 157–170.
[440] Association Burestop 55 and Others v. France, App. no. 56176/18 and 5 Others, Judgment of 1 July 2021, ECtHR, § 86.

conditions, may be protected under Article 10: for instance, information on the allegedly illegal construction work in a coastal area,[441] a plan for a dam which would have led to the submersion of an ancient site,[442] a planned industrial site for the storage of high-level and long-life radioactive waste,[443] or the environmental and health impact of a military radar station[444] falls under the subject matter of Article 10. However, the Court always assesses States' failure to provide the requested information in light of their margin of appreciation. A violation was found when the margin of appreciation in establishing the need for the impugned measure had been particularly narrow.[445] On the other hand, when the interference was not found to be disproportionate to the legitimate aims pursued, the Court did not find the interference with the right to receive information to amount to a violation of Article 10.[446]

In connection with the applicant's role, the Court tends to attach particular importance to the "watchdog" role played by NGOs, whose participation is essential in a democratic society in order to disclose facts that are likely to be of public interest and thus contribute to the transparency of the activities of public authorities.[447] The role of environmental NGOs is also accentuated in the Aarhus Convention, which was cited by the Court in *Association Burestop 55 and Others v. France*. The case concerned environmental protection associations opposed to the planned industrial geological storage centre called "Cigéo" in the Grand-Est administrative region in France, designed for the storage in deep geological repositories of high-level and long-life radioactive waste. The applicant NGOs alleged the violation of Article 10 for public authorities' failure to provide the general public with information on the management of the radioactive waste, and of the content and quality of the information communicated by the authorities. Under the relevant international and EU legal sources, the Court referred to the Aarhus Convention and the Directive 2003/4/EC on public access to environmental information.[448] The Court noted that France ratified the

[441] Vides Aizsardzības Klubs v. Latvia, App. no. 57829/00, Judgment of 27 May 2004, ECtHR.
[442] Cangı v. Turkey, App. no. 24973/15, Judgment of 29 January 2019, ECtHR.
[443] See: Vides Aizsardzības Klubs v. Latvia, ibid.
[444] Rovshan Hajiyev v. Azerbaijan, Apps. nos. 19925/12 and 47532/13, Judgment of 9 December 2021, ECtHR.
[445] Mamère v. France, App. no. 12697/03, Judgment of 7 November 2006, ECtHR, § 20.
[446] Sdružení Jihočeské Matky v. Czech Republic, App. no. 19101/03, Decision on admissibility of 10 July 2006, ECtHR, 1.1.
[447] See: Magyar Helsinki Bizottság v. Hungary, ibid.
[448] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, Official Journal of the European Union, 14 April 2003, pp. 26–32.

Convention on 8 June 2002 and that the State made an interpretative declaration on Articles 4,5 and 6. Furthermore, the Court cited the relevant preambular provisions and Article 5 of the Aarhus Convention concerning the collection and dissemination of environmental information. While the Court accepted the standing of the applicant NGOs, it did not find a violation of freedom of expression, because they had had access to a remedy fulfilling the requirements of Article 10.

In the context of the "watchdog" role of NGOs, it is important to emphasise that the ECHR does not allow them to bring claims before the Court in the interest of the general public but must claim that they had been victims of a violation of a right provided in the ECHR.[449] In addition to NGOs, individuals, particularly activists may also bring claims before the Court in connection with the alleged violation of Article 10 for the refusal to give access to information of public interest on the protection of the environment. This was the case in *Rovshan Hajiyev v. Azerbaijan*, in which the ECtHR recognised that the information sought by the applicant – the environmental and public health impact of a former Soviet military radar station – constituted a matter of public interest and found a violation of Article 10 for public authorities' failure to provide him the requested information.[450]

In addition to Article 10, access to information in environmental matters may also fall under the scope of the procedural aspect of Article 8, as it was established in the abovementioned *Guerra and Others v. Italy*. The case concerned the malfunctioning of a chemical factory in the vicinity of the applicants' home, which resulted in the acute arsenic poisoning of one hundred and fifty people. The applicants argued that the State's failure to reduce pollution levels and accident hazards infringed their right to private and family life, and that the relevant authorities' failure to inform the public about the hazards and procedures to be followed in the event of such an accident amounted to a violation of their right to freedom of information. Regarding the latter issue, the Court accepted the State's argument that Article 10 did not impose a general obligation on public authorities to collect and disseminate information relating to the environment of their own motion, and did not find Article 10 applicable. Although the Aarhus Convention was adopted a few months after the adoption of the judgment in the *Guerra* case, the Court's position was in line with its Article 4, which provides that

[449] See: Article 34 of the ECHR.
[450] Rovshan Hajiyev v. Azerbaijan, ibid.

'[…] public authorities, in response to a request for environmental information, make such information available to the public'. However, the Court found that the State was under the procedural obligation to provide information concerning environmental matters if the violation of the right to private and family life is at stake.[451]

Similar to the findings in the *Guerra* case, in *Tătar v. Romania*, the Court reiterated that the procedural aspect of Article 8 entails States' obligation to inform the villagers of nearby settlements of the potential health risks and environmental impacts of the operation of a gold mine. The applicants alleged that the inaction of the authorities regarding the complaints concerning a breached dam that released 100,000 m^3 of cyanide-contaminated tailings water into the environment violated their right to private life. The Court referred to, inter alia, the relevant principles of the Stockholm Declaration, the Rio Declaration, and the relevant provisions of the Aarhus Convention, particularly Articles 3, 4, and 9, and found the violation of the procedural aspect of Article 8 for the State's failure to ensure public access to the conclusions of investigations and studies concerning the environmental and health impact of the breach of the dam.[452]

In addition to Article 8, the Court also established that access to information shall be provided on the State of the environment during life-threatening emergencies under Article 2. For instance, in *Öneryildiz v. Turkey* and *Budayeva v. Russia*, the Court found a violation of the procedural aspect of the right to life for the States' failure to provide the applicants adequate information about the risks in connection with dangerous industrial activities[453] and natural disasters.[454]

Based on the case law examples mentioned above, it could be concluded that access to information in environmental matters as guaranteed by the Aarhus Convention does not equate to freedom of expression provided in the ECHR.[455] First of all, Article 4 of the Aarhus Convention does not require any interest to be stated in connection with the information request. On the other hand, the ECHR provides relatively strict criteria for admissibility that require the victim status of the applicant,[456] which narrows the

[451] Guerra and Others v. Italy, ibid., §§ 56–60.
[452] Tătar v. Romania, ibid.
[453] Öneryıldız v. Turkey, ibid.
[454] Budayeva and Others v. Russia, ibid.
[455] Braig, K.F., Kutepova, N., Vouleli, V. (2022) 'Playing the Second Fiddle to the Aarhus Convention', *Journal for European Environmental & Planning Law*, 19(1–2), pp. 84–86.
[456] See: Article 34 of the ECHR.

personal scope of the information request. Second, the Aarhus Convention provides a timeframe for public authorities to make the information available after the request. The ECHR does not provide such a requirement, however, the "reasonable time" requirement may be relevant in the context of access to justice under the right to a fair trial. Furthermore, although Article 10 ECHR does not extend to the obligation of States to disseminate environmental information on their own motion, Article 5(1)(c) of the Aarhus Convention – which requires public authorities to disseminate information in the event of an imminent threat to human health or the environment – may fall under the procedural obligations of Articles 2 or 8 ECHR. Therefore, it could be argued that the right to access to information in environmental matters has become an integral part of the procedural aspect of protection provided by Articles 2 and 8, which was significantly influenced by the standards of the Aarhus Convention.[457]

B. The ECtHR and Participation in the Decision-making in Environmental Matters

Participation in the decision-making process in environmental matters does not have an explicit ground in the ECHR. Similar to access to information, this issue could primarily be litigated under the procedural aspect of Article 8. One of the earliest examples of the Court's case law recognising the importance of ensuring that individuals are involved in the decision-making processes that could affect the environment was *Hatton and Others v. the United Kingdom*. The applicants of the case lived in the vicinity of Heathrow Airport and complained of the excessive noise pollution that had given rise to a violation of their rights under Article 8. The Court considered that in cases involving decisions by public authorities affecting environmental issues, two aspects of the inquiry may be carried out by the Court. First, the Court may assess the compatibility of the substantive merits of the decision with Article 8, and second, the procedural aspect of the decision-making process to ensure that due weight had been given to the interests of the individual.[458] Although the Court did not find a violation of Article 8 – as it concluded that the State had struck a fair balance between the competing public and private interests –, the judgment is

[457] Krstić, I., Čučković, B. (2015) 'Procedural Aspects of Article 8 of the ECHR in Environmental Cases – The Greening of Human Rights Law', *Annals of the Faculty of Law in Belgrade – Belgrade Law Review*, 63(3), pp. 178–179; 188–189.
[458] Hatton and Others v. United Kingdom, Application no. 36022/97, Judgment of 8 July 2003, ECtHR, § 99.

remarkable for being one of the first rulings assessing the procedural aspect of the decision-making processes in the context of an environmental issue.

Building on the requirements laid down in *Hatton*, the Court significantly developed its approach to participation in decision-making processes in *Taşkın and Others v. Turkey*. The case concerned the granting of permits to operate a goldmine near Izmir. The applicants alleged that the permit to use the cyanidation process and the related decision-making process had infringed their rights under Article 8. For the assessment of the procedural aspect of Article 8, the Court referred to Principle 10 of the Rio Declaration and outlined the three pillars of the Aarhus Convention, along with Recommendation 1614 (2003) on environment and human rights adopted by the Parliamentary Assembly of the Council of Europe. The Recommendation recognises the substantive right to a healthy environment and commits to safeguarding the individual procedural rights to access to information, public participation in decision-making and access to justice in environmental matters set out in the Aarhus Convention. The Court highlighted the fact that Turkey had not signed or acceded to the Aarhus Convention, which certainly strengthens its role among international legal sources.[459] The abovementioned *Demir and Baykara* judgment, which systematized the ECtHR's approach to international legal sources and concluded that it was not necessary for the Respondent State to have ratified the entire collection of instruments that are applicable in the subject matter of the case, explicitly referred to the *Taşkın* case, where the Court had built on the principles enshrined in the Aarhus Convention.[460]

Regarding the assessment of the procedural aspects of Article 8, the Court highlighted that the decision-making process must involve appropriate investigations and studies in order to allow them to predict and evaluate in advance the effects of the activities that might damage the environment and infringe individuals' rights and enable them to strike a fair balance between the conflicting interests. Furthermore, the Court emphasized the importance of public access to the conclusions of those studies in order to enable them to assess the danger to which they were exposed to. Last, the individuals must also be able to appeal to the courts against any decision, act or omission where

[459] Taşkın and Others v. Turkey, ibid., §§ 98–100. See also: Pedersen, O.W. (2018) 'The European Court of Human Rights and International Environmental Law' in Knox, J.H. and Pejan, R., 2018, ibid., p. 86.
[460] Demir and Baykara v. Turkey, ibid., § 83.

they consider that their interests or their comments had not been given sufficient weight in the decision-making process.[461] In light of this, the Court found that the decision that authorized the continuation of the operation of the goldmine was not made public, which resulted in the State's failure to fulfil its obligation to secure the applicants' right to respect for their private and family life.[462]

Furthermore, the Court also evaluated environmental impact assessment (EIA)[463] as an element of public participation in the decision-making process in *Giacomelli v. Italy*. The application concerned the operation of a plant for the storage and treatment of waste, including the process of using chemical products to treat special industrial waste. The Court pointed out that the result of the EIA – that concluded with the incompatibility of the plant with environmental regulations – was not given weight in the procedure of the authorization of the operation of the plant. Considering this, the Court concluded that the State failed to strike a fair balance between the interest of the community and the applicant's enjoyment of the right to respect for private and family life and found a violation of Article 8.[464]

Although the Court did not refer to the Aarhus Convention in *Dubetska and Others v. Ukraine*, it relied on the standards laid down in its former case law regarding participation in the decision-making.[465] The Court found a violation of Article 8 for the inoperative procedural safeguards, as the decision-making procedure was unjustifiably lengthy, as the authorities had not found an effective solution to the applicants' situation, whose house and living environment had been damaged as a result of the malfunctioning of a coal mine.[466] Similarly, the Court found that public authorities failed to put in place a reasonable policy for mitigating the effects of pollution and other nuisances from nearby motorways on the applicants in

[461] Taşkın and Others v. Turkey, ibid., § 119.
[462] The ECtHR built its reasoning on the *Taşkın* judgment and found a violation of Article 8 in Öçkan and Others v. Turkey and Lemke v. Turkey.
[463] A few years after the adoption of the judgment in Giacomelli, the ICJ recognised the customary nature of the obligation to perform EIA in the Pulp Mills case, noting that in recent years, it has gained such an acceptance among the States that it '[…] may now be considered a requirement under general international law'. See: Pulp Mills on the River Uruguay (Argentina/Uruguay), Judgment, I.C.J. Reports 2010, p. 14, para. 204. See also: Ruozzi, E. (2017) 'The Obligation to Undertake an Environmental Assessment in the Jurisprudence of the ICJ: A Principle in Search of Autonomy', *European Journal of Risk Regulation*, 8(1), pp. 158–169.
[464] Giacomelli v. Italy, ibid., §§ 76–98.
[465] Fitzmaurice, M. (2011) 'The European Court of Human Rights, Environmental Damage and the Applicability of Article 8 of the European Convention on Human Rights and Fundamental Freedoms', *Environmental Law Review*, 13(2), p. 109.
[466] Dubetska and Others v. Ukraine, ibid., §§ 118–124.

Grimkovskaya v. Ukraine. In this judgment, the Court explicitly referred to the Aarhus Convention (and Recommendation 1614 mentioned in *Taşkın*), which Ukraine ratified in 1999. The Court also highlighted that the applicant's meaningful opportunity to contest the State authorities' policymaking in connection with the motorway fell under the scope of the Aarhus Convention.[467]

The limits of the protection guaranteed under Article 8 from the procedural aspect were defined in *Di Sarno and Others v. Italy*. In this case, the applicants complained of the state of emergency between 1994 and 2009 during which rubbish piled up in the streets, invoking the violation of Article 8 from the substantive and procedural point of view. The Court found a violation of Article 8 in its substantive aspect, for failing to ensure the proper functioning of waste collection which adversely affected the applicants' right to respect for their homes and private life. However, as to the alleged failure to provide information that would have enabled the applicants to assess the potential risks, the Court found that the relevant studies were made public and thus were consistent with the requirements of the Aarhus Convention.[468]

In light of the ECtHR's case law, it could be concluded that the Court significantly and explicitly relied on the standards of the Aarhus Convention concerning participation in the decision-making. While the Aarhus Convention differentiates between decisions in specific activities (Article 6), plans, programs and policies (Article 7), and participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments (Article 8), the ECtHR applies a coherent set of criteria for participation, which was reiterated in several judgments, that could be summarized as follows: (a) involvement of appropriate investigations and studies, (b) allowing the public to access the conclusions of such studies and information to enable them to assess the danger, and (c) providing individuals avenues for appeal. Similar to the ECHR, the Aarhus Convention narrows the personal scope of the participation in decisions on specific activities, as Article 6(2) refers to the "public concerned", who, in light of Article 2(5) means the public affected or likely to be affected, or having an interest in the environmental decision-making. In line with this approach, the applicants of ECtHR cases were inhabitants of the area where the given activity took place. In the absence of any specific human right concerning

[467] Grimkovskaya v. Ukraine, ibid., § 69.
[468] Di Sarno and Others v. Italy, ibid., §§ 112–113.

participation, the ECtHR tends to interpret pertinent issues under the procedural aspect of Article 8 ECHR.

C. The ECtHR and Access to Justice in Environmental Matters

Access to justice is an overarching right, and its elements are guaranteed in different provisions of the ECHR. Article 6 guarantees the right to a fair trial, which entails access to court in civil and criminal matters, and Article 13 guarantees the right to an effective remedy before a national authority. The violation of self-standing procedural rights may therefore emerge separate from the procedural aspect of other human rights, such as Article 8, as pointed out above, and was the case in several environmental cases that are primarily considered substantive cases for their contribution to the development of the ECtHR's environmental case law. Such cases include, for instance, *Deés v. Hungary* or *Bor v. Hungary*. The first case concerned heavy road traffic noise, and the second one was related to railway noise in the close vicinity of the applicants' home. While the ECtHR found a violation of the substantive aspect of Article 8 for the State's failure to discharge its positive obligation to prevent third parties from interfering with the applicants' right to respect for private and family life,[469] the Court also held in both cases that there had been a violation of Article 6(1) on account of the length of the proceedings. Namely, the proceedings lasted six years and nine months[470] in the first case and sixteen years in the second,[471] which were both contrary to the "reasonable time" requirement under Article 6.

Environmental claims may be considered under the civil limb of Article 6, which presupposes a dispute over civil rights or civil obligations under domestic law. Thus, where domestic law recognises an individual right to a healthy environment or an aspect of such a right, the claim could be considered civil for the purposes of Article 6. For instance, in the *Taşkın* case presented above, the ECtHR was also asked to assess the violation of Article 6 for the authorities' refusal to comply with the administrative courts' decisions. The Court highlighted that the Turkish constitution recognised the right to live in a healthy and balanced environment to which the applicants referred in the domestic proceedings which was the only means available to them for complaining

[469] Fodor, L. (2011) 'Az Emberi Jogok Európai Bíróságának ítélete a zajterhelés csökkentésére tett intézkedésekről és a bírósági eljárás időtartamáról', *Jogesetek Magyarázata*, 2011/3, pp. 87–88.
[470] Deés v. Hungary, ibid., §§ 25–27.
[471] Bor v. Hungary, ibid., §§ 29–31.

of the infringement.[472] Consequently, the Court found a violation of Article 6(1) for the failure of national authorities to comply with the judgment of the Supreme Administrative Court that ordered the suspension of the goldmine.[473] The ECtHR followed this approach in several judgments, including *Okyay and Others v. Turkey*, and in the recent case of *Cangı and Others v Turkey* mentioned above.

However, it could be argued that the Court took a more restrictive approach in this latter case for not granting victim status to four applicants out of six, as they did not live or own a property in the close vicinity of the goldmine. The applicants alleged the violation of Article 6 for the domestic court's failure to include their questions to the experts in the environmental impact assessment procedure and the non-communication of documents assessed by the experts. The Court's conclusion – violation of Article 6(1) in respect of only two applicants for the latter aspect – was partially criticized by Judge Frédéric Krenc in his dissenting opinion. While agreeing with the finding of a violation of Article 6(1), the Judge pointed out that the finding of the other four applicants' complaint inadmissible as incompatible *ratione materiae* with Article 6 was based on a questionable approach. Judge Krenc argued that the judgment fostered confusion between Article 6 and the procedural aspect of Article 8, as the judgment made the applicability of Article 6 conditional on whether there had been an interference, however, Article 6 provides a procedural right with no substantive content, and thus the requirement to demonstrate an interference shall not have arisen under Article 6.[474]

The *Cangı* judgment certainly departs from the development of the Court's approach regarding access to justice in environmental matters. In the *Okyay* case, the Court found a violation of Article 6 in connection with proceedings regarding the applicants' exposure to the risks posed by three thermal powerplants, even though they lived 250 kilometres from the site.[475] According to the majority's reasoning, in contrast with *Okyay*, the applicants of the *Cangı* case did not demonstrate that they had directly been affected by the operation of the goldmine.[476] However, Judge Krenc pointed out that it was not the ECtHR's task to assess which applicant was directly affected by the civil

[472] Taşkın and Others v. Turkey, ibid., §§ 128–134.
[473] Taşkın and Others v. Turkey, ibid., §§ 135-138.
[474] Cangı and Others v. Turkey, ibid., Partly dissenting opinion of Judge Krenc.
[475] Okyay and Others v. Turkey, ibid., §§ 65, 70–75.
[476] Okyay and Others v. Turkey, ibid., § 37.

right at stake, which was the right to live in a healthy and balanced environment.[477] The Court's inconsistent approach to assessing the victim status in environmental cases is embedded in the problem of establishing causality on the basis of often uncertain scientific facts. To this aim, the Court used so-called "proxies" to avoid confrontation with science. It could be argued that the distance between the source of the pollution and the applicants' home is used as a proxy for assessing the direct effect on the victim, which had been used inconsistently by the ECtHR,[478] and, in line with the dissenting opinion, the *Cangı* case is no exception to that.

Furthermore, the right of access to court may also be invoked by environmental associations when they seek to defend the rights or interests of their members on their own behalf. This was recognised, for instance, in *Collectif Stop Melox and Max v. France*,[479] *L'Erablière A.S.B.L. v. Belgium*,[480] or the abovementioned *Association Burestop 55 and Others v. France*.[481] In respect of environmental associations, the Court requires the claim to be made on behalf of the applicant association and does not consider *actio popularis*, i.e. claims brought in the interest of the public in general. Thus, in *Gorraiz Lizarraga and Others v. Spain*, the Court pronounced that a dispute relating to defence of the public interest did not concern a civil right and found that the applicant association that was – unlike the other five individual applicants – party to domestic court proceedings opposing the construction of a dam could rely on Article 6.[482] Moreover, in *Yusufeli v. Turkey*, the Court found the applicant NGO's claim inadmissible for its failure to demonstrate that its own interests had been substantially affected by the impugned measure regarding the planned construction of a hydroelectric power plant, as the dispute was not related to the civil rights enjoyed by the legal entity.[483]

In comparison with the frames of Article 9 of the Aarhus Convention that establishes the right of access to justice in environmental matters, the ECHR provides limited

[477] Cangı and Others v. Turkey, ibid., Partly dissenting opinion of Judge Krenc.
[478] Sulyok, 2021, ibid., pp. 155–159.
[479] Collectif national d'information et d'opposition à l'usine Melox – Collectif stop Melox and Mox v. France, Application no. 75218, Judgment of 12 June 2007, ECtHR.
[480] L'Erablière A.S.B.L. v. Belgium, Application no. 49230/07, Judgment of 24 February 2009, ECtHR.
[481] See: Association Burestop 55 and Others v. France, ibid.
[482] Gorraiz Lizarraga and Others v. Spain, Application no. 62543/00, Judgment of 27 April 2004, ECtHR, § 36.
[483] Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varliklarini Koruma Derneği v. Turkey, Application no. 37857/14, Judgment of 7 December 2021, ECtHR, §§ 42–43.

protection. Article 9(2) of the Aarhus Convention requires States to ensure that members of the public concerned have access to a review procedure before a court, to challenge the substantive or procedural legality of any decision, act or omission. This may lead to two major conclusions. First, it could be seen on the case law examples that the ECHR requires the violation of a primary right set out in the domestic legal system.[484] This is where the recognition of a self-standing right to a healthy environment may be relevant, as the Court does not require this civil right to be a right enshrined in the Convention. In comparison, the Aarhus Convention guarantees procedural rights to the general public or the public concerned who do not need to demonstrate a violation of a human right in order to claim the right of access to justice or other rights guaranteed in the Convention.

Furthermore, the ECtHR developed a relatively strict approach to the cases brought by environmental associations or NGOs. Beyond the exclusion of *actio popularis*, the Court also established the criteria that NGOs may bring claims on their behalf, and not on behalf of their individual members, which significantly limits their room for manoeuvre under the ECHR. On the other hand, the "public concerned" under the abovementioned Article 9(3) of the Aarhus Convention also refers to NGOs promoting environmental protection in light of Article 2(5).[485] Nonetheless, it should be noted that the ECtHR cannot go beyond the text of the ECHR in environmental cases and shall assess environmental cases within its frames. The cases referred to above demonstrate that the jurisprudence of the ECtHR significantly developed since the adoption of the Aarhus Convention, and the boundaries of environmental litigation are challenged even more in the most recent climate-change-related judgments adopted in April 2024.

D. Procedural Standards in Climate Change Cases

The landmark *Verein KlimaSeniorinnen* judgment introduced significant innovations in the Court's case law of procedural environmental rights – departing from its earlier

[484] Peters, B. (2018) 'Unpacking the Diversity of Procedural Environmental Rights: The European Convention on Human Rights and the Aarhus Convention', *Journal of Environmental Law*, 30(1), pp. 15–17.
[485] Danthinne, A., Eliantonio, M., Peeters, M. (2021) 'Justifying a presumed standing for environmental NGOs: Alegal assessment of Article 9(3) of the Aarhus Convention', *Review of European, Comparative & International Environmental Law*, 31(3), p. 412.

jurisprudence in environmental matters –, the author believes that their analysis merits a separate section in this dissertation.

In addition to substantive standards, the Court also established procedural safeguards under Article 8. First, the Court laid down that information held by public authorities must be made available to the public, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. The public shall have access to the conclusion of the relevant studies in order to enable them to assess the risk to which they are exposed. Second, the Court set out that procedures must be available through which the views of the public and, in particular, the interests of those affected or at risk of being affected, can be taken into account in the decision-making process.[486]

These conclusions are remarkable primarily for extending the standards established in the Court's environmental jurisprudence to climate change and extending the scope of the beneficiaries of these standards beyond the directly affected individuals. This note is particularly interesting in light of the fact that the Court explicitly referred to the parts of the Aarhus Convention which set out the definition of "the public" and "the public concerned" (Article 2) and the relevant parts of the Aarhus Convention Implementation Guide.[487] The need for developing these procedural safeguards at the domestic level thus arises under Article 8. The Court pointed out that the availability of these safeguards will be particularly relevant for determining whether the State remained within its margin of appreciation.[488]

Furthermore, the Court examined the alleged violation of Article 6(1) ECHR, as the applicants complained that they had not had access to a court in respect of the State's failure to take the necessary action to address the adverse effects of climate change. The Court noted that the individual applicants' action instituted at the domestic level concerned largely concerned requests for legislative and regulatory action failing outside the scope of Article 6(1).[489] While accepting the civil nature of the rights and

[486] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., § 554.
[487] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 141–143.
[488] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., § 553.
[489] This finding is also relevant from the perspective of the separation of powers, as it underpins the postulate that the Court cannot replace any action that must be taken by the legislative or executive branch, nor does it have any competence in reviewing the compliance of a domestic law with the ECHR in abstracto. See: Blattner, C. (2024) 'Separation of Powers and KlimaSeniorinnen', *Verfassungsblog*, 30 April 2024 [Online]. Available at: https://verfassungsblog.de/separation-of-powers-and-klimaseniorinnen/ (Accessed: 3 May 2024).

the existence of a genuine and serious dispute in the domestic proceedings, the Court examined the third criterion – whether the outcome of the proceedings was directly decisive for the applicants' rights – separately in the case of the individual applicants and the applicant association. Concerning the four individuals, the Court considered that the dispute they had raised before domestic forums regarding the failure to effectively implement mitigation measures could have been directly decisive for their specific rights. As regards the victim status of the applicant association under Article 6, the Court found that it had demonstrated that the domestic proceedings had an actual and sufficiently close connection to the specific rights of its members seeking protection against the adverse effects of climate change.[490]

The Court's approach to grant standing for the applicant NGO – among other aspects of the judgment – received heavy criticism from Judge Tim Eicke in his separate opinion, as pointed out above. The applicability of this approach to *locus standi* only to climate change cases was confirmed in the abovementioned *Cannavacciuolo* judgment,[491] in which the Court addressed the human rights impacts of systematic and large-scale environmental pollution. As noted above, environmental pollution, along with climate change, is one element of the triple planetary crisis, requiring urgent action from the international community. However, after *Cannavacciuolo*, it is apparent that the Court established different standards for climate change cases and other cases involving environmental pollution, even in the absence of any international legal instrument to suggest such a distinction. Namely, as Judge Frédéric Krenc highlights in his concurring opinion, the Reykjavík Declaration, adopted by the Heads of States and Government of the Council of Europe in 2023, aiming to develop tools to tackle emerging challenges, also in the field of the protection of the environment,[492]

[490] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 615–625.
[491] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 498–499, cited in Cannavacciuolo and Others v. Italy, ibid., §§ 220–222.
[492] Reykjavík Declaration, 'United Around our Values', 4th Summit of the Heads of State and Government of the Council of Europe, 16–17 May 2023, Appendix V [Online]. Available at: https://edoc.coe.int/en/the-council-of-europe-in-brief/11619-united-around-our-values-reykjavik-declaration.html (Accessed: 24 April 2025). The Reykjavík Declaration, although it is a soft law document, may also serve interpretative purposes, particularly regarding the strengthened commitment to resolving systemic and structural human rights problems. So far, it was referenced in a few other cases as well, see: Yüksel Yalçinkaya v. Türkiye, App. no. 15669/20, Judgment of 26 September 2023, ECtHR, § 204; Lypovchenko and Halabudenco v. the Republic of Moldova and Russia, Apps. nos. 40926/16 and 73942/17, Judgment of 20 February 2024, ECtHR, § 61;Ryaska v. Ukraine, App. no. 3339/23, Judgment of 10 October 2024, ECtHR, § 43. In this context, it is also worth referring to the follow-up document of the Reykjavík Declaration, the Council of Europe's first-ever strategical document on the protection of the environment, the Strategy on the Environment and the accompanying

does not attach any different significance to climate change vis-à-vis the other elements of the triple planetary crisis. Instead, as suggested by the Judge, the source of this discrepancy is the *Verein KlimaSeniorinnen* judgment itself, which departed from its earlier approach to standing.[493] Therefore, in light of the development of the Court's post-*KlimaSeniorinnen* jurisprudence, it could be concluded that, in future climate change cases, the Court should elaborate on the specific features of climate change to create more coherence in the jurisprudence.

Returning to the *Verein KlimaSeniorinnen* judgment regarding the standing of NGOs, the ECtHR paid particular attention to the standards of the Aarhus Convention. When assessing the victim status of the applicant association under Articles 2 and 8, the Court noted that the notion of victim status shall be in line with the Aarhus Convention which provided the possibility for associations to substitute individuals in environmental actions.[494] Compared to the Aarhus Convention's approach, the Court narrowed the scope of action of NGOs based on the different aims pursued by the Aarhus Convention and the ECHR and established three criteria for the *locus standi* of NGOs in climate change cases, namely: (a) the association must be lawfully established in the jurisdiction concerned or have standing to act there, (b) it must be able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change, and (c) it must be able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the ECHR.[495]

From the perspective of the scope of application of the Aarhus Convention, the judgment brought innovative conclusions. First, it implicitly affirmed that the Convention is also applicable in the context of climate litigation under certain

Action Plan, adopted on 14 May 2025. See: Council of Europe Strategy on the Environment. United around our Values for People and the Planet. Adopted at the 134th Session of the Committee of Ministers, Luxembourg, 14 May 2025.

[493] Cannavacciuolo and Others v. Italy, ibid., Concurring opinion of Judge Frédéric Krenc, paras. 6–10.

[494] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., § 306.

[495] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 501–502.

conditions of domestic law.[496] This finding is particularly important because the Aarhus Convention does not explicitly refer to climate change, although its principles had undeniably been relevant for the development of the international climate change regime.[497] Furthermore, the extension of the possibility for NGOs to litigate as representatives of individuals not fulfilling the victim status criteria may indicate a shift in the ECtHR's strict approach to the standing of environmental associations. As presented above, the Court tended to accept the standing of NGOs only where their rights had directly been affected by the impugned measure,[498] excluding the possibility of claims brought on behalf of their individual members. However, it has to be seen that climate cases fundamentally differ from the Court's previous environmental cases as the adverse effects of climate change impact humankind as a whole and not any particular individual.

The *Verein KlimaSeniorinnen* judgment stands as a milestone in the development of the ECtHR's jurisprudence, as it laid down the ECtHR's approach to certain substantive and procedural aspects of climate change, including the victim status and States' positive obligations regarding mitigation, and it presumably paves the way for future climate litigation before the Court. Furthermore, it brought at least three significant innovations regarding participatory and procedural environmental rights. First, it extended the scope of the procedural obligations under Article 8 to implement procedural safeguards regarding climate change, including access to information and participation in the decision-making process. The major innovation of this requirement is that the personal scope of these safeguards was extended to the public, which is in line with the principles of the Aarhus Convention. Second, the judgment showed that invoking the right to a fair trial could be a viable tool for NGOs representing individuals in climate litigation, which softens the Court's strict set of requirements established in its environmental jurisprudence for granting them the victim status when advocating on behalf of their members.

[496] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 232–234.
[497] Duyck, S. (2015) 'Promoting the Principles of the Aarhus Convention in International Forums: The Case of the UN Climate Change Regime', *Review of European, Comparative & International Environmental Law*, 22(4), p. 123. See also: Kelleher, O. (2022) 'Systemic Climate Change Litigation, Standing Rules and the Aarhus Convention: A Purposive Approach', *Journal of Environmental Law*, 34(1), p. 107.
[498] See: Collectif Stop Melox and Max v. France, ibid.; L'Erablière A.S.B.L. v. Belgium, ibid.; or the Association Burestop 55 and Others v. France, ibid.

Considering the broader context, it could be argued that the *Verein KlimaSeniorinnen* judgment may also provide an impetus for discussions on the adoption of the mentioned additional protocol on the right to a healthy environment.[499] The ECtHR demonstrated that certain aspects of climate change may fall under the scope of the right to a clean, healthy and sustainable environment, and brought the issue to the fore. As pointed out above, the Court has much discretion in extending the scope of the rights enshrined in the ECHR to the extent that does not contravene the essence of the Court's jurisprudence – such as the principle of subsidiarity and margin of appreciation – however, the "greening" jurisprudence also has its limits. The adoption of an additional protocol would, among other novelties, introduce the possibility of bringing claims before the Court for the alleged violation of substantive or procedural environmental rights, without the requirement to invoke the violation of another right guaranteed in the ECHR, as it stands today. Nonetheless, the adoption of the protocol would also open the door for different types of claims that would certainly challenge and push the limits of the ECtHR's jurisdiction further.

[499] Sicilianos, L.A., Deftou, M.L. (2024) 'Breaking New Ground: Climate Change before the Strasbourg Court', *EJIL:Talk!,* 12 April 2024 [Online]. Available at: https://www.ejiltalk.org/breaking-new-ground-climate-change-before-the-strasbourg-court/ (Accessed: 11 May 2024).

III.3. Integration of International Environmental Rules in Human Rights Jurisprudence: The Inter-American Court of Human Rights

III.3.1. Systemic Integration in the Jurisprudence of the Inter-American Court of Human Rights

The jurisprudence of the Inter-American Court of Human Rights (IACtHR) is complemented by that of the Inter-American Commission on Human Rights (IACHR)[500]. The Commission, established in 1959, has the mandate to take action on individual petitions regarding the American Convention on Human Rights (ACHR),[501] and, inter alia, to submit a case to the Court.[502] Thus, as opposed to the current European human rights system,[503] there are two bodies in the Inter-American regime with the adjudicatory power to interpret the provisions of the regional human rights treaty.

Both adjudicatory bodies may draw inspiration from the American Declaration of the Rights and Duties of Man (also known as the Bogotá Declaration), also adopted under the aegis of the Organization of American States (OAS). With its adoption on 10 June 1948, the Declaration was the world's first international human rights instrument, even preceding the UDHR.[504] Although formally non-binding, the Bogotá Declaration was the only existing Inter-American human rights document until the entry into force of the ACHR in 1978. The Court, established in 1979, primarily interprets the Convention, however, its Article 64(1) provides that

> 'The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. […]'[505]

[500] See: Goldman, R. K. (2009) 'History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights', *Human Rights Quarterly*, 31(4), pp. 856–887. See also: Medina Quiroga, C. and David Contreras, V. (2022) *The American Covnention on Human Rights. Crucial Rights and their Theory and Practice. 3rd edition.* Cambridge: Intersentia.
[501] ACHR, ibid., Article 41.
[502] Article 61 of the ACHR provides that '[o]nly States Parties and the Commission shall have the right to submit a case to the Court […]'.
[503] The European Commission on Human Rights, which had a similar filtering function was abolished with the entry into force of Protocol 11 to the ECHR in 1998.
[504] The UDHR was adopted as a General Assembly Resolution on 10 December 1948. Given the universal character of the UDHR, the UNGA later recognised this day as the "Human Rights Day". See: UNGA, Human Rights Day, A/RES/423 (V), 4 December 1950.
[505] ACHR, ibid., Article 64(1).

The scope of "other treaties" was discussed in the Court's first advisory opinion, *OC-1/82*.[506] The request, submitted by Peru, concerned the interpretation of the mentioned provision, seeking to clarify whether it refers to (i) only those treaties adopted within the framework or under the aegis of the Inter-American system; (ii) the treaties concluded solely among the American States; or (iii) all treaties in which one or more American States are parties.[507] The request provided the Court with the opportunity to clarify the scope of its advisory jurisdiction, also in the context of other international tribunals, and concluded that the advisory jurisdiction that Article 64 confers on the Court was more extensive than that enjoyed by any international tribunal. Likewise, the Court noted that the language of Article 64 is broad, and the limitations only derive from the Court's status as an Inter-American juridical institution, and thus excludes two principal types of treaties from the scope of Article 64, namely (i) those concluded by non-Member States of the Inter-American system, or (ii) those governing the structure or operation of international organs or institutions not belonging to this system.[508]

Regarding the scope of treaties subject to the Court's advisory jurisdiction, the Court referred to the rules of treaty interpretation expressed in Articles 31 and 32 of the VCLT.[509] The Court emphasised the universality of human rights – also expressed in the preamble by referring to the UDHR, as noted above –, and unanimously concluded that the advisory jurisdiction of the Court can be exercised with regard to

> '[…] any provision dealing with the protection of human rights set forth in any international treaty applicable in the American States, regardless of whether it be bilateral or multilateral, whatever be the principal purpose of such a treaty, and whether or not non-Member States of the inter-American system are or have the right to become parties thereto.'[510]

[506] The advisory jurisdiction of the IACtHR is relatively broad, as expressed in the cited Article 64(1), allowing Member States of the OAS to seek interpretation from the Court. The ECtHR's advisory role is incomparable, as it is limited to requests submitted by the highest courts and tribunals in the context of cases pending before them. The ECtHR's advisory jurisdiction was established in Protocol No. 16. See: Dicosola, M., Fasone, C. and Spigno, I. (2015) 'The Prospective Role of Constitutional Courts in the Advisory Opinion Mechanism Before the European Court of Human Rights: A First Comparative Assessment with the European Union and the Inter-American System', *German Law Journal*, 16(6), pp. 1387–1428.
[507] "Other treaties" subject to the consultative jurisdiction of the Court (Art. 64 American Convention on Human Rights), Advisory Opinion OC-1/82 of 24 September 1982, IACtHR, para. 8.
[508] Advisory Opinion OC-1/82, ibid., paras. 18–21.
[509] Advisory Opinion OC-1/82, ibid., para. 33.
[510] Advisory Opinion OC-1/82, ibid., para. 52.

Therefore, *OC-1/82* confirmed the scope of "treaties" subject to the Court's advisory jurisdiction in its broadest understanding, thus encompassing UN human rights treaties and other human rights treaties to which Inter-American States are parties. However, as pointed out by Thomas Buergenthal, the Bogotá Declaration did not fall under the scope of a "treaty", as it had been adopted in the form of a conference resolution in 1948.[511] The legal status of the Declaration was addressed in *Advisory Opinion OC-10/89*, upon the request submitted by the Republic of Colombia. The question the Court had to answer was whether the abovementioned Article 64 of the ACHR authorises the IACtHR to render advisory opinions regarding the interpretation of the American Declaration of the Rights and Duties of Man. The Court, referring to the definition of a "treaty" under the VCLT, concluded that even if the Declaration cannot be regarded as such *strictu sensu*, it did not imply that the Court had no power to render an advisory opinion on the interpretation thereof.[512] This conclusion is supported by the fact that the ACHR refers to the Declaration in the preamble,[513] and in Article 29, providing that

> '[n]o provision of this Convention shall be interpreted as […] excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.'[514]

Furthermore, the Court noted that the Statute of the IACHR understands human rights as (i) the rights set forth in the ACHR; and (ii) the rights set forth in the American Declaration,[515] thus, by means of authoritative interpretation, the latter also serves as a source of international obligations for the Member States, based on their earlier conduct by authorising the IACHR to monitor the rights enshrined in the Declaration.

This advisory opinion was further remarkable for implicitly embracing the principle of systemic integration by stating that, in order to determine the legal status of the

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[511] Buergenthal, T. (1985) 'The Advisory Practice of the Inter-American Human Rights Court', *American Journal of International Law*, 79(1), p. 7.
[512] Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Advisory Opinion OC-10/89 of 14 July 1989, IACtHR, paras. 43–48.
[513] 'Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope […]'. See: ACHR, ibid., Preamble.
[514] ACHR, ibid., Article 29.
[515] Statute of the Inter-American Commission on Human Rights, Resolution No. 447, General Assembly of the OAS, La Paz, 1979, Article 1(2), cited in Advisory Opinion OC-10/89, ibid., para. 41.

Declaration, it is appropriate to consider the Inter-American system in light of its evolution after the adoption of the Declaration.[516] The Court then subsequently elaborated on the need to examine other sources relevant for the interpretation of the ACHR. In *Advisory Opinion OC-16/99* on the Right to Information on Consular Assistance, the Court was asked to interpret certain provisions of the ICCPR, the OAS Charter, and the American Declaration. The Court noted that the first two instruments shall be considered as treaties under the VCLT, and therefore, confirmed the applicability of the rules of treaty interpretation expressed therein. In this regard, the Court explicitly referred to Article 31(3), noting that the interpretation must also take into account the system of which it is part, and confirmed the particular relevance of the evolutive interpretation in international human rights law. The Court referred to the so-called *corpus juris* of international human rights law that comprises a set of international instruments, including treaties, conventions, resolutions, and declarations that must be examined to determine the content of the given human rights norm.[517] This approach was broadened in subsequent advisory opinions in the 2010s. For instance, in *OC-21/14* on The Rights and Guarantees of Children in the Context of Migration, the Court also integrated international customary law, general principles of law, and soft law that serve as guidelines for the interpretation of treaties.[518] The explicit reference to soft law sources demonstrates the Court's flexible understanding of the "relevant rules of international law", which is crucial for its environmental jurisprudence, as elaborated below.

[516] Advisory Opinion OC-10/89, ibid., para. 37.
[517] The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law, Advisory Opinion OC-16/99 of 1 October 1999, IACtHR, paras. 112–115.
[518] Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, Advisory Opinion OC-21/14 of 19 August 2014, IACtHR, para. 60. See also: Entitlement of Legal Entities to Hold Rights under the Inter-American Human Rights System (Interpretation and scope of Article 1(2), in relation to Articles 1(2), 8, 11(2), 13, 16, 21, 24, 25, 29, 30, 44, 46 and 62(3) of the American Convention on Human Rights, as well as of Article 8(1)(A) and (B) of the Protocol of San Salvador), Advisory Opinion OC-22/16 of 26 February 2016, IACtHR, para. 29; Gender Identity, and Equality and Non-Discrimination with regard to Same-Sex Couples. State Obligations in Relation to Change of Name, Gender Identity, and Rights deriving from a Relationship between Same-Sex Couples (Interpretation and Scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights), Advisory Opinion OC-24/17 of 24 November 2017, IACtHR, para. 60; Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the Consequences for State Human Rights Obligations (Interpretation and Scope of Articles 1, 2, 27, 29, 30, 31, 32, 33 a 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States, Advisory Opinion OC-26/20 of 9 November 2020, IACtHR, para. 28.

In parallel with the evolution of the IACtHR's advisory jurisdiction, the special character of human rights treaties in relation to general international law was addressed in the Court's contentious jurisprudence as well. In *Mapiripán Massacre v. Colombia*, the Court recognised the special nature of the ACHR and other international human rights treaties, stemming from the shared values (i.e., the protection of the human being), the specific control mechanisms, and the non-reciprocity of treaty obligations in relation to other States Parties.[519] This case is of particular relevance in the Inter-American jurisprudence for establishing international responsibility of the State for human rights violations committed by paramilitary forces. In the absence of a binding international treaty, the State referred to the ILC's Articles on the Responsibility of States for Internationally Wrongful Acts[520] to establish the non-attributability of such irregular actions. Against this background, the Court noted that Articles 1(1) (Obligation to Respect Rights) and 2 of the ACHR (Domestic Legal Effects) are the basis for the establishment of the international responsibility of the State, as they constitute *lex specialis* norms vis-à-vis general international law.[521]

The jurisprudence of the IACtHR is remarkably rich in references to other sources of international law.[522] As the Court frequently engages with a wide range of legal instruments and jurisprudence, an exhaustive analysis of its practice in this respect would exceed the scope of this study. Therefore, the following section aims to offer an overview of the development patterns in the IACtHR's jurisprudence in embracing the principle of systemic integration.

The Inter-American Court has played a pivotal role in shaping the interpretation of *jus cogens* norms within international human rights law through its jurisprudence on enforced disappearances.[523] Since the adoption of the first judgment on this matter,

[519] Case of the "Mapiripán Massacre" v. Colombia, Judgment of 15 September 2005 (Merits, Reparations, and Costs), IACtHR, §§ 102–107.
[520] ILC, 'Responsibility of States for Internationally Wrongful Acts', 2001, in: Yearbook of the International Law Commission, 2001, vol II, cited in Case of the "Mapiripán Massacre" v. Colombia, ibid., § 102.
[521] Case of the "Mapiripán Massacre" v. Colombia, ibid., § 107.
[522] See: Lixinski, L. (2010) 'Treaty Interpretation by the Inter-American Court of Human Rights: Expansionism at the Service of the Unity of International Law', *European Journal of International Law*, 21(3), pp. 591–602. See also: Popa, L. E. (2024) 'A Consistent Treaty Interpretation by the Inter-American Court of Human Rights in Light of Corpus Juris', *Denver Journal of International Law and Policy*, 52(2), pp. 115–221.
[523] Cançado Trindade, A. A. (2012) 'Enforced Disappearances of Persons as a Violation of Jus Cogens: The Contribution of the Jurisprudence of the Inter-American Court of Human Rights', *Nordic Journal of International Law*, 81(4), pp. 507–508.

Velásquez-Rodríguez v. Honduras in 1988, notable developments have taken place in the international legal framework, which served as a reference point for the Court in its subsequent jurisprudence. In *Blake v. Guatemala*, the Court relied on the United Nations Declaration on the Protection of All Persons from Forced Disappearance and the Inter-American Convention on Forced Disappearance of Persons to define "forced disappearance",[524] and thus broadened the scope of victims to encompass close family members of the disappeared person. Remarkably, the cited sources were non-binding in nature, as the former had been published as a UNGA Resolution,[525] and the latter had not entered into force for Guatemala at the time of the adoption of the judgment.[526]

The Court's broad approach to who qualifies as a victim reflects its commitment to the *pro homine* principle, a well-established feature of its case law. This principle means that when the Court is faced with two possible interpretations of the Convention, it will choose the one that offers the greatest protection for human rights, as long as both options are legally valid.[527] This tent will be of crucial importance for the Court's development of its environmental jurisprudence.

The Court's jurisprudence on enforced disappearances was further refined in *Bámaca-Velásquez v. Guatemala*, where the Court explicitly referred to a wide range of international legal instruments that it considered appropriate, particularly the Geneva Conventions of 1949. In this context, the Court clarified the role of international humanitarian law in the interpretation of the ACHR, noting that, although it lacks competence to declare State responsibility for the violation of international treaties, which do not confer this right on the Court, the relevant provisions of certain treaties may be taken into consideration for the interpretation of the ACHR. In the given case, the shared Article 3 of the Geneva Conventions[528] was of particular relevance for the Court in assessing non-derogable human rights, such as Articles 4 (the right to life)

[524] Case of Blake v. Guatemala, Judgment of 24 January 1998 (Merits), IACtHR, § 63, § 97, and §§ 7–9.
[525] UNGA, Declaration on the Protection of All Persons from Enforced Disappearance, Resolution 47/133, 18 December 1992.
[526] De Pauw, M. (2015) 'The Inter-American Court of Human Rights and the Interpretive Method of External Referencing: Regional Consensus v. Universality', in: Haeck, Y., Ruiz-Chiriboga, O. and Burbano, C. (eds.) *The Inter-American Court of Human Rights: Theory, Practice, Present and Future.* Cambridge: Intersentia, pp. 13–14.
[527] Lixinski, ibid., 2010, p. 588. See also: Bámaca-Velasquez v. Guatemala, Judgment of 25 November 2000 (Merits), IACtHR, Separate concurring opinion of Judge Sergio García Ramírez, para. 3.
[528] See: Geneva Convention relative to the protection of civilian persons in time of war, Geneva, 12 August 1949, UNTS vol. 75, p. 287.

and 5 (the right to humane treatment), as these norms express *jus cogens*.[529] Furthermore, the IACtHR drew from the standards established in the case law of the ECtHR and the UN Human Rights Committee.[530]

The *Bámaca-Velásquez* judgment refers to the earlier case of *Las Palmeras v. Colombia*, which established the possibility for the Court to take into consideration the rules of international humanitarian law.[531] However, the Court's approach in *Las Palmeras* may be relevant not only in the context of taking into consideration the rules of international humanitarian law, but also of any other international legal instrument. As the Court noted, it is competent to determine the compatibility of any norm of domestic or international law applied by the State with the American Convention, without any normative limitation.[532] However, this conclusion does not imply that the Court may find a violation of other international legal instruments, as Article 62(3) confers the right to interpret and apply the provisions of the ACHR.[533] Thus, the Court may find a violation of the ACHR, and, to reach such a conclusion, it may rely on any other international legal instrument that could be relevant for the interpretation of the provisions of the ACHR.

The IACtHR's comprehensive approach to consider other relevant international legal sources can also be observed in the example of *Vargas-Areco v. Paraguay*. In this judgment, the Court addressed the recruitment of children into armed forces under the mentioned Articles 4 and 5 of the ACHR. In this regard, the Court referred to a set of international legal instruments, including the abovementioned Geneva Conventions, the UN Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict,[534] and the provisions of the Rome Statute of the International Criminal Court on war crimes to prove the evolution of a trend in international law to avoid the recruitment of child soldiers.[535] Furthermore, in

[529] Case of Bámaca-Velasquez v. Guatemala, ibid., §§ 206–209.
[530] Case of Bámaca-Velasquez v. Guatemala, ibid., §§ 162–163.
[531] Case of Bámaca-Velasquez v. Guatemala, ibid., 209.
[532] Case of Las Palmeras v. Colombia, Judgment of 4 February 2000 (Preliminary Objections), IACtHR, § 32.
[533] Article 62(3) of the ACHR reads as follows: 'The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.'
[534] Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000, UNTS vol. 2173, p. 222.
[535] Case of Vargas-Areco v. Paraguay, Judgment of 26 September 2006 (Merits, Reparations and Costs), IACtHR, §§ 111–122.

Almonacid-Arellano et al. v. Chile, the Court addressed the concept of crimes against humanity to determine whether an amnesty law that granted blanket amnesties, even for crimes against humanity, amounted to a violation of Articles 8 (the right to a fair trial) and 25 (the right to judicial protection) of the ACHR. The conclusion of the finding of a violation of the ACHR, thus, the incompatibility of the domestic law with the ACHR was significantly supported with reference to a wide range of sources of international criminal law, including the Statutes of international criminal tribunals, such as the ICC and the ICTY, and their case law, among others.[536]

In addition to building on the standards of international humanitarian law and international criminal law, another area where the Court's contribution was outstanding through systemic integration is its case law on economic, social, and cultural rights,[537] including its expanding jurisprudence on the protection of the environment. In contrast with the European human rights system, where economic, social, and cultural rights are enshrined in a separate instrument, which has its own monitoring body, in the Inter-American system, they are integrated in the treaty. Namely, Article 26 (Progressive Development) provides that

> '[t]he States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.'[538]

Furthermore, the ACHR was supplemented with the adoption of the Protocol of San Salvador in 1988, which explicitly recognises economic, social, and cultural rights, including the right to work (Articles 6–7), trade union rights (Article 8), the right to social security (Article 9), the right to health (Article 10), the right to a healthy environment (Article 11), the right to food (Article 12), the right to education (Article 13), the right to the benefits of culture (Article 14), the right to the formation and the protection of families (Article 15), the rights of children (Article 16), the rights of the

[536] Case of Almonacid-Arellano et al. v. Chile, Judgment of 26 September 2006 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, §§ 97–133.
[537] See: Feria-Tinta, M. (2007) 'Justiciability of Economic, Social and Cultural Rights in the Inter-American System of Protection of Human Rights: Beyond Traditional Paradigms and Notions', *Human Rights Quarterly*, 29(2), pp. 443–456.
[538] See: Article 26 of the ACHR.

elderly (Article 17), and the rights of the handicapped (Article 18).[539] The Protocol did not provide for the justiciability of the rights enshrined therein, – with the exception of the right to unionisation and the right to education –,[540] yet, the Court developed their interpretation through the mentioned Article 26 of the ACHR.

Recognising the justiciability of economic, social, and cultural rights through Article 26 has been a relatively long journey for the Court. First, in *Five Pensioners v. Peru*, the Court, although recognising the individual and collective dimension of economic, social and cultural rights, ruled that their progressive development should be measured in function of the entire population, and not on a limited group, which does not necessarily represent the prevailing societal situation. Namely, the five pensioners complained of the abrupt change in the legislation on pensions, which negatively affected their situation. The Court, instead of engaging in discussions on the justiciability of economic, social, and cultural rights, found a violation of Article 21 of the ACHR (the right to property),[541] in light of its conclusions on the functions of the rights embodied in the Protocol of San Salvador.

In subsequent cases, such as *Acevedo Jaramillo et al. v. Peru* and *Aguado-Alfaro et al. v. Peru*, the representatives of the applicants argued that the scope of Article 26 should be determined in light of the evolutive interpretation of international legal instruments, including the ICESCR and the Protocol of San Salvador.[542] Nonetheless, the Court did not address the merits of Article 26.

A significant step in the interpretation of Article 26 was taken in *Acevedo Buendía et al. v. Peru*. Although no violation of this right was found, the Court established that obligations may also stem from Article 26 for the States. Remarkably, the Court analysed the drafting history of the provision and its position in the Convention in Part

[539] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, "Protocol of San Salvador", 17 November 1988, E/CN.4/2004/WG.21/5.
[540] Article 19(6) of the Protocol reads as follows: 'Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights.'
[541] Case of the "Five Pensioners" v. Peru, Judgment of 28 February 2003 (Merits, Reparations and Costs), IACtHR, § 147.
[542] Case of Acevedo Jaramillo et al. v. Peru, Judgment of 7 February 2006 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, §§ 282–285; Case of the Dismissed Congressional Employees (Aguado-Alfaro et. al.) v. Peru, Judgment of 24 November 2006 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, §§ 134–136.

I (State Obligations and Rights Protected), and concluded that it is subject to the general obligation of respecting rights laid down in Article 1(1).[543] Furthermore, the Court recalled the interpendence between civil and political rights and economic, social and cultural rights,[544] noting that no hierarchy exists between them. In this regard, the Court also referred to the jurisprudence of the ECtHR and the UN CESCR. In the context of the given case, the Court also analysed the different nature of States' obligations under the rights to property and judicial protection (Articles 21 and 25), and progressive development (Article 26), noting that, as opposed to the immediate enforceability of the former provisions, Article 26 requires the progressive realisation of the rights enshrined therein.[545] Although the Court concluded that there was no ground to declare the non-compliance with Article 26, the judgment paved the way for the further development of the interpretation of the provision.[546]

The justiciability of economic, social and cultural rights under Article 26 was first pronounced in 2017 in the judgment of *Lagos del Campo v. Peru*, although it had already been subject to discussions in the Judges' concurring opinions in the earlier judgment of *Canales Huapaya et al. v. Peru*.[547] The case of *Lagos del Campo*

[543] Article 1(1) provides that '[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.'

[544] The indivisibility of human rights is a significant tenet in the Inter-American jurisprudence. According to Cançado Trindade, human rights cannot be divided into "generations" or recognised and unrecognised rights. See: Cançado Trindade, A. A. (1994) 'Derechos de Solidaridad', in: Nieto Loaiza, R. and Cerdas Cruz, R. (eds.) *Estudios Básicos de Derechos Humanos I*. San José: Instituto Interamericano de Derechos Humanos, pp. 64–67.

[545] Case of Acavedo Buendía et al. ("Discharged and Retired Employees of the Comptroller") v. Peru, Judgment of 1 July 2009, IACtHR, §§ 97–107.

[546] Lixinski, 2010, ibid., pp. 600–602. See also: Moraes, M. V. and Henning Leal, M. C. (2022) 'Casos Lagos del Campo x Acevedo Buendía: Nova Interpretação de Corte Interamericana de Direitos Humanos Quanto à Justiciabilidade dos Direitos Sociais?', *Revista Direito Público*, 19(104), pp. 399–425; Calderón Gamboa, J. (2018) 'La puerta de la justiciabilidad de los derechos económicos, sociales, culturales y ambientales en el Sistema Interamericano: relevancia de la sentencia Lagos del Campo', in: Morales Antoniazzi, M., Flores Pantoja, R. and Ferrer Mac-Gregor, E. (eds.) *Inclusión, Ius Commune y justiciabilidad de los DESCA en la jurisprudencia interamericana. El caso Lagos del Campo y los nuevos desafíos. Colección Constitución y Derechos*. Mexico City: Universidad Nacional Autónoma de México. Instituto de Investigaciones Jurídicas, pp. 333–379.

[547] In this judgment, the Court did not analyse the right to work in the context of Article 26, but followed the judgemtn delivered in Aguado-Alfaro et al. v. Peru, pronouncing the violation of Articles 25 and 8. Judges Caldas and Ferrer Mac-Gregor advocated in favour of considering the justiciability of Article 26, based on the systematic interpretation of the ACHR and the Protocol of San Salvador. On the other hand, Judge Pérez Pérez argued that Article 26 did not recognise rights and thus the rights enshrined in the Protocol cannot be subject to the jurisdiction of the Court. See: Case of Canales Huapaya et al. v. Peru, Judgment of 24 June 2015 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, Joint concurring opinion of Judges Roberto F. Caldas and Eduardo Ferrer Mac-Gregor Poisot and Concurring opinion of Judge Alberto Pérez Pérez.

concerned the applicant's dismissal from the company where he had worked and served as the president of a labour union, following allegedly defamatory statements he had published about the company, and thus alleged the violation of his freedom of expression and labour rights. The judgment indeed unanimously pronounced the violation of the rights to freedom of thought and expression and to judicial guarantees recognised in Articles 13 and 8, the right to freedom of association recognised in Articles 16 and 26, the rights to judicial protection and to a fair trial enshrined in Articles 8 and 25, and, by five votes to two, the violation of the right to job security under Article 26 of the ACHR.

Regarding the scope and justiciability of Article 26, the Court built on the mentioned judgments of *Acevedo Buendía*, which recognised that this provision was also subject to the general obligations, and *Velásquez-Rodríguez*, establishing the Court's full jurisdiction over all its articles and provisions.[548] The Court also examined the international *corpus juris* to interpret the right to work under Article 26, referring to universal human rights treaties, such as the ICESCR, the UDHR, the UN CRC, and the CEDAW; Inter-American instruments, namely the Social Charter of the Americas[549] and the Protocol of San Salvador; and other regional human rights treaties, in particular the ESC and the Banjul Charter.[550]

As pointed out above, the innovative conclusions of the Court did not receive unanimous support from the Judges, which demonstrates that the justiciability of Article 26 had given rise to substantial discussion. While Judges Roberto F. Caldas and Eduardo Ferrer Mac-Gregor expressed their support of the justiciability of economic, social and cultural rights based on the evolutive interpretation of the Convention in light of the international *corpus juris*,[551] Judges Eduardo Vio Grossi and Humberto Antonio Sierra Porto dissented from the majority's findings on Article 26. Both the dissenting Judges emphasised the existence of economic, social and cultural rights, including the right to job security; the point they contested was rather

[548] Case of Lagos del Campo v. Peru, Judgment of 31 August 2017 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, § 142; Velásquez-Rodríguez v. Honduras, ibid., § 29. See also: Case of Garibaldi v. Brazil, Judgment of 23 September 2009 (Preliminary Objections, Merits, Reparations, and Costs), IACtHR, § 41.
[549] Social Charter of the Americas, Organization of American States, Cochabamba, OEA/Ser.P, AG/doc.5242/12 rev. 2, 20 September 2012.
[550] Lagos del Campo v. Peru, ibid., §§ 141–154.
[551] Lagos del Campo v. Peru, ibid., Separate opinion of Judge Roberto F. Caldas and Concurring opinion of Judge Eduardo Ferrer Mac-Gregor.

the Court's competence to rule on the possible violation of them. Judge Vio Grossi highlighted that the Protocol explicitly provides for the justiciability of two rights, which implies that other rights, although recognised therein, may not be subjected to the Court's jurisdiction.[552] Furthermore, Judge Sierra Porto expressed his concerns about the extensive consideration of the international *corpus juris*, especially including soft law, particularly because Article 26 did not refer to any other instrument of international law but to the OAS Charter, which did not explicitly enshrine the right to job security.[553]

Notwithstanding the dissents, the Court's approach to the justiciability of Article 26 established in *Lagos del Campo* was further embraced in the context of other economic, social and cultural rights. For instance, similar tendencies can be identified in the context of the right to health.[554] The issue of direct justiciability of Article 26 in relation to the right to health was first raised by Judge Ferrer Mac-Gregor in his concurring opinion to the judgment in *Suárez Peralta v. Ecuador*, although it was not addressed in the judgment itself.[555] In the subsequent case of *Gonzales Lluy et al. v. Ecuador*, in which the representatives of the applicant also argued that the right to health had been violated in the context of Article 26 for the performance of blood transfusions, resulting in the applicant's HIV infection, and asked the Court to take into consideration the remarkable development of the international *corpus juris*, particularly the Protocol of San Salvador and the doctrine of the UN CESCR.[556] Although the Court did not address the merits of the right to health and the justiciability of Article 26, the judgment is remarkable for declaring the violation of a norm established in the Protocol for the first time. Namely, the Court pronounced the violation of Article 13 of the Protocol (the right to education) for the applicant's expulsion from the kindergarten because of her health status.[557]

[552] Lagos del Campo v. Peru, ibid., Partially dissenting opinion of Judge Eduardo Vio Grossi, p. 4.
[553] Lagos del Campo v. Peru, ibid., Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, pp. 1–3.
[554] See: Cárdenas-Contreras, L. E. (2022) 'La salud a la manera de la Corte Interamericana de Derechos Humanos: una exploración de la jurisprudencia, hasta 2021, a propósito del artículo 26 de la Convención Americana sobre Derechos Humanos', *Díkaion*, 37(1), pp. 1–38.
[555] Case of Suárez Peralta v. Ecuador, Judgment of 21 May 2013 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, Concurring opinion of Judge Eduardo Ferrer Mac-Gregor Poisot.
[556] Case of Gonzales Lluy et al. v. Ecuador, Judgment of 1 September 2015 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, § 159.
[557] Gonzales Lluy et al. v. Ecuador, ibid., §§ 230–291.

The justiciability of the right to education was not subject to discussion, as the Protocol explicitly provides for it; however, opinions were divided regarding the autonomous approach to the right to health. Judge Ferrer Mac-Gregor, in his opinion on *Suárez Peralta*, also expressed the need for the justiciability of other rights enshrined in the Protocol, as well as the applicability of the right to health in the given case of *Gonzales Lluy*. The Judge emphasised the use of systematic interpretation of the normative framework to establish the Court's jurisdiction on economic, social and cultural rights that were integrated in the Inter-American system with the adoption of the Protocol.[558]

The recognition of the justiciability of the right to health was established in *Poblete Vilches et al. v. Chile* and the subsequent *Cuscul Pivaral et al. v. Guatemala* in 2018.[559] Notably, these judgments were adopted after the groundbreaking *Lagos del Campo*, which established the possibility of the autonomous violation of Article 26, thus incorporating economic, social and cultural rights to the American Convention. Regarding the right to health specifically, the Court referred to the international *corpus juris*, including hard and soft norms, such as UN and regional human rights treaties and the general comments of UN treaty bodies, particularly that of the UN CESCR, and the jurisprudence of the ECtHR.[560]

From the perspective of the analysis of the IACtHR's interpretative approaches, *Cuscul Pivaral* is particularly remarkable for dedicating a separate section to the systematic interpretation. When examining Article 26, the Court explicitly referred to the need to interpret the norm as part of a whole under Article 31(3) of the VCLT. In this scope, the Court considered the internal system, thus the relationship between the ACHR and the Protocol, and its embeddedness in the international legal context. Against this background, the Court concluded that the text of the mentioned Article

[558] Gonzales Lluy et al. v. Ecuador, ibid., Concurring opinion of Judge Eduardo Ferrer Mac-Gregor Poisot, paras. 16–18. The recognition of the right to health as an autonomous right was also discussed in, for instance, Case of Chinchilla Sandoval v. Guatemala, Judgment of 29 February 2016 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, Separate opinion of Judge Roberto F. Caldas and Concurring opinion of Eduardo Ferrer Mac-Gregor Poisot.

[559] Fuchs Marino, T., Coimbra de Carvalho, L, and Arcaro Conci, L. G. (2022) 'A tutela do direito à saúde na jurisprudência da Corte Interamericana de Direitos Humanos', *Revista Brasileira de Direitos Fundamentais & Justiça*, 16(46), p. 335. See also: Díaz-Tendero Bollain, A. (2018) 'El derecho a la salud en la Convención Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores', in: Moreles Antoniazzi, M. and Clérico, L. (eds.) *Interamericanización del Derecho a la Salud. Perspectivas a la Luz del Caso Poblete de la Corte IDH*. Mexico City: Instituto de Estudios Constitucionales del Estado de Querétaro, pp. 111–144.

[560] Case of Poblete Vilches et al. v. Chile, Judgment of 8 March 2018 (Merits, Reparations and Costs), IACtHR, §§ 114–115.

19(6) of the Protocol, which explicitly mentioned the Court's jurisdiction over two enshrined rights, did not imply a restriction on the Court's competence over the other rights.[561] Thus, it can be concluded that the Court developed the justiciability of the rights enshrined in the Protocol of San Salvador based on the systematic interpretation thereof, supplemented by other means of interpretation reflected in the VCLT. The above analysis also shows that the IACtHR places a strong emphasis on the international *corpus juris* for the interpretation of the ACHR and the Protocol. The scope of the international legal framework that the Court examines is broad, as it includes universal and regional, binding and non-binding sources that support emerging trends and tendencies in international law. This *corpus juris* is of crucial importance for the development of the Court's jurisprudence, and, as presented below, for its environmental case law as well.

III.3.2. Systemic Integration in the Environmental Jurisprudence of the Inter-American Court of Human Rights

Similar to the ECtHR, the IACtHR has developed a body of environmental case law that encompasses multiple areas and involves the interpretation of several rights, even if the right to a healthy environment is explicitly recognised in the Inter-American system. Environmental issues first appeared in the context of the protection of indigenous peoples' rights[562] in the Inter-American jurisprudence, primarily through Article 21 (the right to property), but environmental issues may also be intertwined with the right to life (Article 4) or the right to humane treatment (Article 5). These cases illustrate the collective dimension of human rights protection, as the claims were submitted on behalf of communities as collective rights-holders.

[561] Cuscul Pivaral et al. v. Guatemala, Judgment of 23 August 2018 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, § 88.

[562] For an overview of indigenous peoples' rights in international law, see: Marinkás, Gy. (2016) 'Cultural Rights as a Tool of Protecting the Rights of Indigenous Peoples', in: Szabó, M., Varga, R. and Láncos, P. L. (eds.) *Hungarian Yearbook of International Law and European Law 2016*. The Hague: Eleven International Publishing, pp. 15–38. At this point, it should be noted that the ECtHR does not have a comparably robust jurisprudence on indigenous rights. Nonetheless, the Advisory Committee on the Framework Convention for the Protection of National Minorities, working under the aegis of the Council of Europe, significantly contributes to the human rights protection of national minorities as a vulnerable group in European societies. In this regard, it is worth noting that the Committee recently prepared its factsheet on the environment and national minorities, which presents key concerns and recommended actions in the spirit of the Reykjavík Declaration. See: Environmental Challenges and National Minorities [Online]. Available at: https://rm.coe.int/prems-065425-gbr-2568-environmental-challenges-and-national-minorities/1680b607c6 (Accessed: 24 September 2025).

Furthermore, procedural rights may also be invoked in the context of cases involving environmental matters. Thus, the IACtHR's environmental jurisprudence also encompasses the case law of procedural rights, such as the right to a fair trial (Article 8), the right to judicial protection (Article 25), or the procedural aspect of freedom of thought and expression (Article 13). Procedural rights may also be invoked in indigenous and non-indigenous cases, either in their collective or individual dimensions.

In addition to the environmental dimension recognised in other substantive and procedural rights, the Inter-American human rights system embraces the right to a healthy environment. Namely, Article 11 of the Protocol of San Salvador provides that

> '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.'

However, as elaborated above, the justiciability of the rights enshrined in the Protocol has long been subject to discussions among the Judges until the adoption of *Lagos del Campo v. Peru* in 2017. Parallel with these developments, the Court also developed the scope and content of the right to a healthy environment in *Advisory Opinion OC-23/17* and its subsequent case law. Thus, given the outstanding role of the IACtHR's advisory jurisdiction in shaping the interpretation of the ACHR, particularly its environmental jurisprudence, the analysis will focus on both the advisory and contentious jurisprudence of the Court. The structure of the chapter will proceed according to the chronological development of the Court's environmental jurisprudence, with a view to the division of substantive and procedural rights. The first subsection will address substantive rights in the context of indigenous cases with a special focus on the right to property. Considering that the Inter-American Commission had an important role in establishing the Inter-American indigenous jurisprudence, the Commission's key cases involving environmental considerations will also be briefly summarised. Second, the analysis will proceed with examining procedural environmental standards in indigenous and non-indigenous contexts. Third, the explicit recognition of the right to a healthy environment in the Inter-American system justifies the inclusion of a separate section on the Court's interpretation of this right as an autonomous right. Accordingly, the third subsection will examine Article

11 of the Protocol of San Salvador and its justiciability, with particular attention to emerging issues falling within its scope, notably those related to climate change.

III.3.2.1. The Right to Property and Other Substantive Rights in the Context of Early Indigenous Cases

A. The Role of the Inter-American Commission on Human Rights in the Development of the Environmental Jurisprudence in the Inter-American System

The Inter-American Commission was the first body within the Inter-American system to address cases involving indigenous peoples in connection with environmental concerns, setting the groundwork for subsequent adjudication by the Court. One of the earliest cases involving environmental protection was the *Yanomami* case before the IACHR in 1985. The Yanomami Indians, an indigenous population in Brazil, faced a number of threats to health and life due to the construction of a highway through their native lands, resulting in the displacement of native villages. The invasions were carried out without prior and adequate protection for the safety and health of the Yanomami Indians, which led to deaths caused by epidemics of influenza, tuberculosis, measles, and venereal diseases. The Commission pronounced the violation of several rights recognised in the Bogotá Declaration, such as the right to life, liberty and personal security (Article I), the right to residence and movement (Article VIII), and the right to the preservation of health and to well-being (Article XI).[563] Although the Commission recognised the violation of human rights of indigenous peoples, it did not establish a direct connection between environmental degradation and the violation of the Declaration. Nonetheless, the case is remarkable for being among the first indigenous cases involving environmental issues.[564] Remarkably, the Commission referred to Article 27 of the ICCPR to support the recognition of the rights of indigenous peoples.[565]

The recognition of land rights was accentuated in *Maya Indigenous Community of the Toledo District v. Belize*, in which the Commission found a violation of rights enshrined in the Bogotá Declaration for the State's failure to protect the lands

[563] Yanomami Indigenous Community v. Brazil, Resolution no. 12/85, Case no. 7615, Brazil, 5 March 1985, IACHR [Online]. Available at: https://www.cidh.org/annualrep/84.85eng/Brazil7615.htm (Accessed: 18 January 2025).
[564] Scott, I. K. (2000) 'The Inter-American System of Human Rights: An Effective Means of Environmental Protection', *Virginia Environmental Law Journal*, 19(2), pp. 214–216.
[565] Yanomami Indigenous Community v. Brazil, ibid., para. 7.

traditionally used and occupied by the indigenous community. Namely, the government granted logging and oil concessions on the Maya lands, which caused substantial environmental harm and brought long-term and irreversible damage to the natural environment upon which the indigenous community depended.[566] From the perspective of the development of the Commission's approach to environmental protection, the *Maya* decision is remarkable for recognising the Maya peoples' communal property rights to the lands, with consideration of a broad scope of the relevant international legal framework, including the proposed American Declaration on the Rights of Indigenous Peoples,[567] ILO Convention (No. 169) on Indigenous and Tribal Peoples,[568] the then-draft UN Declaration on the Rights of Indigenous Peoples (UNDRIP),[569] and the Rio Declaration on Environment and Development.[570] The Commission further pointed out that the violation of property rights was also exacerbated by environmental damage, severely affecting the Maya communities.[571] The Commission encountered numerous other cases regarding the impact of the violation of indigenous peoples' property rights on the environment, however, given that such cases were later referred to the Court, they will be discussed in the next subsection.

Another aspect of environmental protection is the question of climate change and its impact on human rights. One of the earliest rights-based climate change cases in the world was the so-called "Inuit petition" before the IACHR in 2005, filed in the name of all Inuit of the Arctic regions of the United States and Canada.[572] The petitioners, seeking relief from violations resulting from global warming caused by acts and omissions of the United States, referred to the violation of several rights guaranteed in the Bogotá Declaration, including the Inuits' right to the benefits of culture (Article

[566] Maya Indigenous Community of the Toledo District v. Belize, Case 12.053, Report No. 40/04, 12 October 2004, IACHR.
[567] American Declaration on the Rights of Indigenous Peoples, AG/RES.2888 (XLVI-I/16), Santo Domingo, Organisation of American States, 15 June 2016.
[568] ILO, Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), Geneva, International Labour Organisation, 27 June 1989, UNTS vol 1650.
[569] UNGA, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 13 September 2007.
[570] Maya Indigenous Community of the Toledo District v. Belize, paras. 53–55.
[571] Rodriguez-Pinzon, D. (2005) 'Inter-American System', *Netherlands Quarterly of Human Rights*, 23(1), pp. 113–116.
[572] Petition No. P-1413-05, 16 November 2006, IACHR [Online]. Available at: https://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-relief-from-violations-resulting-from-global-warming-caused-by-acts-and-omissions-of-the-united-states/ (Accessed: 16 January 2025).

XIII), to use and enjoy the lands they have traditionally occupied and the right to use and enjoy their personal, intangible and intellectual property under the right to own private property (Article XXIII), the right to the preservation of health (Article XI), right to life, liberty and personal security (Article I), the right to residence and movement (Article VIII), and the right to inviolability of the home (Article IX). The petition was remarkably progressive for its time, as it drew attention to the vulnerability of indigenous peoples in the climate crisis already in 2005, before the adoption of the major catalyst for climate change litigation, the Paris Agreement.[573] However, in the absence of clear human rights obligations in the context of climate change, the Commission found the petition inadmissible, which is arguably a questionable approach from today's perspective, particularly in light of the UN Human Rights Committee's decision in the *Daniel Billy and Others v. Australia* case in 2022.[574]

Furthermore, there are several environment-related petitions pending before the IACHR at the time of the conclusion of the present chapter, including the "Athabaskan petition" initiated by indigenous peoples of the Arctic,[575] and the petition seeking to redress violations of the rights of children in Cité Soleil, Haiti.[576] Both petitions could have a profound impact on the development of the Inter-American human rights

[573] On the role of the Paris Agreement in climate change litigation, see: Voigt, C. (2023) 'The Power of the Paris Agreement in International Climate Change Litigation', *Review of European, Comparative & International Environmental Law*, 32(2), pp. 237–249.

[574] As noted above, in Daniel Billy and Others v. Australia, also known as the Torres Strait Islanders case, the UN Human Rights Committee adopted a landmark decision in the context of human rights protection of indigenous peoples against the adverse impacts of climate change. The Committee found the violation of Articles 17 (right to private and family life) and 27 (the right minorities to enjoy their own culture) for Australia's failure to adequately protect Torres Strait Islanders against the adverse impacts of climate change. See: Daniel Billy and Others v. Australia, ibid. See also: Sancin, 2024, ibid. While there is no formal obligation of the IACHR to implement UN treaty bodies' approaches, cross-fertilisation of different human rights courts and bodies holds particular significance in climate change litigation, as it represents a highly dynamic and evolving area of legal development, which, at the same time, requires global solutions. See: Feria-Tinta, ibid., 2024.

[575] Petition to the Inter-American Commission on Human Rights seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples resulting from Rapid Arctic Warming and Melting caused by Emissions of Black Carbon by Canada, 23 April 2013. For a comparative overview of the "Inuit petition" and the "Athabaskan petition" in light of legal developments in the field of climate change and human rights, see: McCrimmon, D. (2016) 'The Athabaskan Petition to the Inter-American Human Rights Commission: Using Human Rights to Respond to Climate Change', *The Polar Journal*, 6(2), pp. 398–416.

[576] Petition and Request for Precautionary Measures to the Inter-American Commission on Human Rights, Six Children of Cité Soleil, Haiti and Sakala Community Center for Peaceful Alternatives Petitioners concerning violations of the American Convention on Human Rights, 4 February 2021 [Online]. Available at: https://climatecasechart.com/non-us-case/petition-to-the-inter-american-commission-on-human-rights-seeking-to-redress-violations-of-the-rights-of-children-in-cite-soleil-haiti/ (Accessed: 15 May 2025).

system's approach to environmental protection. First, the "Athabaskan petition" may give the Commission an opportunity to clarify the environmental perspective of the rights enshrined in the Bogotá Declaration. This clarification would be particularly relevant for Canada, which is not a party to the ACHR, therefore, its citizens are limited to seeking remedies for human rights violations exclusively through the Commission on the basis of the rights enshrined in the Bogotá Declaration. The implications of this case could also extend beyond the confines of the petition, as it could set a precedent for other environment- or climate-change-related cases also for alleged violations by the United States, who did not ratify the ACHR either,[577] yet it is one of the highest-emitting countries in the world.[578] Furthermore, the petition concerning the children in Cité Soleil draws attention to the long-standing environmental injustices arising from toxic trash disposal in the residential district of Port-Au-Prince, which causes short and long-term health harm to the inhabitants of the area, including children. The petition would give opportunity to the IACHR to elaborate on the standards of the ACHR regarding protection against toxic waste treatment also for non-indigenous peoples.

B. Indigenous Cases in the Jurisprudence of the Inter-American Court with a View on the Environment

The environmental perspective initially emerged within the Court's jurisprudence on indigenous rights by broadening the Commission's early conclusions. The *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* was the Court's first high-profile case interpreting right to property in the context of indigenous peoples' rights, adopted in 2001.[579] The members of the community contested the government's permission to cut trees in the indigenous lands without prior consultation with them. The government

[577] See: The status of ratification of the ACHR [Online]. Available at: https://treaties.un.org/pages/showdetails.aspx?objid=08000002800f10e1 (Accessed: 18 January 2025). The accession of the United States to the ACHR has been pending since its signature in 1977. Arguments against ratification are based on federalist and sovereignty concerns, as well as opposition to the interpretation of certain specific matters in international human rights law, such as abortion or death penalty. See: Diab, J. (1992) 'United States Ratification of the American Convention on Human Rights', *Duke Journal of Comparative & International Law*, 2(2), pp. 323–343.While environmental and climate change litigation shows a growing tendency in the U.S., such litigation remains at the domestic level, as the IACtHR does not have jurisdiction over the United States. The only recourse for U.S. citizens in the Inter-American human rights system is through the IACHR on the basis of the Bogotá Declaration.

[578] United Nations Environment Programme (UNEP), 'The Emissions Gap Report 2015', Nairobi, 2015, p. 24.

[579] See: Anaya, S. J., and Grossman, C. (2002) 'The Case of Awas Tingni v. Nicaragua: A Step in the International Law of Indigenous Peoples', *Arizona Journal of International and Comparative Law*, 19(1), pp. 1–16.

argued that the indigenous communities had no title to the land, however, it was the government itself who did not demarcate the lands belonging to indigenous peoples despite their continuous efforts since the 1950s. The Court emphasised the autonomous meaning of "property" in Article 21 of the ACHR, which also included the rights of members of the indigenous communities within the framework of communal property, and highlighted that property of such lands did not merely mean a matter of possession, but a material and spiritual element, which they must fully enjoy. The Court emphasised that indigenous peoples' customary law must be considered when interpreting the right to property under Article 21. Consequently, possession of the land by indigenous communities should be sufficient to establish property rights under the American Convention, even in the absence of formal recognition.[580] Although the judgment is primarily remarkable for establishing indigenous communities' title to the lands traditionally belonging to them, the aspect of environmental protection appeared in the expert opinions, which emphasised the dependence of indigenous peoples on nature and consequently, the importance of measures that avoid environmental damages.[581]

The Court developed its approach to the title to lands traditionally belonging to indigenous communities in the context of concessions for mining and logging in the case of the *Saramaka People v. Suriname* in 2007. In this case, in addition to ordering the State to delimit, demarcate and grant collective title over the territory, the Court also ruled that the State shall grant the members of the Saramaka people legal recognition of the collective juridical capacity.[582] In this judgment, concerns over the degradation of the environment are more accentuated, and ordered the State to perform prior environmental (and social) impact assessments,[583] and to pay just compensation for damage, including material and immaterial damage regarding their spiritual connection with the territory, and the distress endured.[584] In contrast with *Awas Tingni,* in this judgment, the Court examined the right to property in its international legal

[580] Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of 31 August 2001 (Merits, Reparations and Costs), IACtHR, §§ 148–151.
[581] Mayagna (Sumo) Awas Tingni Community v. Nicaragua, ibid., Expert opinions of Charles Rice Hale and Roque de Jesús Roldán Ortega.
[582] Case of the Saramaka People v. Suriname, Judgment of 28 November 2007 (Preliminary Objections, Merits, Reparations and Costs), IACtHR, § 174.
[583] Saramaka People v. Suriname, ibid., § 158.
[584] Orrellana, M. A. (2008) 'Saramaka People v. Suriname', *American Journal of International Law*, 102(4), pp. 845–846.

context and referred to the mentioned ILO Convention No. 169, the ICCPR, the ICESCR, and the jurisprudence of the UN Human Rights Committee, to determine the status of the Saramaka community as a tribal community protected by international human rights law.[585]

The Court embraced a similar approach in *Kichwa Indigenous People of Sarayaku v. Ecuador*. The case concerned the violation of the Kichwa indigenous people's collective rights to consultation, to indigenous communal property, and to cultural identity (Articles 13 and 21 of the ACHR), inter alia, due to oil exploration activities authorised by Ecuador on the ancestral lands without prior consent.[586] The exploration activities caused significant environmental damage, which was carefully addressed by the Court in ordering comprehensive reparations that extend well beyond compensation for pecuniary and non-pecuniary damage, also including measures of restitution (removal of explosives and reforestation of the area), guarantees of non-repetition, and satisfaction, such as a public act of acknowledgment of international responsibility and the publication and broadcasting of the judgment.[587]

Such measures, particularly the obligation of restitution, underscore the IACtHR's forward-looking approach to compensation, which is a key strength of environmental protection in the Inter-American human rights system. This was in fact the first time the Court conducted a proceeding at the site of the events of a contentious case,[588] allowing the delegation of judges to observe the conditions and gather first-hand evidence to determine the necessary measures. Therefore, the *Kichwa* case significantly contributed to the IACtHR's jurisprudence regarding environmental protection, even though the Court did not explicitly address the role of a healthy environment under the rights guaranteed in the ACHR, let alone self-standing environmental rights. However, in parallel with the efforts to recognise the justiciability of Article 26 for the violation of other economic, social and cultural rights, as elaborated above, the representatives of the applicants also argued for the

[585] Saramaka People v. Suriname, ibid., §§ 92–96. See also: Raisz, A. (2008) 'Indigenous Communities before the Inter-American Court of Human Rights – New Century, New Era?', *Miskolc Journal of International Law*, 5(2), pp. 46–47.
[586] Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Judgment of 27 June 2012, IACtHR.
[587] Kichwa Indigenous People of Sarayaku v. Ecuador, ibid., §§ 279–340.
[588] Verdonck, L. and Desmet, E. (2017) 'Moving human rights jurisprudence to a higher gear: rewriting the case of the Kichwa Indigenous People of Sarayaku v Ecuador (IACtHR)', in: Brems, E. and Desmet, E. (eds) *Integrated Human Rights in Practice*. Cheltenham: Edward Elgar Publishing, p. 477.

violation of the right to culture under the provision on progressive development, however, the Court did not consider this argument at that time.[589] Nonetheless, the Court implicitly embraced an ecological approach to indigenous rights by developing the doctrine of restitution and other reparation measures for environmental damage, which has been enhanced in its subsequent case law.[590]

The abovementioned few examples shed light on the IACtHR's early case law on environmental matters in the context of indigenous peoples' right to property. The analysed cases were adopted before the Court's groundbreaking judgment of *Lagos del Campo* in 2017, which established the justiciability of economic, social and cultural rights through Article 26, however, the tendency of the applicants' efforts pursuing the recognition of the violation of the rights enshrined in the Protocol of San Salvador can also be observed. Furthermore, these judgments also demonstrate the Court's (and the Commission's) engagement with recent developments in international law, as it did not only consider the relevant provisions of the major UN human rights treaties, such as the ICCPR or and ICESCR but specialised instruments as well, such as the ILO Convention and documents that had been in the drafting process at the time of the adoption of the judgment. Notwithstanding the soft law nature of certain cited instruments, it is important to note that they represent the growing tendency of recognising indigenous peoples' rights in addition to general human rights treaties.[591] On the other hand, it can also be concluded that the Court scarcely referred to the *corpus juris* of international environmental law, which shows that the environmental aspect was perhaps not the most significant dimension of these judgments.

III.3.2.2. Procedural Environmental Rights in the Jurisprudence of the Inter-American Court of Human Rights

The Latin American counterpart of the Aarhus Convention, the Escazú Agreement, was adopted with the support of the Economic Commission for Latin America and the Caribbean (ECLAC) in 2018, and entered into force in 2021 after its eleventh

[589] Kichwa Indigenous People of Sarayaku v. Ecuador, ibid., §§ 137–139.
[590] See, for instance, Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and Their Members V. Panama, Judgment of 14 October 2014, IACtHR; Case of the Kaliña and Lokono Peoples V. Suriname, Judgment of 25 November 2015, IACtHR; Case of the Xucuru Indigenous People and its Members v. Brazil, Judgment of 5 February 2018, IACtHR.
[591] Marinkás, Gy. (2020), 'The Right to a Healthy Environment as a Basic Human Right – Possible Approaches Based on the Practice of the Human Rights Mechanisms, with Special Regard to the Issues of Indigenous Peoples', *Journal of Agricultural and Environmental Law*, 15(29), pp. 141–143.

ratification. Currently, the treaty has 24 Signatories and 17 Parties.[592] Similar to the Aarhus Convention, the Escazú Agreement also recognises "the right of every person of present and future generations to live in a healthy environment" as the objective of the treaty, along with the right to sustainable development.[593] Furthermore, the Escazú Agreement is also based on the three pillars of access to information, public participation and justice in environmental matters, drawing from Principle 10 of the Rio Declaration.[594]

In addition, a significant novelty of the Agreement is the explicit protection it provides for "human rights defenders in environmental matters", which renders it the first, and so far, only international binding instrument that protects them,[595] which sheds light on the critical situation of environmental defenders in the region. According to Global Witness, Latin America has been the most dangerous region for defenders, with nearly 90% of the globally recorded killings taking place in the region.[596] Although it may be too early to analyse the impact of the Escazú Agreement on the IACtHR's jurisprudence, certain gaps can be identified based on its earlier case law.

Procedural rights are enshrined in the ACHR in Articles 13 (freedom of thought and expression), 8 (right to a fair trial), and 25 (right to judicial protection), among others, and therefore, could also be used in connection with environmental matters. This was the case, for instance, in *Claude Reyes et al. v. Chile*, in which the applicants relied on the abovementioned procedural rights of the ACHR for state authorities' failure to provide them with the information they requested about a planned deforestation project. Although the claim did not touch upon substantive environmental issues, the

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[592] Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Economic Commission for Latin America and the Caribbean, ibid. [Online]. Available at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-18&chapter=27&clang=_en (Accessed: 30 April 2025).

[593] Article 1 of the Escazú Agreement provides that: '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.'

[594] See: Escazú Agreement, Articles 5–8.

[595] Pánovics, A. (2021) 'The Escazú Agreement and the Protection of Environmental Human Rights Defenders', *Pécs Journal of International and European Law*, 2021/1, pp. 31–33.

[596] See: 'Almost 2,000 land and environmental defenders killed between 2012 and 2022 for protecting the planet', *Global Witness* [Online]. Available at: https://globalwitness.org/en/press-releases/almost-2000-land-and-environmental-defenders-killed-between-2012-and-2022-protecting-planet/ (Accessed: 30 April 2025).

Court established procedural guarantees of access to State-held information of public concern.[597] From the methodological perspective, the case is remarkable for relying on a broad scope of international legal standards regarding access to information in general and in environmental matters specifically, such as the Rio Declaration and the Aarhus Convention.[598] Given that the idea of creating a binding regional treaty on procedural environmental rights was endorsed in 2012, at the UN Conference on Sustainable Development (Rio+20), it can be concluded that the IACtHR could gain inspiration from instruments outside the Latin American region. Notably, the absence of any document on the recognition of procedural environmental rights did not lead the Court to rule against these standards; in contrast, they were implicitly embraced in the judgment.

The procedural aspect also appeared in indigenous cases, such as in the case of *Kaliña and Lokono Peoples v. Suriname*, in which the Court found a violation of the right to judicial protection regarding the right to the free access to information of the members of the indigenous community, along with the violation of substantive rights, similar to the other indigenous cases discussed above.[599] The particularity of the violation of the right of access to information was that the parties (the Commission and the applicants) did not request its declaration from the Court; instead, it was addressed based on the *iura novit curia* principle, which allows the Court to examine possible violations of the norms of the ACHR that have not been alleged by the parties, under certain circumstances, that is, in case the State had the opportunity to express its positions on the alleged violation.[600]

This point in the judgment received criticism from Judge Alberto Pérez Pérez in his partially dissenting opinion, not necessarily for the Court's *ex officio* consideration of the possible violation of a right not requested by the parties, but rather because the Judge did not consider the information requested to fall under the scope of Article 13.

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[597] Case of Claude Reyes et al. v. Chile, Judgment of 19 September 2006, IACtHR, §§ 81–103. See also: Chavez, L. C. (2013) 'The Claude Reyes Case of the Inter-American Court of Human Rights – Strengthening Chilean Democracy?', *Nordic Journal of Human Rights*, 31(4), p. 513.
[598] Claude Reyes et al. v. Chile, ibid., § 81.
[599] Case of the Kaliña and Lokono Peoples v. Suriname, ibid., § 268. See also: McKay, F. (2018) 'The Case of the Kaliña and Lokono Peoples v. Suriname and the UN Declaration on the Rights of Indigenous Peoples: Convergence, Divergence and Mutual Reinforcement', *Erasmus Law Review*, 2018/4, p. 31.
[600] Kaliña and Lokono Peoples v. Suriname, ibid., § 259. See also: Velásquez-Rodríguez, ibid., § 163. See also: Shelton, D. (2013) 'Jura Novit Curia in International Human Rights Tribunals', in: Boschiero, N. et al. (eds.) *International Courts and the Development of International Law. Essays in Honour of Tullio Treves.* The Hague: T.M.C. Asser Press, pp. 189–211.

Namely, the Judge noted that the freedom of information recognised in Article 13 refers to matters of public interest, while the information requested by the applicants was a matter of the interest of the Kaliña and Lokono peoples. The Judge contrasted this approach to the Court's earlier approach to Article 13 in the mentioned *Kichwa Indigenous People of Sarayaku* case, in which the Court – although requested by the representatives of the applicants –, did not rule on the alleged violation of Article 13, as it considered the violations to be conceptualised under the rights enshrined in Article 21, and found a violation thereof.[601]

Another important aspect of the judgment of the *Kaliña and Lokono Peoples* is the conceptualisation of procedural environmental rights under the protection of natural resources. In this context, in addition to the international *corpus iuris* on indigenous peoples' rights, the Court considered the UN Convention on Biological Diversity (CBD), the Ramsar Convention on Wetlands,[602] and the international instruments mentioned in the domestic nature protection act, including the World Heritage Convention[603] and the UNFCCC.[604] The Court emphasised the right of indigenous peoples to the protection of the natural resources in their territories, and laid down the criteria of their contribution in this regard based on the CBD and other instruments, such as Principle 10 of the Rio Declaration and the Aarhus Convention, and its judgment in *Claude Reyes et al. v. Chile*.[605]

Furthermore, considering that the protection of human rights defenders is enshrined in the Escazú Agreement, providing for procedural rights, the IACtHR's case law on human rights activists in environmental matters would be appropriate to analyse in this section. As noted above, environmental activists are particularly exposed to severe human rights violations in the region, ranging from criminalisation and intimidation to physical violence and killings. Although these patterns are sadly frequent, based on the statistical data mentioned above, this reality is only scarcely reflected in the Court's jurisprudence.

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[601] Kaliña and Lokono Peoples v. Suriname, ibid., Partially dissenting opinion of Judge Alberto Pérez Pérez, paras. 11–16.
[602] Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 2 February 1971, UNTS vol. 996, p. 245.
[603] Convention concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, 17 December 1975, UNTS vol. 1037, p. 151.
[604] Kaliña and Lokono Peoples v. Suriname, ibid., § 176.
[605] Kaliña and Lokono Peoples v. Suriname, ibid., § 181.

Notable exceptions include *Kawas-Fernández v. Honduras* and *Luna López v. Honduras*. Both judgments addressed the murder of environmental defenders, emphasised the State's obligation to take positive measures to protect their life, and found the violation of the right to life, the right to humane treatment, and, in the *Kawas-Fernández* case, the right to freedom of association. However, unfortunately, the majority of such murders remain unpunished, and only a small number of such cases reach the Court[606] that could establish some reparations, such as measures of rehabilitation and guarantees of non-repetition. The reparations in these two cases are also worth examining, as the Court ordered a wide scope of reparation measures, including the obligation to investigate, pecuniary and non-pecuniary damage, and, interestingly, in the *Kawas-Fernández* case, measures in memory of the victim, such as the construction of a monument and mounting of signs at the national park named after her.[607]

In a disturbing reflection of the dangers faced by environmental defenders in Latin America, they are not only at risk of being murdered but may also be subjected to torture. This absurd reality is expressed in *Cabrera García and Montiel Flores v. Mexico*, which concerned the arrest and torture of two environmental activists advocating against excessive logging in the region by transnational and local companies. The Court found a violation of the right to personal liberty, the right to humane treatment, the right to a fair trial, however, given that the victim's did not give sufficiently detailed information about their environmental defence activities before and at the time of their detention, the Court did not find a violation of freedom of association, as it did in the *Kawas-Fernández* case.[608] As the freedom of association or expression was not at the centre of discussions in this case, the Court did not analyse the environmental *corpus juris*, but the international legal framework regarding the prohibition of torture, and referred to the Inter-American Convention to Prevent and

[606] Lehne Cerrón, M. E. (2024) 'Political Will: The Missing Ingredient in Protecting the Environment and Environmental Defenders', *EJIL:Talk!*, [Online]. Available at: https://www.ejiltalk.org/political-will-the-missing-ingredient-in-protecting-the-environment-and-environmental-defenders/ (Accessed: 3 February 2025).
[607] See: Case of Kawas-Fernández v. Honduras, Judgment of 3 Aporil 2009 (Merits, Reparations and Costs), IACtHR, Part X; Case of Luna López v. Honduras, Jugdment of 10 October 2013 (Merits, Reparations and Costs), IACtHR, Part IX.
[608] Tanner, L. R. (2011) 'Kawas v. Honduras – Protecting Environmental Defenders', *Journal of Human Rights Practice*, 3(3), p. 322.

Punish Torture and the case law of the UN Human Rights Committee, the UN Committee against Torture, and the European Court of Human Rights.[609]

Freedom of expression was more accentuated in *Norín Catrimán v. Chile*, which concerned the conviction of members of the indigenous Mapuche in Chile, who, as a result of the social conflict between them and the State, were prohibited from using their own social media. The case marginally affected the environment, as the community was advocating for the recovery of their ancestral lands and respect for their use and enjoyment of these lands and their natural resources.[610] In this context, the Court did not consider international environmental legal sources but the international framework for the rights of indigenous peoples.[611]

Several conclusions can be drawn from the mentioned examples from the IACtHR's jurisprudence regarding the procedural standards of environmental protection. First, it is apparent that the IACtHR, unlike the ECtHR, does not tend to emphasise the difference between the procedural and substantive aspects of rights. However, given that the Court addressed States' obligations to investigate the death or the torture of the applicants in the aforementioned cases, and that the rights to freedom of expression and freedom of association are strongly intertwined with the procedural guarantees of access to information, the mentioned cases can be considered under the scope of procedural rights.

Furthermore, these case law examples also reflect the key differences in the European and Inter-American systems, particularly considering the situation of environmental activists. In the European framework, human rights violations of environmental defenders fall under the scope of freedom of expression and freedom of association (such as *Rovshan Hajiyev v. Azerbaijan* or *Bumbeș v. Romania*) and, in extreme cases, under the right to liberty and security (e.g., *Bryan and Others v. Russia*). In contrast, the gravity of the situation of activists in the Latin American region is shown by the fact that their cases usually involve the violation of the right to life and the prohibition

[609] Case of Cabrera García and Montiel Flores v. Mexico, Judgment of 26 November 2010 (Preliminary Objection, Merits, Reparations and Costs), IACtHR, 51., § 107, § 136.
[610] Case of Norín Catrimán et al. v. Chile, Judgment of 29 May 2014 (Merits, Reparations and Costs), IACtHR, § 79.
[611] Norín Catrimán et al. v. Chile, ibid., § 89, § 206.

of torture (such as in *Kawas-Fernández v. Honduras, Luna Lopez v. Honduras*, and *Cabrera García and Montiel Flores v. Mexico*).

The cases analysed in this subsection were issued before the adoption of the Escazú Agreement. In the absence of a regional treaty recognising procedural environmental rights, the IACtHR scarcely relied on the Rio Declaration and the Aarhus Convention. Against this background, the Escazú Agreement can have a crucial impact on the development of the Court's doctrine on States' positive obligations, particularly for human rights defenders in environmental matters.[612]

III.3.2.3. The Right to a Healthy Environment in the Jurisprudence of the Inter-American Court of Human Rights

The right to a healthy environment, along with other economic, social and cultural rights, has been part of the Inter-American human rights system since 1988, with the adoption of the Protocol of San Salvador. However, this right was rarely referred to in the key judgments as a source relevant for the interpretation of other rights in connection with the environmental aspects of the cases. Prominent examples are the judgments of *Yakye Axa Indigenous Community v. Paraguay* and the abovementioned *Kawas-Fernández v. Honduras*.

In the first example, the complaint concerned the State's failure to acknowledge the property rights of the community over their ancestral land, including the alleged violation of the right to life by depriving communities of traditional means of livelihood. Regarding the alleged violation of the right to life, the Court had to establish whether the environmental conditions negatively affected the community members' right to life. To this aim, the Court considered the existing international *corpus juris* regarding the special protection required by indigenous communities, in view of certain rights guaranteed by the Protocol, such as right to health (Article 10), right to a healthy environment (Article 11), right to food (Article 12), right to education

[612] Article 9 of the Escazú Agreement reads as follows: '1. Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.
2. Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.
3. Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.'.

(Article 13), and right to the benefits of culture (Article 14), and pronounced the violation of the right to life.[613]

In *Kawas-Fernández*, although the primary focus of the judgment was on the protection of the right to life (Article 4), prohibition of arbitrary deprivation of life (Article 4(1)), right to humane treatment (Article 5), right to physical, mental and moral integrity (Article 5(1)), the Court also addressed the link between environmental protection and human rights, as well as the right to a healthy environment as incorporated in Article 11 of the Protocol. In this regard, the Court took note of the jurisprudence of the ECtHR, referring to *Guerra and Others v. Italy, López Ostra v. Spain*, and *Fadeyeva v. Russia*; resolutions adopted by the General Assembly of the OAS and the UN Commission on Human Rights (replaced by the UN Human Rights Council in 2006);[614] and constitutional provisions of States Parties to the ACHR that expressly recognise the right to a healthy environment.[615]

Whether the Court has jurisdiction over the rights enshrined has long been discussed in scholarly works,[616] primarily focusing on the interpretation of Article 26 of the ACHR. As noted above, the Court first rendered economic, social and cultural rights justiciable under Article 26 *Lagos del Campo v. Peru* in connection with labour rights, and concluded that the rights named in this Article form an integral part of the American Convention, regarding which Article 1(1) establishes general obligations.

The Court thoroughly addressed the justiciability of environmental rights under the ACHR in *Advisory Opinion OC-23/17*. The request focused on state obligations regarding the environment and human rights in a cross-border context, namely, when there is a danger that major infrastructure projects may have severe effects on the

[613] Case of the Yakye Axa Indigenous Community v. Paraguay, Judgment of 17 June 2005, IACtHR, § 163.
[614] See: UNGA, 'Human Rights Council', A/RES/60/251, 2 April 2006.
[615] Kawas-Fernández v. Honduras, ibid., §§ 148–149.
[616] For an overview of the diverse approaches, see Ruiz-Chiriboga, O. R. (2013) 'The American Convention and the Protocol of San Salvador: Two Intertwined Treaties. Non-Enforceability of Economic, Social and Cultural Rights in the Inter-American System', *Netherlands Quarterly of Human Rights*, 31(2), pp. 165–168. It is remarkable that the justiciability of economic, social and cutural rights had paralelly evolved in the UN. Namely, the justiciability of the rights enshrined in the ICESCR before the UN CESCR was established in the Optional Protocol of 2013. See: Kecskés, G. (2015) 'Individual Complaints within the Field of Economic, Social and Cultural Rights – Pro and Contra Arguments', in: Szabó, M., Varga, R. and Láncos, P. L. (eds.) *Hungarian Yearbook of International Law and European Law 2015*. The Hague: Eleven International Publishing, pp. 93–113.

marine environment.[617] The request provided the Court with an excellent opportunity to articulate its position regarding the role of human rights law in environmental protection issues in a comprehensive and systemic manner.[618] The Court recognised the "undeniable relationship" between the protection of the environment and the realisation of human rights, acknowledging that environmental degradation and climate change negatively affect the enjoyment of human rights. Additionally, the Court summarised the human rights affected by environmental degradation, particularly the right to a healthy environment itself, the right to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property, and the right not to be forcibly displaced.[619] As pointed out above, the Court addressed the environmental aspect of these rights in its earlier case law, however, it has not extensively interpreted the right to a healthy environment as enshrined in Article 11 of the Protocol, even if it has briefly referred to it. Therefore the advisory opinion marked the first occasion for the Court to elaborate on the content and nature of the right, significantly building on the international *corpus juris* and the jurisprudence of other regional human rights courts.

The Court recognised both the collective and individual dimension of the right to a healthy environment, noting that the former embraces a universal value that is owed to present and future generations. This approach builds on the theory of intergenerational equity, which aims to address the problems of unsustainable development and environmental degradation and induce future-oriented decision-making, by proposing that each generation shall bequeath the planet to future generations in at least as good conditions as they received it. The doctrine, as proposed by Edith Brown Weiss, has so far limited recognition in public international law,[620] thus its implicit recognition certainly demonstrates the forward-looking approach of the IACtHR. On the other hand, the individual dimension arises when the violation has

[617] The Environment and 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 of the American Convention on Human Rights), Advisory Opinion OC-23/17 of 15 November 2017, IACtHR.

[618] For an comprehensive overview of Advisory Opinion OC-23/17, see: Feria-Tinta, M. and Milnes, S. C. (2016) 'The Rise of Environmental Law in International Dispute Resolution: The Inter-American Court of Human Rights Issues a Landmark Advisory Opinion on the Environment and Human Rights', *Yearbook of International Environmental Law*, 27(1), pp. 64–81.

[619] Advisory Opinion OC-23/17, ibid., para. 66.

[620] Brown Weiss, 1989, ibid. On the status of the recognition of intergenerational equity in public international law, see: Krajnyák, 2024, ibid., pp. 12–18.

a direct or indirect impact on the individual in connection with other substantive rights. This dimension has been scarcely addressed by the IACtHR prior to the adoption of the *Advisory Opinion*, which primarily focused on the collective aspect of environmental protection in connection with other human rights in indigenous cases. In contrast, the environmental jurisprudence of the IACtHR's European counterpart, the ECtHR primarily embraces the individualistic approach to environmental protection, and, owing to the strict victim status criteria, the collective dimension is, so far, relatively less elaborated.[621]

Furthermore, the IACtHR not only considered the anthropocentric dimension of the right to a healthy environment but also recognised its ecocentric aspect. Namely, the Court explicitly stated that the right to a healthy environment "protects the components of the environment, such as forests, rivers and seas, as legal interests in themselves", not because of the benefits they offer for humans but for their intrinsic value. This argument is embedded in the theory of rights of nature, which propose the recognition of legal personality to elements of nature or the environment.[622] This tendency is particularly tangible in the Latin American States, including Bolivia, Colombia, or Ecuador.[623]

The Court significantly built on universal human rights instruments to elaborate on the vulnerability aspect of the right to a healthy environment, emphasising that the effect of environmental degradation may impact certain groups with greater intensity, including indigenous peoples, children, people living in extreme poverty, minorities, women, people with disabilities, and displaced people.[624] The vulnerability aspect has been a key element in the IACtHR's environmental jurisprudence. As evidenced by the cases discussed above, the Court has frequently addressed matters involving indigenous peoples, consistently considering their vulnerable status as a decisive factor for determining violations.

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[621] Article 34 of the ECHR limits the scope of applicants to those who claim to be a victim of a violation. The ECtHR tends to carefully examine the victim status in environmental cases, and denies standing from those who do not meet this criteria. See, for instance, Cordella and Others v. Italy, ibid.
[622] See: Nash, 1989, ibid.
[623] Advisory Opinion OC-23/17, ibid., para. 62.
[624] Advisory Opinion OC-23/17, ibid., para 67. See also: Grear, A. (2011) 'The Vulnerable Living Order: Human Rights and the Environment in a Critical and Philosophical Perspective', *Journal of Human Rights and the Environment*, 2(1), p. 23.

In the mentioned *Advisory Opinion*, the IACtHR provided a comprehensive interpretation of the interrelationship of human rights and the environment and elaborated state obligations deriving from the rights to life and personal integrity in the context of environmental protection. The Court developed the substantive obligations based on the jurisprudence of human rights judicial and quasi-judicial bodies, including its own case law and that of the IACHR, as well as the ECtHR, the ACtHPR, the African Commission on Human and Peoples' Rights (ACHPR), and UN human rights treaty bodies; and other international tribunals, such as the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS). Such obligations include the obligation of prevention, the application of the precautionary principle, and the obligation of cooperation.[625]

The obligation of prevention includes the duty to regulate, the duty to supervise and monitor, the duty to require and approve environmental impact assessments, the duty to prepare a contingency plan, and the duty to mitigate if environmental damage occurs. Furthermore, the Court noted that the precautionary principle – significantly drawing from the *Case of Pulp Mills on the River Uruguay*[626] – obliges States to protect the rights to life and to personal integrity in cases where it is plausible that an activity may cause serious and irreversible environmental harm, even in the absence of scientific certainty. The obligation of cooperation is a customary norm recognised by the ICJ in the *Nuclear Tests cases*,[627] the *Advisory Opinion on the legality of the threat or use of nuclear weapons*,[628] and the abovementioned *Pulp Mills* case. However, in contrast with the other two environmental obligations, the duty to cooperate is an obligation between States, that do not primarily directed to individuals. The Court defined these duties in three categories, namely, the duty to notify, the duty to consult and negotiate with potentially affected States, and the duty to share information. The interpretation of the duty of cooperation was particularly important, as it is explicitly enshrined in Article 26 of the ACHR and the Protocol.

Remarkably, the Court also established procedural obligations to ensure human rights in the context of environmental protection. These are access to information, public

[625] Advisory Opinion OC-23/17, ibid., paras. 127–210.
[626] Pulp Mills on the River Uruguay, (Argentina/Uruguay), ibid.
[627] Nuclear Tests (Australia/France), Judgment of 20 December 1974, I.C.J. Reports 1974, p. 253.
[628] Legality of the Threat or Use of Nuclear Weapons, ibid., p. 226.

participation, and access to justice in environmental matters,[629] drawing inspiration from the Aarhus Convention and the Rio Declaration. Although the initiative to prepare a binding treaty on Principle 10 in the region was at the negotiation stage at the time of the adoption of *Advisory Opinion OC-23/17*, it is remarkable that the IACtHR had already integrated its core values into the Inter-American human rights framework before the adoption of the treaty, and well before its entry into force in 2021. In addition, the IACtHR significantly built on the ECtHR's jurisprudence referencing the Aarhus Convention in matters involving procedural environmental rights, such as the aforementioned *Guerra and Others v. Italy, Taşkin and Others v. Turkey, Roche v. the United Kingdom,* and *Di Sarno and Others v. Italy* regarding access to information; *Grimkovskaya v. Ukraine* or *Dubetska and Others v. Ukraine* in connection with participation in the decision-making, and the mentioned *Taşkin* judgment in the context of access to justice in environmental matters.[630]

The recognition of the interrelationship of human rights and the environment, as well as the Court's comprehensive interpretation of the right to a healthy environment – embracing both its collective and individual dimensions and defining its inherent substantive and procedural aspects – in *Advisory Opinion OC-23/17*, marks a historic milestone in the development of human rights law. It was the first time a human rights court addressed the relationship between environmental protection and human rights in a systematic way, building on the several decades-long tendencies in universal and regional human rights adjudication. In addition to systematising States' human rights obligations in relation to environmental protection, the *Advisory Opinion* went beyond the previous interpretation of Article 11 of the Protocol by pronouncing its justiciability under Article 26 of the ACHR. Referring to the *Lagos del Campo* judgment mentioned above, the Court extended the protection to the right to a healthy environment, as it is also included among the economic, social and cultural rights that are protected under Article 26.[631] This implies that after the adoption of the *Advisory Opinion*, Article 26 could be invoked in cases concerning the degradation of the environment, without alleging the violation of the right to life or the right to personal

[629] Advisory Opinion OC-23/17, ibid., paras 211–212.
[630] Advisory Opinion OC-23/17, ibid., para. 215, 219, and 235.
[631] Advisory Opinion OC-23/17, ibid., para. 57.

integrity.[632] Therefore, the Court did not pronounce the direct justiciability of Article 11 of the Protocol but the justiciability of the right to a healthy environment as a right pertaining to economic, social and cultural rights and thus protected under Article 26.

This approach received criticism in two separate opinions. Judge Eduardo Vio Grossi disagreed with establishing the justiciability of the right to a healthy environment under Article 26, and pointed out that Article 26 did not recognise economic, social and cultural rights. Instead, according to the Judge, Article 26 established States' obligation to adopt measures to progressively ensure the full realisation of the rights implicit in the standards of the Charter of the OAS, which, however, does not recognise environmental rights. Furthermore, Judge Vio Grossi highlighted that this right was justiciable at the domestic level if it was established in the domestic laws of States Parties, otherwise, there was no consensus about its justiciability at the international level, and thus, it was contrary to the principle that "no State can be taken before an international court without its consent".[633]

Furthermore, Judge Humberto Antonio Sierra Porto pointed out that the request for the advisory opinion did not address the justiciability of the right to a healthy environment under Article 26. In fact, the questions raised concerned the interpretation of state obligations regarding the right to life (Article 4) and to personal integrity (Article 5) in environmental matters. According to the Judge, establishing the justiciability of the right to a healthy environment or any other economic, social and cultural right exceeded the competence of the Court.[634] Such arguments were also presented by both Judges in separate opinions of the *Lagos del Campo* case, which established the precedent of the justiciability of the rights enshrined in the Protocol of San Salvador. Indeed, once the Court pronounced the justiciability of economic, social and cultural rights under Article 26 in *Lagos del Campo*, it would be difficult to justify why this approach could not be extended to the right to a healthy environment. As Judge Sierra Porto highlighted in the partially dissenting opinion regarding *Lagos del Campo*, the extension of the scope of Article 26 was purely based on the evolutive interpretation method, which is only one method of interpretation among the many others that exist

[632] Pane, G. (2024) 'Litigating the Climate between National and International Regimes: Judicial Complementarity?', *AEL Working Paper, European Society of International Law (ESIL) Paper*, 2024/23, p. 11.
[633] Advisory Opinion OC-23/17, ibid., Concurring opinion of Judge Eduardo Vio Grossi, para. 4.
[634] Advisory Opinion OC-23/17, ibid., Concurring opinion of Judge Humberto Antonio Sierra Porto, para. 8.

in international law, including literal interpretation, systematic interpretation, and teleological interpretation.[635]

However, it could also be argued that the IACtHR does not merely interpret the ACHR, but it plays a crucial role in advancing transformative constitutionalism in the region,[636] aiming to promote deep social change through legal interpretation, which is particularly relevant for Latin America, a region that suffers from violence, exclusion, and weak institutions.[637] Hence, the Court tends to emphasise the interdependence between civil and political rights and economic, social and cultural rights, which is – as mentioned above – embraced by the Protocol of San Salvador. Thus, it could be argued that this context justifies the IACtHR's approach to establishing the justiciability of the rights enshrined in the Protocol through Article 26 of the ACHR, even in the absence of an explicit provision on it.

Notwithstanding the fact that advisory opinions are non-binding, the relevance of *Advisory Opinion OC-23/17* is immeasurable in the field of human rights and environmental protection. Its impact surpasses the usual function of an advisory opinion and extends far beyond the scope of the request that arose from Colombia's concerns regarding the construction of new infrastructure projects in the Wider Caribbean Region. For recognising the right to a healthy environment as an autonomous right and establishing States' core substantive and procedural obligations in the matter, the *Advisory Opinion* has been used as a point of reference for other human rights jurisdictions, including the ECtHR[638] and the UN HRC.[639] At the same time, it set a precedent in the Inter-American human rights jurisprudence regarding the justiciability of environmental rights under Article 26 of the ACHR, a matter that the Court was later called to address in a contentious case shortly after the adoption of the *Advisory Opinion*.

On 6 February 2020, the IACtHR handed down a landmark judgment in the case of the *Indigenous Communities of the Lhaka Honhat (Our Land) Association v.*

[635] Case of Lagos del Campo v. Peru, ibid., Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, paras. 21–25.
[636] Mardikian, L. (2023) 'The Right to a Healthy Environment before the Inter-American Court of Human Rights', *International & Comparative Law Quarterly*, pp. 950–951.
[637] von Bogdandy, A. and Urueña, R. (2020) 'International Transformative Constitutionalism in Latin America', *American Journal of International Law*, 114(3), p. 405.
[638] See, for instance: Verein KlimaSeniorinnen and Others v. Switzerland, ibid., § 225.
[639] See Daniel Billy et al. v. Australia, ibid., para. 3.4.

Argentina. The case was initiated by an association of communities belonging to various indigenous groups within the province of Salta in Argentina, near the border of Chile and Bolivia. The complaint concerned illegal logging activities on the ancestral lands of indigenous communities, whose righteous property claims over the lands had not been recognised. The illegal activities resulted in a deforestation and loss of biodiversity, strongly affecting indigenous communities whose traditional way of life is based on hunting, gathering, and fishing.[640]

The claim was presented before the IACtHR in 2019, after the Commission found the State's non-compliance with its earlier report adopted in 2012, declaring the violation of the rights of the communities and ordering the State to provide reparations.[641] The Court's judgment focused on three major aspects: the right to indigenous communal property; the rights to movement and residence, right to a healthy environment, adequate food, water and to take part in cultural life; and rights to judicial guarantees and protection.[642] Given the complexity of the judgment, this section will focus on one specific aspect of it, namely, the violation of the rights guaranteed in Article 26 of the ACHR regarding the right to a healthy environment. Notably, the judgment marked the first time the IACtHR analysed the right to a healthy environment in a contentious case.

[640] Marciante, M. (2022) 'The Right to a Healthy Environment under the ACHR: An Unprecedent Decision of the Inter-American Court of Human Rights', *Diritto pubblico comparato ed europeo*, 43(2), pp. 2994–2995.

[641] The environmental aspect of the case was not accentuated in the Commission's report, given that it was adopted in 2012, a few years before the IACtHR established the justiciability of the right to a healthy environment under Article 26 of the ACHR in Advisory Opinion OC-23/17. See: Report no. 2/12, Case 12.094, Indigenous Communities of the Lhaka Honhat (Our Land) Association, Merits, Argentina, 26 January 2012, IACHR.

[642] In addition to pronouncing a violation of Articles 21 (right to property), 23(1) (right to participate in government), 26 (progressive development), and 8(1) (right to a fair trial), the Court established various forms of reparations, including the obligation to delimit, demarcate and grant a title of ownership over the territory for the 132 indigenous communities; the obligation to refrain from implementing any actions negatively affecting the indigenous communities; the removal of the criollo population, along with the dismantling of fences and the removal of their livestock from the indigenous territory; and the implementation of actions to provide permanent access to drinking water. See: Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, Judgment of 6 February 2020 (Merits, Reparations and Costs), IACtHR, IX. Operative Paragraphs. See also: Carrasco, M. (2024) 'Case of Lhaka Honhat vs. Argentine State: Four Years After the Inter-American Court's Ruling', *Debates Indígenas* [Online]. Available at: https://debatesindigenas.org/en/2024/08/01/case-of-lhaka-honhat-vs-argentine-state-four-years-after-the-inter-american-courts-ruling/ (Accessed: 6 February 2025).

Allegations of the violation of the right to a healthy environment first arose under Article 22 of the ACHR (the right to freedom of movement and residence). The applicants argued that the installation of fencing, the introduction of cattle, and the illegal logging by third parties (non-indigenous settlers) degraded the environment, destroyed the herbaceous and arboreal vegetation, and ruined the irrigation and regeneration capacity of the land. Remarkably, the Court noted that Article 22 is not applicable in the case but accepted the arguments to be considered under Article 21 (right to property) and in relation to the rights contained in Article 26.

In addition to the right to a healthy environment, the Court also addressed the right to adequate food, water, and participation in cultural life under Article 26, significantly building on the international *corpus juris*, such as the UDHR, the ICCPR, the ICESCR and other UN human rights treaties, such as the CEDAW and the CRC; the work of UN human rights treaty bodies – particularly General Comments No. 12 (the right to food), 15 (the right to water), and 21 (the right of everyone to take part in cultural life); ILO Convention, the UNDRIP, and its own earlier jurisprudence, particularly *Advisory Opinion OC-23/17*.[643] Interestingly, the Court examined the right to water, even if the representatives of the indigenous communities had not alleged its violation. The Court justified this approach by invoking the *iura novit curia* principle which empowers it to examine the potential violations of provisions not explicitly raised by the parties.[644] This ensures that the Court can consider relevant legal aspects even when the parties may not have had the opportunity to articulate their position regarding the supporting facts. This practice is extensively applied in the Inter-American system for various reasons,[645] primarily because the Inter-American human rights doctrine aims to promote compliance with the full range of human rights through the case system, meaning that there is a strong emphasis on the interrelation between the rights enshrined in the ACHR and the Protocol, as well as rights pertaining to the international *corpus iuris* often recalled in the judgments.

Regarding the right to a healthy environment, the Court noted that States did not only have the obligation to respect it, but also the obligation to adopt positive measures,

[643] Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, ibid., §§ 202–254.
[644] Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, ibid., § 200.
[645] Shelton, 2013, ibid., pp. 199–202.

also including the prevention of violation.[646] This obligation also extends to third parties or non-State actors, as illustrated in *Lhaka Honhat*, given that the environmentally harmful activities had been carried out by private parties, the so-called "criollos", non-indigenous farmers settled on the indigenous lands in the early twentieth century. To determine the attributability of the environmental harm to the State, the Court assessed whether the State had been aware of the activities performed by the third parties and concluded that the State had taken certain actions, however ineffective. This established the State's responsibility for the harm occurred, and pronounced the violation of the right to take part in cultural life related to cultural identity, a healthy environment, adequate food and water, established in Article 26 of the ACHR, in relation to Article 1(1), establishing the obligation to respect rights.[647]

This finding represents the most controversial aspect of the judgment, as it was decided by a three-to-three vote, with the President of the Court casting the deciding vote.[648] Judges Eduardo Vio Grossi, Humberto Antonio Sierra Porto and Ricardo Pérez Manrique contested the justiciability of environmental rights under Article 26 and expressed their concerns in partially dissenting opinions.[649] Judge Vio Grossi argued that the Convention does not explicitly enshrine such a right and cautioned against the Court's expansive interpretation, emphasising adherence to the original text and the established interpretation criteria under the VCLT.[650] Judge Sierra Porto reiterated his position regarding the extensive interpretation of Article 26 in *Lagos del Campo* and raised concerns about legal certainty and the limits of such interpretation. According to the Judge, these concerns are illustrated in the Court's application of the *iura novit curia* principle regarding the right to water, as this right is not enshrined in the Charter of the OAS or in the Protocol of San Salvador. Instead, the Court deduced its existence from the international *corpus iuris* consisting of declarations and other soft law documents, which may not justify the extension of the Court's jurisdiction to recognise

[646] Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, ibid., § 207.
[647] Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, ibid., § 370(3).
[648] The Court was composed of six judges, as Judge Eugenio Raúl Zaffroni, an Argentine national, did not take part in the procedure according to Article 19 of the Rules of Procedure of the Court.
[649] For an analysis regarding the dissenting opinions, see: Lima, L. C. (2020) 'The Protection of the Environment before the Inter-American Court of Human Rights: Recent Developments', *Rivista Giuridica Ambiente*, 2020/3, pp. 516–518.
[650] Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, ibid., Partially dissenting opinion of Eduoardo Vio Grossi, para. 9.

new rights.[651] Furthermore, Judge Pérez Manrique proposed an alternative solution for the justiciability of environmental rights based on the "thesis of simultaneity". Namely, the Judge suggested environmental rights to be addressed under Article 21 (right to property) instead of Article 26, which, according to him, would better embrace the indissoluble relationship between the land and the enjoyment of environmental rights.[652]

The dissenting opinions of the *Lhaka Honhat* judgment highlight that the justiciability of the right to a healthy environment is a subject of debate among the Judges stemming from interpretative dilemmas, primarily between evolutive interpretation[653] and the traditional interpretative methods established in the VCLT. The strongest criticism opposing the justiciability of environmental rights – and economic, social and cultural rights enshrined in the Protocol – is articulated by Judges Vio Grossi and Sierra Porto, who argue that the Court's broad interpretation and flexible application of the *iura novit curia* principle may undermine legal certainty and the principle of state consent. On the other hand, arguments in favour – as expressed by Judge Pazmiño Freire[654] – emphasise the interdependence and indivisibility of civil and political rights with economic, social and cultural rights that should be interpreted in light of the international *corpus juris*. Although the justiciability of environmental rights under Article 26 appears to have been settled, with the majority of Judges affirming it in *Advisory Opinion OC-23/17* and *Lhaka Honhat*, a thought-provoking alternative has been proposed by Judge Pérez Manrique – namely, addressing environmental concerns through the lens of the right to property. This approach could arguably provide a broader scope and content to States' obligations, while also grounding its jurisdiction on an indisputably justiciable right.

The Inter-American jurisprudence reached a further milestone on 22 March 2024, with the adoption of the judgment in the case of the *La Oroya Population v. Peru*, the first case involving the violation of the right to a healthy environment in a non-indigenous

[651] Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, ibid., Partially dissenting opinion of Judge Humberto Antonio Sierra Porto, paras. 8–10.
[652] Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, ibid., Partially dissenting opinion of Ricardo C. Pérez Manrique, paras. 13–14.
[653] See: De Pauw, 2015, ibid., p. 3.
[654] Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina, ibid., Concurring opinion of Judge Patricio Pazmiño Freire, paras. 8–9.

context.[655] The claim revolved around the long-standing environmental degradation and health crises in the La Oroya district in Peru, one of the world's most polluted areas due to the operation of the La Oroya Metallurgical Complex dedicated to smelting and refining of metals with high levels of lead, copper, zinc and arsenic. The company's activity significantly contributed to the severe contamination of air, water and soil that caused serious alterations in the victims' quality of life, particularly for vulnerable groups such as children, women, and the elderly.

The complexity of the judgment is shown by the declaration of the violation of several rights, including the right to a healthy environment and health under Article 26, the right to life (Article 4), the right to life with dignity and the right to personal integrity (Articles 4 and 5), the rights of the child (Article 19), the rights to access to information and to participate in government (Articles 13 and 23), and the right to judicial protection (Article 25).[656] Thus, given the focus of the present chapter, the following paragraphs will be dedicated to the judgment's implications regarding the right to a healthy environment.

Building on *Advisory Opinion OC-23/17* acknowledging the procedural and the substantive aspects of the right to a healthy environment, the Court took an additional step and defined the elements of the substantive dimension of environmental protection, including air, water, food, the ecosystem, and the climate, among others. In this sense, the Court referred to *Lhaka Honhat*, which pronounced that the environment should be protected even in the absence of certainty or evidence of the risk to individuals, which, however, did not prevent the violation of other human rights as a consequence of environmental damage. Regarding air pollution, the Court pronounced that the right to breathe air whose pollution levels do not constitute a significant risk to the enjoyment of their human rights, regarding which the States are obliged to establish laws, regulations and policies that regulate air quality standards that do not constitute health risks; to monitor air quality and inform the population of possible health risks; and to carry out action plans to control air quality that includes

[655] Viveros-Uehara, T. (2024) 'La Oroya and Inter-American Innovations on the Right to a Healthy Environment', *Verfassungsblog* [Online]. Available at: https://verfassungsblog.de/la-oroya-and-inter-american-innovations-on-the-right-to-a-healthy-environment/ (Accessed: 6 February 2025).

[656] La Oroya Population v. Peru, ibid., X. Operative Paragraphs.

the identification of the main sources of air pollution, and implement measures to enforce the standards of the quality of air.[657]

Remarkably, this was the first major pollution case comparable to the ECtHR's vast case law on industrial pollution, including cases referenced in the judgment, such as *Fadeyeva v. Russia*, *Okyay and Others v. Turkey*, or *Cordella and Others v. Italy.* As elaborated above, in the absence of any explicit environmental right in the ECHR, the ECtHR developed a "sub-right of an environmental character" primarily under the right to respect for private and family life, and more recently, under the right to life. As illustrated by the cases mentioned above, the ECtHR has a well-established practice of considering industrial pollution claims under Article 8[658] until the adoption of *Cannavacciulo and Others v. Italy* on 30 January 2025, in which the ECtHR, when examining the relevant international law and practice, referred to the *La Oroya* judgment of the IACtHR,[659] and pronounced the violation of Article 2 for a comparably widespread and large-scale pollution phenomenon in the "Terra dei Fuochi" area of South Italy.[660] While the ECtHR rarely cites the IACtHR's judgments,[661] referencing *La Oroya* certainly underscores its universal relevance in adjudicating environmental cases under human rights law.

In addition to the right to clean air, the IACtHR also examined the right to water in connection with the right to a healthy environment. The Court distinguished between the right to water as a substantive facet of the right to a healthy environment and an autonomous right to water. Regarding the first facet, the Court noted that it protects bodies of water as elements of the environment that have value in themselves as a universal interest, as well as for other living organisms, including humans. The second facet, the right to water as an autonomous right recognises the crucial role of water for humans and their survival, and thus protects its access, use, and exploitation by human

[657] La Oroya Population v. Peru, ibid., §§ 118–120.
[658] Peters, B. (2022) 'The European Court of Human Rights and the Environment', in: Sobenes, E., Mead, S., and Samson, B. (eds) *The Environment Through the Lens of International Courts and Tribunals*. The Hague: T.M.C. Asser Press, p. 189. See also: Kotiuk, I., Weiss, A., and Taddei, U. (2022) 'Does the European Convention on Human Rights guarantee a human right to clean and healthy air? Litigating at the nexus between human rights and the environment - the practitioners' perspective', in: Kobylarz, N. and Grant, E. (2022) *Human Rights and the Planet.* Cheltenham: Edward Elgar Publishing, p. 122.
[659] Cannavacciuolo and Others v. Italy, ibid., § 185.
[660] Cannavacciuolo and Others v. Italy, ibid., § 467.
[661] An exception could be Verein KlimaSeniorinnen and Others v. Switzerland, ibid., §§ 225–227.

beings.[662] Most importantly, the Court noted that the right to a healthy environment includes both the right to clean air and the right to water, which bears the obligation of States to protect against violation thereof by third parties based on the principle of prevention and precaution. The Court embraced the UN Guiding Principles on Business and Human Rights, the major soft law document establishing recommendations for private parties (businesses) regarding human rights, and pronounced that companies themselves also have responsibilities to respect human rights and act with due diligence, regardless of their size, sector, operational context, ownership, or structure.[663]

Last, the judgment also demonstrates that the IACtHR aligns with recent developments regarding environmental protection in human rights by referring to the recognition of the right to a clean, healthy and sustainable environment by the UN General Assembly in Resolution 76/300,[664] and proposing the *jus cogens* nature of the prohibition of illegal and arbitrary conduct that causes serious, extensive, long-lasting and irreversible damage to the environment.[665] The Court therefore considers such obligations at the same level as other *jus cogens* norms in public international law, such as the prohibition of the use of force, genocide, slavery, apartheid, crimes against humanity, and forced disappearances, among others. The impact of defining *jus cogens* norms regarding environmental protection constitutes a grundbreaking development not only in human rights law and international environmental law but in public international law in general, as its pronouncement in a binding judgment of a human rights court indisputably strengthens the position of States' international obligations regarding the protection of the environment.[666] According to Judges Pérez Manrique, Ferrer Mac-Gregor Poisot and Mudrovitsch, the *jus cogens* nature of these environmental norms could be deduced from the definition of *jus cogens* norms itself, which, based on the International Law Commission's concept, are norms that

[662] La Oroya Population v. Peru, ibid., § 124.
[663] La Oroya Population v. Peru, ibid., §§ 109–111.
[664] UNGA, A/RES/76/300, ibid.
[665] La Oroya Population v. Peru, ibid., § 129.
[666] Environmental jus cogens norms had earlier been proposed by scholars, however, it has not been pronounced by any court until the *La Oroya* judgment. See: Kotzé, L. J. (2016) 'Constitutional Conversations in the Anthropocene: In Search of Environmental Jus Cogens Norms', *Netherlands Yearbook of International Law 2015*, vol. 46, p. 241.

> ‘reflect and protect fundamental values of the international community. They are universally applicable and are hierarchically superior to other rules of international law.’[667]

Furthermore, they are

> ‘accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character […]’[668]

The Judges pointed out in their concurring opinion that the obligation to protect the environment as a form of *jus cogens* crystallises or reflects the fundamental value of the international community of recognising the environment as the support of States and a *sine qua non* for their existence. The Judges referred to a vast number of international legal sources recognising state obligations for environmental protection, including the abovementioned UN General Assembly resolution, which, as pointed out in the concurring opinion, did not create a new right, but rather declared a pre-existing reality, which had previously been developed in multiple international instruments.[669] However, it has to be highlighted that the right to a healthy environment is, at the moment, not recognised in binding UN human rights treaties, and even the cited Resolution is a soft law document, which may not establish binding norms for the States. Nonetheless, the Judges argued that the UN General Assembly is the most representative body of the international community and therefore its acts are suitable to be considered for *opinio iure sive necessitatis*.

The arguments for recognising the *jus cogens* nature of States’ obligation to protect the environment could be compared with the reasons raised in favour of recognising the justiciability of environmental rights, as both argumentations strongly build on the evolutive interpretation and the principle of systemic integration.[670] The IACtHR’s progressive approach significantly advances the doctrine of environmental protection in human rights law and has a growing impact on the jurisprudence of the ECtHR, however, in the author’s opinion, certain affirmations extend beyond the scope of

[667] ILC, ‘Peremptory norms of general international law (jus cogens)’, A/CN.4/L.967, 11 May 2022, Conclusion 2 [3].
[668] Ibid., Conclusion 3 [2].
[669] La Oroya Population v. Peru, ibid., Concurring opinions of Judges Ricardo C. Pérez Manrique, Eduardo Ferrer Mac-Gregor Poisot and Rodrigo Mudrovitsch, paras. 76–88.
[670] Rachovitsa, A. (2017) ‘The Principle of Systemic Integration in Human Rights Law’, *International and Comparative Law Quarterly*, 66(3), p. 557.

competence of the Inter-American system, and require support primarily from the ICJ, particularly in questions revolving around the *jus cogens* nature of certain norms, as it may bring significant implications for public international law as well.

Furthermore, the adoption of the Paris Agreement also had an impact on the jurisprudence of the IACtHR. As pointed out above, the Inter-American Commission on Human Rights was among the first human rights forums to encounter climate change claims, however, the "Inuit petition" was inadmissible based on the standards of the time. Since then, both the IACHR and the IACtHR addressed the impact of climate change on the enjoyment of human rights. In the aforementioned *Kawas Fernández* case, the Court acknowledged that the adverse effects of climate change impair the enjoyment of human rights.[671] Although the claim did not involve questions regarding climate change, the fact that the Court mentioned it along with environmental degradation as a factor negatively affecting the realisation of human rights demonstrates the Court's complex approach. In addition, *Advisory Opinion OC-23/17* reiterated this position and reflected on the developments in the United Nations.[672] However, the *Advisory Opinion* was adopted before the recognition of the right to a clean, healthy and sustainable environment in the UN and the first landmark climate change cases of human rights adjudicatory bodies, such as *Daniel Billy* and *Verein KlimaSeniorinnen*.

Furthermore, in 2021, the Commission adopted *Resolution 3/2021* titled "Climate Emergency: Scope of Inter-American Human Rights Obligations", which confirmed that the right to a healthy, balanced and pollution-free environment is also applicable in the context of climate change, and, based on *Advisory Opinion OC-23/17*, is justiciable before the Court. The *Resolution* addresses the climate emergency in nine titles, namely: (I) centrality of the rights approach in the construction of climate change instruments, policies, plans, programs, and norms on climate change, (II) human rights in the context of environmental deterioration and the climate emergency in the Americas, (III) rights of individuals and groups in situations of vulnerability or historical discrimination in environmental and climate matters, (IV) rights of indigenous peoples, tribal communities, Afro-descendants and peasants or those working in rural areas in the face of climate change, (IV) rights of land and nature

[671] Kawas-Fernández v. Honduras, ibid., § 148.
[672] Advisory Opinion OC-23/17, ibid., para. 54.

defenders, (V) rights of access to information, public participation and access to justice in environmental and climate matters, (VI) extraterritorial obligations of States in environmental and climate matters, (VII) responsibility of companies to respect human rights and remedy possible violations thereof in the environmental and climate context, and (IX) fiscal, economic and social policies for a just transition.[673] The influence of the Escazú Agreement – which entered into force in the same year as the *Resolution* was adopted – is particularly tangible, as the Commission dedicated an entire section to environmental and climate defenders. Additionally, it could also be concluded that the Commission endorsed the obligations deriving from the Paris Agreement and their interrelationship with human rights. The significance of this document is reflected in the ECtHR's jurisprudence as well with the *Verein KlimaSeniorinnen* judgment noting that the Resolution had recognised climate change as a human rights emergency.[674]

So far, the IACtHR has not encountered a contentious case concerning climate change comparable to *Verein KlimaSeniorinnen* in the European human rights jurisprudence. Nonetheless, the Court tends to address climate change as part of the debate regarding environmental degradation in recent contentious cases, such as *Lhaka Honhat* and *La Oroya*. Notably, in the latter judgment the Court explicitly considered the international climate change framework, particularly the Paris Agreement, to assess the violation of children's rights under Article 19 of the ACHR, and referred to General Comment No. 26 of the UN CRC highlighting the relevance of the concept of intergenerational equity and the consideration of the needs of future generations.[675] The issue of climate change was raised for consideration in the given case by the Court itself, once again demonstrating its extensive approach based on the *iura novit curia* principle.

While the Court has yet to hear its first contentious climate change case, it adopted *Advisory Opinion OC-32/25* titled "The Climate Emergency and Human Rights" in May 2025.[676] The *Advisory Opinion*, requested on 9 January 2023 by Colombia and

[673] Resolution, 3/2021, Climate Emergency: Scope of Inter-American Human Rights Obligations, 31 December 2021, IACHR.
[674] Verein KlimaSeniorinnen and Others v. Switzerland, ibid., § 228.
[675] La Oroya v. Peru, §§ 139–143.
[676] The Climate Emergency and Human Rights (Interpretation and scope of Articles 1(1), 2, 4(1), 5(1), 8, 11(2), 13, 17(1), 19, 21, 22, 23, 25 and 26 of the American Convention on Human Rights; 1, 2, 3, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador," and I, II, IV, V, VI, VII, VIII, XI, XII, XIII, XIV, XVI, XVIII, XX, XXIII, and XXVII, of the American Declaration of the Rights and Duties of Man). Advisory Opinion OC-32/25 of 29 May 2025, IACtHR.

Chile, sought to clarify the scope of state obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and human survival on the planet.[677]

The questions submitted to the Court were centred around six key issues, namely (I) state obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency, particularly in light of the Paris Agreement, (II) state obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights, considering the rights guaranteed in the Escazú Agreement; (III) the differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency, (IV) state obligations arising from consultation procedures and judicial proceedings owing to the climate emergency based on Articles 8 and 25 of the ACHR, (V) Convention-based obligations of prevention and the protection of territorial and environmental defenders, women, indigenous peoples, and Afro-descendant communities in the context of the climate emergency, also in light of Article 9 of the Escazú Agreement, and (VI) the shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency, considering that the climate crisis has a greater impact on the Caribbean region, one of the impacts being migration and forced displacement.[678]

The request has garnered significant attention, as it is one of the three international advisory proceedings concerning climate change, along with requests for advisory opinions from the ITLOS and the ICJ. The ITLOS rendered its *Advisory Opinion* on 21 May 2024, the first advisory opinion on States' obligations regarding climate change issued by an international tribunal.[679] In the *Advisory Opinion*, initiated by the

[677] Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights, ibid. For rapid analyses, see: Auz, J. (2025) 'The Inter-American Court of Human Rights' Advisory Opinion on the Climate Emergency: A Global South Contribution to Climate Governance', *EJIL:Talk!* [Online]. Available at: https://www.ejiltalk.org/the-inter-american-court-of-human-rights-advisory-opinion-on-the-climate-emergency-a-global-south-contribution-to-climate-governance/ (Accessed: 24 September 2025); Nolan, A. (2025) 'Placing future generations at the heart of Inter-American human rights law?', EJIL:Talk! [Online]. Available at: https://www.ejiltalk.org/placing-future-generations-at-the-heart-of-inter-american-human-rights-law/ (Accessed: 24 September 2025).

[678] See: ibid.

[679] Silverman-Roati, K. and Bonnemann, M., 2024, ibid.

Commission of Small Island States on Climate Change and International Law (COSIS), the ITLOS addressed the interpretation of the UNCLOS in the context of climate change, and concluded that

> 'States Parties to the Convention have specific obligations under Article 194 of UNCLOS to take all necessary measures to prevent, reduce, and control marine pollution from anthropogenic GHG emissions and to endeavor to harmonize their policies in this connection.'[680]

Moreover, the request to the IACtHR also addresses questions of international cooperation and obligations regarding the most affected areas in the region under the theme of shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency.[681]

While the extensive analysis of the IACtHR's recent advisory opinion would exceed the limits of the present study, one finding should certainly be mentioned here, namely, the Court's approach to environmental *jus cogens* norms. Building on its approach in the *La Oroya v. Peru* judgment, the Court now explicitly pronounced the *jus cogens* nature of the obligation not to cause irreversible damage to the climate and the environment. This pronouncement is perhaps the most remarkable contribution of the *Advisory Opinion*, as there is no other international legal instrument in the current framework that expressly places environmental obligations among *jus cogens* norms. Therefore, the Court developed this conclusion from its own interpretation, based on general principles of law, such as the principle of effectiveness, which ensures that the rights and obligations recognised are interpreted and applied effectively in order to achieve their purpose. The principle of effectiveness, in the present case, is based on the clear and demonstrable dependence between the protection of human rights and the prohibition of anthropogenic conduct with an irreversible impact on the vital equilibrium of the planetary ecosystems. Furthermore, the Court noted that the fact that there was no conflict with any current law forms the legal grounds for the recognition of the peremptory prohibition to generate irreversible damage to the environment, and thus establishes the *jus cogens* nature of the norm.[682]

[680] Case no. 31, ibid., para. 243.
[681] Request for an Advisory Opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights, ibid.
[682] Advisory Opinion OC-32/25, ibid., paras. 287–294.

Although both advisory opinions on climate change – that of the ICJ and the IACtHR – were adopted relatively recently, it can already be stated that they will significantly contribute to understanding States' human rights obligations in light of the climate crisis. Given that climate change litigation is expected to remain on the agenda of human rights courts, the impact of these instruments could extend far beyond the limits of the ICJ's jurisprudence and the Inter-American framework and could serve as a reference point for other jurisdictions, particularly the ECtHR and the ACtHPR.

III.4. Integration of International Standards in Human Rights Jurisprudence: The African Court of Human and Peoples' Rights

III.4.1. Systemic Integration in the Jurisprudence of the African Court of Human and Peoples' Rights

The leading human rights treaty in Africa, the African Charter for Human and Peoples' Rights (also known as the Banjul Charter), was adopted in 1981 and entered into force in 1986.[683] The Charter established the African Commission on Human and Peoples' Rights (ACHPR), with the mandate to promote human and peoples' rights and ensure their protection in Africa. The Commission may also interpret all the provisions of the Charter upon the request of a State Party, an institution of the Organisation of African Unity (OAU), or an African organisation recognised by the Organisation.[684] The Charter did not envisage the creation of a court; instead, it was proposed in a protocol to complement the protective mandate of the Commission. The Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (ACtHPR) was adopted in 1998 and entered into force in 2004.[685]

The Protocol established the contentious and advisory jurisdiction of the Court and implicitly codified systemic integration as an interpretation method for the Charter. Regarding the Court's contentious jurisdiction, Article 3(1) of the Protocol provides that

> '1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the State concerned. […].'

Furthermore, in connection with the Court's advisory jurisdiction, Article 4(1) of the Protocol establishes that

> '1. At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments,

[683] African Charter on Human and Peoples' Rights (Banjul Charter), Organization of African Unity, Nairobi, 27 June 1981, UNTS vol. 1520, p. 217.
[684] Banjul Charter, Articles 30 and 45. See also: Viljoen, F. (2015) *International Human Rights Law in Africa. 2nd edition.* Oxford: Oxford University Press, pp. 151–212.
[685] Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 10 June 1998.

> provided that the subject matter of the opinion is not related to a matter being examined by the Commission. […].'

In addition, Article 7 of the Protocol, under the title "Sources of Law", stipulates that

> 'The Court shall apply the provisions of the Charter and any other relevant human rights instruments ratified by the States concerned.'

Such explicit competence to interpret other treaties is exceptional among international human rights courts,[686] as neither the European nor the Inter-American human rights instruments establish the courts' jurisdiction over treaties other than the regional human rights treaties. The ACtHPR's competence can be compared with that of the IACtHR, which developed the interpretation of its competence over the Bogotá Declaration and the Protocol of San Salvador through treaty interpretation. Nonetheless, based on the *Advisory Opinion OC-1/82*, as elaborated in the previous chapter, it can be concluded that the IACtHR may also interpret treaties in which American States are parties. However, this competence does not extend to the interpretation of such treaties in contentious cases; thus, the IACtHR may take into consideration the relevant international legal framework, also including binding and non-binding sources, but it has never ruled on the violation or non-violation of treaties outside the scope of the Inter-American human rights framework. In contrast, the Protocol to the Banjul Charter theoretically grants the African human rights court the competence to rule on other human rights instruments, provided that they are ratified by the State concerned.

However, the mentioned provisions of the Protocol do not touch upon the consideration of other sources, which cannot be directly interpreted but can be useful for interpreting the Charter or the other treaties applied. The case law of the ACtHPR may provide some orientation in this regard; however, given that the Court has been operating since 2006, its jurisprudence is relatively sparse compared to its European and Inter-American counterparts.

In the Court's first judgment on the merits, *The Tanganyika Law Society and Legal and Human Rights Centre v. the United Republic of Tanzania,* also known as *Mtikila and Others v. Tanzania*, the Court examined Tanzania's prohibition on independent candidates running for public office, finding a violation of Articles 10 (freedom of

[686] Rachovitsa, 2017, ibid., p. 578.

association), 13 (the right to participate freely in the government of one's country), 2 (prohibition of discrimination), and 3 (equality before the law) of the Charter.[687] Notably, the applicants also argued that the State violated the relevant provisions of other international human rights instruments, such as the UDHR and the ICCPR, as well as the rule of law as a principle of customary international law. The Court, although noting that it had jurisdiction over the alleged violations of these instruments under the mentioned Article 3(1) of the Protocol, concluded that they had been considered under the relevant provisions of the Charter, and thus did not deem it necessary to consider the application of those treaties.[688] Nevertheless, the Court relied on the jurisprudence of other human rights adjudicatory bodies when assessing the State's arguments regarding the restriction on the applicants' rights based on Articles 27(2)[689] and 29(4)[690] of the Charter. Namely, the Court referred to the ECtHR's jurisprudence on the interpretation of the limitations of rights with reference to "necessity in a democratic society", and drew a parallel with the IACtHR's approaches. Furthermore, the ACtHPR cited the UN HRC's General Comment No. 25 on the right to participate in public affairs (Article 25 of the ICCPR).[691]

The question of jurisdiction over other human rights treaties was addressed by Vice-President Fatsah Ouguergouz in his separate opinion to the judgment. The Judge argued that the Treaty establishing the East African Community should have been applied by the Court, as requested by the Respondent State, and pointed out that it fell under the scope of "other relevant human rights instruments ratified by the State concerned". Namely, according to the Judge, Article 3(1) of the Protocol implies the following criteria: (i) the instrument must be an international treaty; (ii) this international treaty must relate to "human rights"; and (iii) it must have been ratified by the State concerned. Furthermore, the Judge proposed that the Court draws a

[687] The Tanganyika Law Society and Legal and Human Rights Centre v. the United Republic of Tanzania, Reverend Christopher R. Mtikila v. the United Republic of Tanzania, Apps. nos. 009/2011 and 011/2011, Judgment of 14 June 2013 (Merits), ACtHPR, § 126.
[688] Mtikila and Others v. Tanzania, ibid., §§ 122–123. See also: Windridge, O. (2015) 'A Watershed Moment for African Human Rights: Mtikila & Others v Tanzania at the African Court of Human and Peoples' Rights', *African Human Rights Law Journal*, 15(2), pp. 313–314.
[689] Article 27(2) of the Charter reads as follows: 'The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.'
[690] Article 29(4) of the Charter reads as follows: 'The individual shall have the duty: […] to preserve and strengthen social and national solidarity, particularly when the latter is threatened.'
[691] CCPR, General Comment No. 25 (1996) on article 25 of the International Covenant on Civil and Political Rights, on the right to participate in public affiars, voting rights and the right of equal access to public service (12 July 1996) CCPR/C/21/Rev.1/Add.7, cited in Mtikila and Others v. Tanzania, ibid., §§ 106–107.

distinction between treaties which primarily deal with human rights and those which address other issues but contain provisions related to human rights as well. In this regard, Judge Ouguergouz concluded that the Court's jurisdiction extended to the interpretation and application of both the UDHR and the ICCPR.[692]

The ACtHPR's approach to interpreting other human rights treaties in the *Mtikila* case can be contrasted with *Abdoulaye Nikiema (Norbert Zongo) v. the Republic of Burkina Faso* and *Lohé Issa Konaté v. Burkina Faso*, both judgments adopted in 2014. The *Zongo* case concerned the State's failure to investigate the murder of a journalist and editor. The applicants alleged the violation of various international treaties, including the African Charter, the ICCPR, the UDHR, and the Revised Treaty of the Economic Community of West African States (ECOWAS), of which Article 66 explicitly provides the obligation to ensure respect for the rights of journalists.[693] Based on Article 3(1) of the Protocol, the Court confirmed its jurisdiction over the mentioned treaties, however, after finding a violation of the right to a fair trial, equality before the law, and freedom of expression enshrined in the Charter, it did not find it necessary to rule on the same allegation on the basis of the relevant provisions of the UDHR and the ICCPR. However, regarding freedom of expression, the Court took note of the specific obligation established in the ECOWAS Treaty and concluded that this provision and Article 9 of the Charter (freedom of expression) should be read jointly, given that the former provides a particular protection, while the latter provides a general one.[694] Therefore, the Court found a violation of Article 9 read together with Article 66 of the Revised ECOWAS Treaty.

In *Lohé Issa Konaté v. Burkina Faso*, the first case of the ACtHPR regarding the freedom of the press, the Court addressed the conviction of a journalist for publishing newspaper articles that alleged corruption by a state prosecutor. Similarly, the applicants alleged the violation of the relevant provisions on freedom of expression of the Charter, the ICCPR, and the Revised ECOWAS Treaty, and reached similar

[692] Mtikila and Others v. Tanzania, ibid., Separate opinion of Vice-President Fatsah Ouguergouz, paras. 13–16.
[693] Beneficiaries of Late Norbert Zongo, Abdoulaye Nikiema Alias Ablassé, Ernest Zongo and Blaise Ilboudo & The Burkinabè Human and Peoples' Rights Movement v. Burkina Faso, App. no. 013/2011, Judgment of 24 June 2014 (Merits), ACtHPR, §§ 7–11.
[694] Abdoulaye Nikiema (Norbert Zongo) v. the Republic of Burkina Faso, ibid., § 180.

conclusions as in the *Zongo* case.[695] Interestingly, the Court acknowledged the ECtHR's, the IACtHR's, and the UN HRC's approaches to the exhaustion of domestic remedies, but did not follow them when declaring the application admissible based on the argument that the procedure at the domestic level was unduly prolonged.[696]

The ECOWAS Treaty falls under the second category of treaties, according to the proposed classification of human rights treaties by Judge Ouguergouz, as it primarily focuses on economic cooperation among the (currently) 12 States Parties. Chapter XI of the Treaty establishes certain human rights guarantees for the objective of cooperation in the full development and utilisation of the human resources.[697] Nonetheless, the ACtHPR considered it a human rights treaty under its jurisdiction, which demonstrates the Court's broad interpretation and flexible approach to determining the scope of human rights treaties. Based on the mentioned examples, it can also be concluded that the Court, although it has jurisdiction over other human rights treaties, such as the ICCPR, does not tend to examine the alleged violation thereof, unless it provides specific guarantees, such as the ECOWAS Treaty.

One of the few exceptions could be the case of *Mohamed Abubakari v. the United Republic of Tanzania*, in which the Court declared the violation of both Article 7 of the African Charter and Article 14 of the ICCPR regarding the right to a fair trial for the State's failure to respect certain guarantees of access to court. The Court compared the scope of the two treaty provisions and concluded that the issue of the provision of free legal assistance was not explicitly addressed in Article 7 of the Charter, and thus noted that this provision shall be read together with Article 14 of the ICCPR.[698]

Furthermore, in *APDH v. the Republic of Côte d'Ivoire*, the applicant NGO alleged the violation of various human rights instruments regarding the composition, organisation, and functioning of the Ivorian Electoral Commission, referring to the Banjul Charter,

[695] Lohé Issa Konaté v. Burkina Faso, App. no. 004/2013, Judgment of 5 December 2014, ACtHPR, § 176.
[696] Lohé Issa Konaté v. Burkina Faso, ibid., § 106. See also: Duffy, M. J. (2015) 'Konate v. Burkina Faso: An Analysis of a Landmark Ruling on Criminal Defamation in Africa', *Journal of International Media and Entertainment Law*, 6(1), pp. 8–10.
[697] Revised Treaty of the Economic Community of West African States (ECOWAS), Cotonou, 24 July 1993, UNTS vol. 2373, p. 233.
[698] Mohamed Abubakari v. the United Republic of Tanzania, App. no. 007/2013, Judgment of 3 2015 (Merits), ACtHPR, §§ 137–145.

the African Charter on Democracy,[699] the ECOWAS Democracy Protocol,[700] and the ICCPR. The Court, while establishing its jurisdiction over the mentioned treaties, also concluded that these provisions did not provide any precise indications as to the characteristics of an independent and impartial electoral body. Interestingly, the Court referred to the Dictionary of International Public Law to ascertain the meaning of "independence", and also considered the standards of the ECtHR's jurisprudence on the right to free elections.[701]

These examples reveal that systemic integration is an important treaty interpretation method also for the ACtHPR. The Court has an exceptionally broad jurisdiction that extends beyond the scope of the regional human rights treaty (or treaties), and may pronounce the violation of other regional or universal treaties. In addition, the Court follows the European and the Inter-American jurisprudences, and builds on them to establish certain standards for the African human rights system. However, the mentioned examples show that the ACtHPR embraces a more reserved approach to considering a broad spectrum of sources – especially in contrast with the Inter-American court –, particularly to specialised UN human rights treaties and any other binding or non-binding instruments that reinforce an international trend in the field of human rights law.

III.4.2. Systemic Integration in the Environmental Jurisprudence of African Human Rights Bodies

III.4.2.1. The Normative Framework for the Protection of the Environment in Human Rights Law in Africa

The African Charter is the first international human rights treaty to protect the three generations of human rights, namely, civil and political rights, economic, social and cultural rights, as well as group rights in a single document.[702] The indivisibility of human rights is expressed in the Preamble, stating that

[699] African Charter on Democracy, Elections and Governance, 30 January 2007, Addis Ababa, African Union, No. 55377.
[700] Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacakeeping and Security, Dakar, Economic Community of West African States, December 2001.
[701] Actions pour la Protection des Droits de l'Homme (APDH) v. the Republic of Côte d'Ivoire, App. no. 001/2014, Judgment of 18 November 2016, ACtHPR, §§64–65 and §§ 114–119.
[702] Ssenyonjo, M. (2011) 'Analysing the Economic, Social and Cultural Rights Jurisprudence of the African Commission: 30 Years Since the Adoption of the African Charter', *Netherlands Quarterly of Human Rights*, 29(3), pp. 359–360.

> '[…] civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and […] the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.'[703]

Chapter I of the Charter (titled "Human and Peoples' Rights") does not differentiate between first, second, or third generation rights, and enshrines first generation rights in Articles 2–13, second generation rights in Articles 14–18, and third generation rights in Articles 19–24. The integration of all three categories of human rights under the same title also implies the justiciability of all rights contained therein.[704] Thus, in comparison with the Inter-American human rights system, where economic, social and cultural rights are enshrined in a separate document, the Protocol of San Salvador to the ACHR, and were rendered justiciable through the IACtHR's interpretation, these rights are undoubtedly justiciable as they are codified in the text of the human rights treaty.

Against this background, the African Charter is also the first international human rights treaty that explicitly recognises environmental rights. Namely, Article 24 of the Charter establishes that

> '[a]ll peoples shall have the right to a general satisfactory environment favourable to their development.'

This provision is complemented by Article 13(2), the right of equal access to the public service of one's country,[705] and Article 16(1), the right of every individual to enjoy the best attainable state of physical and mental health.[706] Furthermore, the phrasing of Article 24 also connects the right to a healthy environment to the right to development enshrined in Article 22, referring to economic, social and cultural development,[707]

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[703] Banjul Charter, ibid., Preamble, Recital 7.
[704] Viljoen, 2012, ibid., p. 214.
[705] Article 13 of the Banjul Charter provides that '1. Every citizen shall have the right to participate freely in the government of his country, either directly or through reely chose representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country. 3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.'
[706] Article 16 of the Banjul Charter provides that '1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.'
[707] Article 22 of the Banjul Charter provides that '1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.'

which reflects the preambular emphasis on the "particular attention to the right to development".[708] Therefore, the wording of Article 24 implies that development is an integral part of environmental rights in the sense that "favourable development" is conditional on "a general satisfactory environment".[709]

Notably, the right to a healthy environment is also enshrined in one of the protocols to the Banjul Charter, the Maputo Protocol on the rights of women, which was mentioned in this dissertation in the context of the ECtHR referring to it in its case law on gender-based violence. Regarding the protection of the environment, the Maputo Protocol is notable for explicitly recognising women's right to live in a healthy environment in Article XVIII. Under this provision, the Protocol also stipulates that

> 'States Parties shall take all appropriate measures to […] ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels; […] promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and facilitate women's access to, and participation in their control […].[710]

The Maputo Protocol is the only specialised international human rights treaty that explicitly recognises the right to a healthy environment,[711] also reflecting the vulnerability of women in the African continent, as one of the most vulnerable groups worldwide in the context of environmental problems.[712] In addition to the substantive aspect of the right to a healthy environment, certain procedural elements can also be drawn from this provision, such as participation in decision-making and access to information in matters of the environment and natural resources. This provision is certainly forward-looking, not only because it is the only international human rights

[708] See: Banjul Charter , ibid., Recital 7.
[709] Kotzé, L. J. and du Plessis, A. (2019) 'The African Charter on Human and Peoples' Rights and Environmental Rights Standards', in: Turner, S. J. et al. (eds.) *Environmental Rights. The Development of Standards.* Cambridge: Cambridge University Press, p. 100.
[710] Maputo Protocol, ibid., Article XVIII.
[711] As noted above, the UN CRC contains certain guarantees of the protection of the environment for children under Article 24 (the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health). Furthermore, the African Charter on the Rights and Welfare of the Child, adopted under the aegis of the African Union, provides the right to education directed to the development of respect for the environment and natural resources (Article 11). These provisions do not explicitly enshrine the right to a healthy environment, and are thus not justiciable before the respective adjudicatory body.
[712] Boshoff, E. (2020) 'Women's Environmental Human Rights in Africa with Reflections on Key Provisions of the Maputo Protocol', in: Addaney, M. and Jegede, A. O. (eds.) *Human Rights and the Environment under African Union Law.* Cham: Palgrave Macmillan, pp. 110–113.

treaty that explicitly recognises environmental rights for a vulnerable group, but also because it is the only binding provision so far in the African human rights system that reflects Principle 10 of the Rio Declaration. In fact, the Aarhus Convention and the Escazú Agreement do not have any comparable African counterparts that would enshrine participatory and procedural environmental rights.[713]

In addition to the recognition of the right to a healthy or satisfactory environment, the rights-based approach to the protection of certain elements of the environment is also reflected in Article 21(1), providing that

> '[a]ll peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.'

This provision reflects a rights-based approach to the protection of natural resources on the continent. Remarkably, nature protection was not only one of the earliest subjects regulated under international environmental law, but one of the very first international environmental conventions was also adopted in relation to nature protection in Africa. In particular, the Convention for the Preservation of Wild Animals, Birds and Fish in Africa (also known as the London Convention of 1900),[714] adopted by colonial powers, was one of the earliest international environmental legal instruments,[715] even if it never entered into force as it did not receive the required number of ratifications. The Convention Relative to the Preservation of Fauna and Flora in their Natural State (also referred to as the London Convention of 1933)[716] was

[713] The negotiation of a legally binding treaty recognising participatory and procedural rights in Africa is currently not at the negotiation stage. However, the idea of the creation of such a treaty has already been articulated, for instance, at a side event to the 52nd session of the Human Rights Council in 2023, with the participation of David R. Boyd, the then-UN Special Rapporteur on human rights and the environment. The event served as a platform for the representatives of civil society to engage with stakholders taking part in the creation of the Escazú Agreement in Latin-America. Although the initiative did not reach to the table of decision-makers yet, the preparation of an African treaty on participatory and procedural rights can be one of the most fascinating developments in the next few years in the field of environmental rights. See: Burke, J. and Bicko Ooko, T. (2023) 'Building momentum towards the realisation of environmental rights in Africa', *Universal Rights Group* [Online]. Available at: https://www.universal-rights.org/building-momentum-towards-the-realisation-of-environmental-rights-in-africa/ (Accessed: 2 May 2025).

[714] Convention for the Preservation of Wild Animals, Birds and Fish in Africa, London, 19 May 1900. See: Hickling, J. (2025) 'The Role of Science and Historiography in the Development of Transnational Environmental Law: A New History of the 1900 London Convention for the Preservation of African Wildlife', *Transnational Environmental Law*, 14(1), pp. 171–197.

[715] Sands, P. and Peel, J. (2012) *Principles of International Environmental Law*. Cambridge: Cambridge University Press, p. 480.

[716] Convention Relative to the Preservation of Fauna and Flora in their Natural State, London, 8 November 1933, 172 LNTS 241.

based on the London Convention of 1900, and was superseded by the African Convention on the Conservation of Nature and Natural Resources (or the Algiers Convention) in 1968.[717] The Convention has been, for a long time, the most comprehensive multilateral treaty for the conservation of nature;[718] remarkably, it belongs to the few international environmental agreements concluded before the development of the basic framework at the Stockholm and Rio Conferences in 1972 and 1992, respectively.[719]

The idea of revising the Algier Convention arose after the adoption of the Banjul Charter in the 1980s, however, it only came to fruition in 2003 after a series of inter-agency meetings with the adoption of the Revised African Nature Convention that entered into force after the 15th ratification in 2016.[720] Remarkably, the Preamble of the revised convention explicitly refers to the Banjul Charter, the Charter of Economic Rights and Duties of States, the World Charter for Nature, and emphasises

> 'the need to continue furthering the principles of the Stockholm Declaration, to contribute to the implementation of the Rio Declaration and of Agenda 21, and to work closely together towards the implementation of global and regional instruments supporting their goals'.[721]

Drawing on the aforementioned provisions, it appears that the African human rights system offers the strongest normative framework regarding the protection of the environment in the context of the protection of human rights.[722] Particularly, it provides the first binding international human rights treaty – also including universal and regional human rights treaties – that explicitly recognises the right to a satisfactory environment. Several other provisions of the Charter strengthen this right, especially peoples' right to development and the free disposal of natural resources.

In addition, the right to a healthy environment can also be found in a protocol to the Charter, establishing the right in the context of women's rights, and thus recognising

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[717] African Convention on the Conservation of Nature and Natural Resources, Algiers, 15 September 1968, UNTS vol. 479, p. 39.
[718] Lyster, S. (1985) *International Wildlife Law. An Analysis of International Treaties concerned with the Conservation of Wildlife.* Cambridge: Cambridge University Press, p. 115.
[719] Weiss, 2011, ibid., p. 3.
[720] Revised African Convention on the Conservation of Nature and Natural Resources, Maputo, African Union, 11 July 2003.
[721] Revised African Nature Convention, ibid., Recitals 9–11.
[722] In contrast, the mentioned Council of Europe treaties on the protection of the environment, such as the Bern Convention or the Florence Convention, do not explicitly refer to human rights or the ECHR.

the vulnerability aspect of environmental rights. Furthermore, it is noteworthy that one of the earliest international environmental agreements served as the predecessor of the major environmental instrument of the continent, the Revised African Nature Convention, which explicitly recalls the Banjul Charter in the preamble, thus referring to human rights in the context of the protection of nature and natural resources. In view of these instruments, it can be concluded that the Court (and the Commission) is equipped with a solid normative framework for the development of its environmental jurisprudence.

III.4.2.2. The Environmental Jurisprudence of African Human Rights Bodies

As noted above, the African Commission plays a crucial role in promoting and protecting human rights in Africa. This mandate also entails a quasi-judicial role to receive communication from States and other authors pursuant to Articles 47–56 of the Charter.[723] Given that so far the only case in which Article 24 of the Charter was explicitly examined and found to have been violated was decided by the Commission, the author believes that the Commission's relevant case law should briefly be reviewed, as it complements the jurisprudence of the ACtHPR, which has been functioning since 2006.

The first, and so far, only case in the African human rights jurisprudence explicitly addressing the right to a satisfactory environment under Article 24 was *SERAC and CESR v. Nigeria* (also referred to as the *Ogoni* case), decided by the Commission in 2001. The communication was brought by two NGOs alleging that the Nigerian government contributed to massive human rights violations of the Ogoni people through its involvement in the oil exploitation in the Niger Delta.[724] The applicants alleged the violation of the right to health (Article 16), the right to a general satisfactory environment favourable to development (Article 24), and the right to freely dispose of wealth and natural resources (Article 21) under the Charter, and the implicit rights to food and shelter for condoning and facilitating the operations of oil corporations in

[723] Chapter III of the Charter lays down the Procedure of the Commission. Article 47 establishes the procedure of inter-State complaints, which may take place if all local remedies have been exhausted. Furthermore, Article 55 provides that the Commission may also receive communications from other parties, but does not explicitly name the scope of these authors.

[724] van der Linde, M. and Louw, L. (2003) 'Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC communication', *African Human Rights Law Journal*, 3(1), p. 168. See also: Ebeku, K. S. A. (2003) 'The right to a satisfactory environment and the African Commission', *African Human Rights Law Journal*, 3(1), pp. 173–176.

Ogoniland, resulting in the contamination of water, soil and air that had severe short- and long-term health impacts. Regarding the merits of the case, the Commission first noted that both civil and political rights and social and economic rights generate four levels of duties for a State, namely, the duty to respect, protect, promote and fulfil these rights. Regarding the right to a general satisfactory environment – or the right to a healthy environment –, the Commission defined States' obligations as 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.[725]

The Commission also referred to Article 12 of the ICESCR (the right of everyone to the highest attainable standard of physical and mental health), which is embraced in Article 16 of the Charter, and concluded that these provisions obligate governments to desist from directly threatening the health and environment of their citizens. Furthermore, the Commission also pronounced that compliance with Articles 16 and 24 of the Charter also includes environmental and social impact assessment, monitoring and providing information to the communities exposed to hazardous materials, and providing meaningful opportunities for individuals to be heard and to participate in the development of decisions affecting their communities.[726]

In addition, the Commission examined the applicants' complaint regarding the implicit right to housing or shelter, and concluded that the destruction of housing adversely affects property, health and family life, and thus pronounced that the combined effects of these rights reads into the Charter the right to housing and shelter. Concerning this implicit right, the Commission noted that it also encompasses the right to protection against forced evictions. To define it, the Commission drew inspiration from the general comments of the ICESCR. Similar to the right to housing or shelter, the Commission also pronounced that the right to food was also implicitly guaranteed in the Charter through other rights, particularly the rights to health, education, work and political participation.[727] Although the Commission referred to "international law", it

[725] The Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria, Comm. no. 155/96, Decision of 27 October 2001, ACHPR, para. 52.
[726] SERAC and CESR v. Nigeria, ibid., para. 53.
[727] SERAC and CESR v. Nigeria, ibid., paras. 60–66.

did not explicitly refer to other international documents that recognise this right, such as the ICESCR and its general comment.

The Commission also addressed the violations committed by non-State actors, and established the State's positive obligations to protect citizens from damaging acts perpetrated by private parties, recalling the jurisprudence of the ECtHR and the IACtHR, including the aforementioned *Velásquez-Rodríguez* case.[728] Based on the assessment, the Commission found a violation of the mentioned rights and recommended the government of Nigeria to stop all attacks on Ogoni communities, ensure adequate compensation to victims of the human rights violations, ensure appropriate environmental and social impact assessment for future oil development, and to provide information on health and environmental risks and meaningful access to regulatory and decision-making bodies.[729]

The Commission's decision in the *Ogoni* case stands as a landmark ruling for the sole explicit interpretation of the right to a satisfactory environment under the Banjul Charter, which undeniably confirmed the justiciability of economic, social and cultural rights in the African human rights system.[730] In addition to establishing States' obligations under Article 24, the Commission also pronounced its interrelation with other human rights, particularly the rights to health, housing, and food. Notably, the Commission also embraced the procedural dimension implicit in the right to a healthy environment by establishing the obligation regarding access to information and participation in the decision-making in environmental matters, which clearly echoes the influence of Principle 10 of the Rio Declaration and the Aarhus Convention, which entered into force in the same year in Europe as the Commission adopted its decision in the *Ogoni* case.

The Commission's interpretation fully aligned with Articles 60–61 of the Charter, which provides that it shall draw inspiration from international law on human and peoples' rights, and take into consideration other general or special international conventions, customs generally accepted as law, and general principles of law.[731]

[728] SERAC and CESR v. Nigeria, ibid., para. 57.
[729] SERAC and CESR v. Nigeria, ibid.., Operative paragraphs.
[730] Alemahu Yeshanew, S. (2011) 'Approaches to the justiciability of economic, social and cultural rights in the jurisprudence of the African Commission on Human and Peoples' Rights: Progress and perspectives', *African Human Rights Law Journal*, 11(2), pp. 317–340.
[731] Murray, R. (2019) *The African Charter on Human and Peoples' Rights: A Commentary.* Oxford: Oxford University Press, 782–793. See also: de Vos, P. (2004) 'A new beginning? The enforcement of

Although no explicit reference was made to international environmental instruments, such as the Rio Declaration, the decision demonstrates that the African human rights jurisprudence implicitly builds on international standards, preceding its regional and even universal counterparts.

Although the Commission addressed the collective rights of an indigenous community in the *Ogoni* case, it did not elaborate on this aspect of the claim; instead, the decision considered the community as "peoples". The indigenous aspect was more emphasised in the subsequent case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group v. Kenya*, also known as the *Endorois* case. The decision marks the first recognition of African indigenous peoples' rights over their traditionally owned lands under Article 14 of the Banjul Charter, also invoking the violation of freedom of religion (Article 8), the right to take part in the cultural life of one's community (Article 17), the right to freely dispose of wealth and natural resources (Article 21), and, for the first time in the Commission's practice, the right to development (Article 22).[732]

While the issue of environmental degradation was not at the centre of the case, as the applicant NGOs did not allege the violation of Article 24 of the Banjul Charter, the *Endorois* case may also be considered as part of the African human rights jurisprudence on the environment. The case concerned the eviction of the Endorois community from their ancestral land to create a national park. The forced displacement of the community was carried out without adequate compensation and led to the disruption of the community's pastoral enterprise and violations of the right to practice their religion and culture, as well as their collective development.[733]

The consideration of environmental issues arose under Articles 21 and 22. Regarding Article 21, the Commission extensively relied on the Inter-American jurisprudence and referred to the judgment of *Saramaka*, *Yakye Axa*, and *Sawhoyamaxa* to establish

social, economic and cultural rights under the African Charter on Human and Peoples' Rights', *Law, Democracy & Development*, 8(1), pp. 1–24.

[732] Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, Comm. no. 276/03, Decision of 25 November 2009, ACHPR, Recommendation of the African Commission.

[733] See: Ashamu, E. (2011) 'Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council v Kenya: A Landmark Decision from the African Commission', *Journal of African Law*, 55(2), pp. 300–313. See also: Ndahinda, F. M. (2016) 'Peoples' rights, indigenous rights and interpretative ambiguities in decisions of the African Commission on Human and Peoples' Rights', *African Human Rights Law Journal*, 16(1), pp. 41–44.

the State's duty to consult with the indigenous community[734] and to obtain their free, prior and informed consent in conformity with their traditions and customs.[735] In addition to the Inter-American jurisprudence, the Commission significantly relied on the international legal framework of the protection of indigenous peoples, and considered the relevant provisions of ILO Convention No. 169, the UNDRIP, the ICCPR, the ICESCR, other UN human rights treaties, and the documents adopted by UN human rights treaty bodies and special rapporteurs.[736]

In light of these decisions, it may be concluded that the Commission plays an important role in the development of the African human rights jurisprudence. Given the strong commitment of the Banjul Charter to international human rights standards, the Commission draws inspiration from other binding and non-binding sources and builds on the jurisprudence of other human rights adjudicatory bodies. However, this inspiration may not always be apparent from the text of the decisions. In the *Ogoni* case, the Commission did not refer to any international environmental document to develop its understanding of the substantive and procedural aspects of the right to a satisfactory environment. Nevertheless, these decisions may provide a solid basis for the Court's environmental jurisprudence.

The ACtHPR further elaborated on indigenous rights and addressed environmental considerations more explicitly, although not in the context of Article 24 of the Charter. The *African Commission on Human and Peoples' Rights v. Republic of Kenya*, also referred to as the *Ogiek* case, stands as the only indigenous case in the Court's jurisprudence so far. In this judgment, the Court established the violation of freedom of religion, the right to property, the right to take part in the cultural life of one's community, the right to freely dispose of wealth and natural resources, and the right to development as a result of the eviction of the Ogiek community from their ancestral lands.[737] The Court – similar to the Commission in the *Endorois* case – recognised the

[734] Centre for Minority Rights Development (Kenya) and Minority Rights Group v. Kenya, ibid., paras. 256–266.
[735] Centre for Minority Rights Development (Kenya) and Minority Rights Group v. Kenya, ibid., para. 291. See: Ndlovu, N. and Nwauche, En. S. (2022) 'Free, Prior and Informed Consent in Kenyan Law and Policy After Endorois and Ogiek', *Journal of African Law*, 66(2), pp. 201–227.
[736] Centre for Minority Rights Development (Kenya) and Minority Rights Group v. Kenya, ibid., paras. 204, 147–157. See also: Gilbert, J. (2011) 'Indigenous Peoples' Human Rights in Africa: The Pragmatic Revolution of the African Commission on Human and Peoples' Rights', *International and Comparative Law Quarterly*, 60(1), pp. 245–270.
[737] Lugard, S. B. (2021) 'The human rights to a satisfactory environment and the role of the African Court on Human and Peoples' Rights', *KAS African Law Study Library*, 8(3), pp. 405–406.

indigenous status of the community, as well as their dependence on the natural environment, noting that the eviction had adversely affected their access to basic necessities, such as food, water, shelter, medicine, exposure to the elements and diseases. However, the Court did not find the violation of the right to life, for the applicants' failure to demonstrate the causal connection between the evictions and the deaths that occurred among community members.[738]

Furthermore, environmental considerations also arose in the context of the right to culture. Particularly, the Respondent State argued that it had to ensure a balance between cultural rights vis-à-vis environmental conservation to fulfil its obligations under Article 24 of the Charter. The State highlighted that the traditional activities of Ogieks, such as fishing and hunting, may have a negative impact on the environment.[739] The Court did not accept this argumentation, highlighting that the Banjul Charter does not provide for explicit exceptions to the right to culture. While the Court recognised that the restriction of the cultural rights of the Ogiek population to preserve the natural environment may theoretically have been justified to safeguard the common interest under Article 27 of the Banjul Charter,[740] it found that the State had not adequately substantiated its claim that the eviction was for the preservation of nature.[741] (Instead, the land had been allocated to third parties for commercial logging, without sharing any benefits with the Ogieks.)[742] Thus, the Court upheld the international guarantees of indigenous peoples' rights vis-à-vis an unjustified argument for the protection of the environment.[743]

The jurisprudence of the African human rights system, including the case law of the Commission and the Court, reflects the influence of the international corpus of human rights and the environment. Although the right to a satisfactory environment was

[738] African Commission on Human and Peoples' Rights v. Republic of Kenya, App. no. 006/2012, Judgment of 27 May 2017 (Merits), ACtHPR, § 155.
[739] African Commission on Human and Peoples' Rights v. Republic of Kenya, ibid., § 174.
[740] Article 27 of the Banjul Charter can be found in Chapter II, under the title "Duties". The provision reads as follows: '1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. 2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.'
[741] African Commission on Human and Peoples' Rights v. Republic of Kenya, ibid., §
[742] Claridge, L. and Kobei, D. (2023) 'Protected areas, Indigenous rights and land restitution: the Ogiek judgment of the African Court of Human and Peoples' Rights and community land protection in Kenya', *Oryx*, 57(3), p. 316.
[743] See: Giacomini, G. (2023) 'Human rights violations in the name of environmental protection: reflections on the reparations owed to the Ogiek Indigenous people of Kenya', *Ordine internazionale e diritti umani*, vol. 3, pp. 508–520.

explicitly addressed only once by the Commission – in the *Ogoni* case –, this decision clarified the interpretation of State obligations under Article 24 of the Banjul Charter, and reflected on the substantive and procedural aspects of the right. The right to a healthy environment has not been, so far, the primary focus of the case law of the African human rights jurisprudence, and consequently, references to international environmental legal sources remain limited. Nevertheless, the normative framework of the African human rights system holds great potential for future jurisprudential expansion, providing the only binding and enforceable provision on the right to a healthy environment in the text of the human rights treaty.

The Court may have the opportunity to develop a comprehensive understanding of the right to a healthy environment in the context of the climate crisis through the advisory opinion requested on 2 May 2025 on the obligations of States with respect to the climate crisis.[744] The request is centred on the interpretation of the right to a satisfactory environment and its intersection with other rights enshrined in the Banjul Charter, particularly the right to development and the right to life, with a focus on marginalised groups, such as women, children, the elderly, indigenous peoples, and environmental human rights defenders. The request underscores the significance of the principle of systemic integration by referring to a broad range of applicable law, including instruments of the African human rights framework, such as the mentioned Maputo Protocol on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child,[745] the Revised African Convention on Conservation of Nature, and the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (also referred to as the Kampala Convention);[746] and international climate change treaties, including the UNFCCC, the Kyoto Protocol, the Paris Agreement, and the Convention on Biological Diversity.[747]

In light of the request's recent submission, which the ACtHPR has not yet accepted, it could be too early to assess the potential impact of the advisory opinion at this stage.

[744] Request for an advisory opinion on the human rights obligations of African states in addressing the climate crisis [Online]. Available at: https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-human-rights-obligations-of-african-states-in-addressing-the-climate-crisis/ (Accessed: 4 May 2025).
[745] African Charter on the Rights and Welfare of the Child, Organization of African Unity, 11 July 1990.
[746] Convention for the Protection and Assistance of Internally Displaced Persons in Africa, African Union, 23 October 2009.
[747] Ibid., pp. 37–38.

However, in light of the solid normative framework of the African human rights system and the growing international tendency to recognise States' obligations in respect of climate change at various forums, including UN human rights treaty bodies, the ECtHR, the IACtHR, the ICJ, and the ITLOS, this future advisory opinion can strengthen the ACtHPR's role in addressing climate change through human rights law, and contribute to shaping the evolving corpus of international law on the relationship between human rights and environmental challenges.

IV. CONCLUSION

The dissertation examined the environmental jurisprudence of regional human rights courts from the perspective of systemic integration as a treaty interpretation method to evaluate the role of other sources of public international law, particularly of international environmental law, in the evolution of the international human rights jurisprudence.

The analysis is embedded in the broader context of the interrelation of human rights and the environment, a phenomenon that has preoccupied academics and practitioners for several decades. The interconnection between human rights and the environment has been recognised since the early stages of the development of modern international environmental law, yet it began to be articulated within human rights law only in recent decades. The growing tendency of recognising an environmental right in international environmental law culminated in 2022, with the recognition of the right to a clean, healthy and sustainable environment by the United Nations General Assembly (UNGA). However, the normative status of this document is not yet clarified; as a soft law instrument, it is certainly not justiciable. However, the recent advisory opinion of the IACtHR and particularly the ICJ may demonstrate that it forms part of customary norms.

Furthermore, the formulation of a customary norm of the protection of the environment through human rights law is not limited to the questions evolving around the recognition of the right to a healthy environment, as environmental concerns have been progressively integrated into the interpretation and application of other human rights provisions in regional human rights jurisdictions. As it is argued throughout the dissertation, systemic integration, that is, the integration of the norms of the system expressing the interrelation of human rights and the environment, has played and continues to play a significant role in developing standards of the environmental jurisprudence of human rights courts.

In the dissertation, the environmental case law of human rights courts is analysed along the axis of substantive and procedural standards, as this analytical distinction facilitates the identification of patterns in the evolving scope of environmental human rights protection. The primary and most discernible feature in the examined regional human rights systems concerns the explicit recognition of environmental rights. Namely, the

European human rights system is the only one among the three examined jurisprudences that does not explicitly provide for the right to a healthy environment or any other reference to the environment. Although there have been continuous endeavours to adopt an additional protocol to the European Convention on Human Rights recognising the right, the European Court of Human Rights ruled on numerous occasions that, in the absence of an explicit provision, Judges cannot pronounce the violation of environmental rights. On the other hand, the right to a healthy or satisfactory environment is expressly recognised in the Inter-American and African jurisprudence, although in different normative contexts. The proactive approach of the Inter-American Court of Human Rights played a significant role in establishing the justiciability of economic, social and cultural rights, including the right to a healthy environment, that are established in a protocol to the American Convention on Human Rights. In the African human rights system, although the justiciability of the right was not subject to discussion, as it is enshrined in the text of the African Charter on Human and Peoples' Rights, so far, the Court has not made full use of the potential of the recognition of the right.

To date, there have been three cases at the international level in which a violation of the right to a healthy environment was established, namely *Lhaka Honhat v. Argentina* and *La Oroya v. Peru* from the Inter-American Court's jurisprudence, and *SERAC v. Nigeria* from the practice of the African Commission on Human and Peoples' Rights. Notably, *La Oroya*, adopted after the UNGA Resolution on the right to a clean, healthy and sustainable environment, acknowledged the *jus cogens* nature of certain elements of this right. The Court's conclusion certainly constitutes a groundbreaking development in international human rights law with implications for public international law as well. It could be argued that the pronouncement of the *jus cogens* nature of a norm, as supported by Advisory Opinion OC-32/25, while it strengthens the position of States' human rights obligations regarding the protection of the environment, at least in the Inter-American system, may extend beyond the scope of the Inter-American court, and would require support from other international courts, primarily the International Court of Justice in its future jurisprudence.

Although no other judgment has gone so far as to explicitly pronounce the *jus cogens* nature of environmental norms, certain standards of international environmental law have been integrated into the jurisprudence of human rights courts. Regarding the

substantive aspect, the European Court primarily refers to soft and hard law documents adopted within the framework of the Council of Europe, and occasionally, the European Union. Finding the "European consensus" is necessary to establish certain standards, which is why it can be observed that the Court attaches primary importance to the geographical scope of the materials considered, and places less emphasis on the binding nature of such sources, as can be seen in the example of Council of Europe treaties that have been cited in the judgments even if they have not entered into force. Furthermore, other relevant sources may occasionally be referred to in the judgments in the context of substantive standards. These examples include scarce references to the Stockholm Declaration and other international human rights treaties, such as the ICCPR and its interpretation by the UN Human Rights Committee. Recent judgments, particularly *Verein KlimaSeniorinnen* and *Cannavacciuolo*, reflect an emerging pattern to consider a broader scope of international legal materials, including the international normative framework and the jurisprudence of other forums, particularly UN human rights treaty bodies and other regional human rights courts.

In comparison, the so-called "international *corpus juris*" has been at the centre of attention of the Inter-American court. Since the earliest cases involving environmental considerations, primarily under the right to property, the Court has engaged with a broad scope of international legal sources, either of soft or hard legal nature, including the jurisprudence of other human rights bodies. In contrast with the European court, its Inter-American counterpart may rely on the *iura novit curia* principle, which allows the Court to examine possible violations of the norms that have not been alleged by the parties, or that are not explicitly recognised in the Inter-American system, such as the right to water. The two courts' approaches to such interpretative methods represent the most significant difference in the two jurisprudences from the perspective of the dissertation. While the European jurisprudence centres around common values – the "European consensus" –, which, at the moment, does not entail an explicit and justiciable right to a healthy environment enforceable at the international level, the Inter-American system presupposes that the "court knows the law", and thus may progressively develop it through judicial interpretation. The culmination of this interpretative approach is certainly the recognition of the *jus cogens* nature of States' obligation to protect the environment in the *La Oroya* judgment and Advisory Opinion OC-32/25.

Considering the substantive aspect of the protection of the environment in human rights law, the African human rights system is equipped with a robust normative framework that explicitly recognises the right to a healthy environment in the Charter and one of its protocols in the context of the rights of women, and provides and international environmental treaty that expressly refers to the human rights enshrined in the Charter. Although the African environmental human rights jurisprudence encompasses relatively few cases, certain patterns can also be discerned in respect of the substantive standards of environmental protection. First, African human rights bodies draw significant inspiration from the universal human rights framework and the Inter-American and European jurisprudences. Interestingly, scarce references can be found to international environmental legal sources; one of the few exceptions could be the reference to the Stockholm Declaration. Furthermore, it is remarkable that the first and, so far, only interpretation of the right to a satisfactory environment was provided in 2001 in *SERAC v. Nigeria*, more than two decades before the international recognition of the right in the UNGA Resolution, which demonstrates that the African human rights jurisprudence, at least in the context of the right to a healthy environment, preceded its counterparts in developing substantive – and as elaborated below, procedural – environmental standards.

Additionally, although African human rights bodies do not emphasise the application of the *iura novit curia* principle, it is implicitly embraced in the practice, as shown in the mentioned case, where the Commission – similar to the Inter-American practice – , addressed the right to housing and shelter that is not explicitly enshrined in the Charter, and developed its understanding based on the interpretation of universal human rights norms, particularly the International Covenant on Economic, Social and Cultural Rights.

In conclusion, the analysis of systemic integration in the substantive standards of the environmental jurisprudence of human rights courts reveals the following patterns. In the absence of a substantive environmental right recognised in international human rights treaties, human rights courts may not build on binding sources. However, reference to Principle 1 of the Stockholm Declaration, as the foundation of the recognition of the relationship between human rights and the environment in international law, can be found in each jurisprudence. Furthermore, although the UNGA Resolution recognising the right to a clean, healthy and sustainable

environment was adopted relatively recently, it has been considered in judgments adopted since then in the European and Inter-American human rights systems, which underpins the growing importance of systemic integration in the environmental human rights jurisprudence. Certain patterns of the expansion of substantive standards can also be identified through the recent developments in the case law of these two courts, marked by the judgments of *La Oroya* and *Cannavacciuolo*, adopted by the Inter-American court in 2023 and the European court in 2025, respectively.

The development of procedural standards in the environmental jurisprudence of human rights courts shows different tendencies. In contrast with the substantive aspect of the right, which has not been explicitly recognised at the universal level until 2022, procedural environmental rights were established in 1992 in Principle 10 of the Rio Declaration, which was the point of reference for the adoption of two regional conventions, the Aarhus Convention in Europe and the Escazú Agreement in the Latin-American region. In the European human rights jurisprudence, the Aarhus Convention is the most referenced international environmental legal source, as it is a binding European treaty that reflects universally accepted norms and also represents the "European consensus", even if not all Member States of the Council of Europe ratified it. The standards of the Aarhus Convention and their reflection in the European jurisprudence were a source of inspiration for the Inter-American jurisprudence and the creation of the Escazú Agreement, which entered into force in 2021. Thus, the Agreement can be expected to strengthen procedural environmental rights in the Inter-American system, particularly protecting human rights defenders in environmental matters, one of the region's most pressing challenges.

The African human rights jurisprudence, although it offers a solid normative framework for environmental protection, does not provide for a similar instrument on procedural environmental rights. Nonetheless, the African Commission established certain procedural obligations of States implicitly based on these international standards. The adoption of a binding treaty can be expected to significantly contribute to the promotion of environmental democracy.

The growing tendency to embrace systemic integration can be observed in the developing climate change case law of the courts. To date, all three courts have been asked to express their position on States' substantive and procedural human rights

obligations in the context of climate change. The first ruling was adopted in April 2024 by the European Court of Human Rights in *Verein KlimaSeniorinnen*, which drew significant inspiration from the complex international legal framework of international climate law and its human rights implications, and developed its standards for the climate change jurisprudence. The Inter-American court recently developed its advisory opinion on States' human rights obligations in climate change, while the African court received a request for an advisory opinion on the subject matter at the time of the preparation of the present dissertation, in early May 2025.

Therefore, the dissertation may provide a snapshot of a dynamic and evolving jurisprudence, with a strong focus on mapping discernible tendencies. As demonstrated in the dissertation, treaty interpretation serves as a crucial factor in the development of the environmental standards in regional courts' human rights jurisprudence. The evolution of international environmental legal norms can no longer be viewed in isolation from human rights law; rather, it increasingly reflects processes of systemic integration, whereby environmental considerations are incorporated into the interpretation and application of existing human rights provisions. This integrative approach not only strengthens the normative content of human rights guarantees but also addresses the fragmentation of international law in responding to complex, cross-cutting challenges such as environmental protection.

SUMMARY

The dissertation focuses on the principle of systemic integration as a method of treaty interpretation in the environmental jurisprudence of regional human rights courts. Thus, the analysis seeks to examine the impact of the evolution of international legal sources – particularly soft and hard law sources of international environmental law – on the development of substantive and procedural environmental standards in the jurisprudence of the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court of Human and Peoples' Rights.

The central questions of the thesis revolve around the ways and the extent to which these courts incorporate norms of international environmental law into their human rights reasoning, the legal and methodological implications of such cross-regime referencing, the formulation of new customary norms in the field of human rights and the environment, and reflect on its implications for the classical doctrine of the sources of public international law.

The detailed case law analysis of the three human rights courts, presented in the context of the developing environmental jurisprudence of other courts and adjudicatory bodies, such as the International Court of Justice and United Nations human rights treaty bodies, supports the growing tendency of establishing higher standards of the protection of the environment through human rights law. These tendencies may be corroborated by the explicit recognition of the right to a healthy environment, but do not necessarily depend on it. Thus, the dissertation demonstrates that systemic integration not only supports the development of environmental standards in regional human rights regimes but also strengthens the interrelationship between distinct fields of public international law, contributing to the mitigation of normative fragmentation in the international legal order.

The thesis is divided into four major parts: Part I serves as an introduction to the dissertation and sets out the methodology, motivation, and relevance of the research within the domestic and international legal scholarship. Part II presents the current status of the interrelationship of human rights and the environment in public international law, introducing the theoretical and normative foundations (II.1.), and identifying topical challenges that the protection of the environment raises for the doctrine of international human rights law (II.2.).

Part III, the central part of the thesis, examines systemic integration in the environmental jurisprudence of human rights courts. Part III.1. provides a general overview of the doctrine of systemic integration in public international law and international human rights law as a self-contained regime. This part contains a detailed analysis of the relevant case law from the jurisprudence of the European Court of Human Rights (III.2.), the Inter-American Court of Human Rights (III.3.), and the African Court of Human and Peoples' Rights (III.4.). Part IV draws together the key findings of the dissertation, also reflecting on potential future research directions concerning the interrelationship of human rights and the environment.

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