

monograph

THE INTERNATIONAL LEGAL PROTECTION OF ENVIRONMENTAL HUMAN RIGHTS

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Monograph

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PROTECTION OF ENVIRONMENTAL
HUMAN RIGHTS**

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Introduction

Environmental human rights belong to the third generation of human rights, since states have begun to pay due attention to environmental protection relatively recently. The first international conference dedicated to environmental protection was held only in 1972 in Stockholm (United Nations Conference on the Human Environment).

Environmental human rights emerged in response to the growing environmental problems of our time. These problems are complex: increasing pollution of all components of the environment, loss of biodiversity, climate change, increasing shortage of fresh water, etc. Environmental pollution is not limited to state borders, and therefore its protection and, as a result, the protection of environmental human rights requires proper international legal regulation.

Physical existence of a person is not possible without ensuring the environmental rights of a person and, first of all, the right to a healthy environment. Without ensuring this right, all other human rights are also at risk. The existence of adequate international standards in this sphere would contribute to improving the quality and effectiveness of national environmental legislation and, as a result, to improving the state of the environment and the quality of people's lives.

Therefore, the question arises whether the existing international legal regulation of the protection of environmental human rights meets modern needs and is sufficient and effective. The present monograph attempts to provide an answer to this question. This monograph was prepared as part of the project VEGA 1/0713/23 - International legal protection of environmental rights - quo vadis?

The monograph is devoted to the analysis of the international legal regulation of the protection of environmental human rights both from a theoretical point of view and from the practical aspect of the protection of environmental human rights in proceedings before existing international bodies. The monograph consists of four thematic areas, where

- the first is devoted to the environmental human rights within the framework of international legal regulation, to substantive and procedural dimensions of environmental human rights and to the right to food and international legal protection against desertification;
- the second is aimed at the analysis of existing international legal mechanisms for the protection of the environmental rights of vulnerable categories of the population;

- the third is devoted to the protection of environmental human rights in proceedings before the Aarhus Convention Compliance Committee and the European Court of Human Rights;
- the fourth is devoted to advisory opinions of international courts on climate change obligations of states since climate change has become a human rights issue.

CHAPTER 1. ENVIRONMENTAL HUMAN RIGHTS IN INTERNATIONAL LAW

1.1 Environmental Human Rights within the Framework of International Legal Regulation

A healthy environment is crucial for human life. Without it, human existence and human dignity are impossible. Recently, we have been observing the recognition of the connection between human rights and the environment. This is evidenced by a significant number of international documents, national legislation of individual countries and decisions of national and international courts. Environmental rights are necessary for ensuring other human rights.

Universal Declaration of Human Rights of 1948, which is the first international document in which the international community has enshrined key human rights, does not explicitly mention environmental human rights, but many of its provisions guarantee human rights, which can have environmental dimensions. To them belong article 3, which guarantees the right to life and article 25, which guarantees the right to a standard of living adequate for the health and well-being of himself and of his family ¹.

Stockholm Declaration on the Human Environment of 1972 was the first international legal document which linked human rights with the right to healthy environment. According to Principle 1 of the Declaration, “*man 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 a solemn responsibility to protect and improve the environment for present and future generations*” ².

According to Principle 1 of the Rio Declaration on Environment and Human Development, “*human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature*” ³. As we can see, this

¹ Universal Declaration of Human Rights. (1948). URL: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

² Stockholm Declaration on the Human Environment. (1972). URL: <https://docenti.unimc.it/elisa.scotti/teaching/2023/28955/files/2.a-stockholm-declaration>

³ Rio Declaration on Environment and Human Development. (1992). URL: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CNF.151_26_Vol.I_Declaration.pdf

principle does not explicitly articulate a human right to a healthy environment, but it implicitly recognizes that healthy environment is a necessary precondition for healthy and productive life.

Principles laid down in both declarations contributed to the establishment of the human right to a healthy environment. They provided the normative foundation for recognizing environmental protection as inseparable from the enjoyment of fundamental human rights.

International Covenant on Civil and Political Rights of 1966 in articles 6 and 17 recognizes the right to life and the right to privacy, family and home, which can be also impacted in cases of environmental degradation ⁴. The International Covenant on Economic, Social and Cultural Rights of 1966 also includes several articles that are closely tied to the state of the environment through the recognition of fundamental human rights. To them belong: article 11, which guarantees the right to an adequate standard of living; article 12, which guarantees the right to the highest attainable standard of physical and mental health; article 7, which guarantees the right to just and favourable conditions of work; and article 10, which is aimed at the protection of the family ⁵.

The right to a safe environment is the basis of environmental rights. All other environmental rights are aimed at its implementation. Climate change also significantly affects environmental human rights, causing disasters that threaten people's lives and health. The protection of environmental human rights should be a priority of international law. Citizens should be given the opportunity to protect their environmental human rights, otherwise the legislative recognition of these rights will be only declarative.

World Charter for Nature adopted by the GA Resolution 37/7 in 1982 recognizes that *“mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients”* ⁶. Thus, it implicitly recognizes that environmental protection is essential for human well-being and implies that degradation of natural systems threatens human life and development.

Procedural environmental human rights are most fully reflected in the UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted at the Ministerial Conference on the Environment in Aarhus

⁴ International Covenant on Civil and Political Rights. (1966). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁵ International Covenant on Economic, Social and Cultural Rights. (1966). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

⁶ World Charter for Nature. (1982). URL: <https://ejcj.orfaleacenter.ucsb.edu/wp-content/uploads/2018/03/1982.-UN-World-Charter-for-Nature-1982.pdf>

(Denmark) in June 1998 ⁷. It is one of the most effective international instruments aimed at protection of environmental human rights and linking these rights with environmental governance.

Convention on Biological Diversity of 1992 in article 8 (j) incorporates principles of benefit-sharing and indigenous rights, linking biodiversity conservation with human rights. It requires to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity ⁸ and thus indirectly recognizes the environmental rights of indigenous peoples.

The Paris Agreement of 1995 in the preamble determines the obligation of states “*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*” ⁹. Article 7, paragraph 5 requires states to take into consideration vulnerable groups and communities.

In 2012 the Human Rights Council by its Resolution 19/10 established the mandate for the Independent Expert on Human Rights and the Environment for three years ¹⁰. It was extended in 2018, 2021 and 2024. In 2024 the title was also changed to Special Rapporteur on the human right to a clean, healthy and sustainable environment (A/HRC/RES/55/2) ¹¹. The Special Rapporteur has the following mandate: to study the human rights obligations relating to the enjoyment of the human right to a clean, healthy and sustainable environment, in consultation with governments, relevant international organizations and intergovernmental bodies; to continue to identify, promote and exchange views on good practices relating to human rights obligations and commitments that inform, support and strengthen environmental policymaking, especially in the area of environmental protection; to work on identifying challenges and obstacles to the full realization of human rights obligations relating to the

⁷ UN Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matter. (1998). URL: <https://unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

⁸ Convention on Biological Diversity. (1992). URL: <https://www.cbd.int/doc/legal/cbd-en.pdf>

⁹ Paris Agreement. (2015). URL: https://unfccc.int/sites/default/files/english_paris_agreement.pdf

¹⁰ Special Rapporteur on the human right to a clean, healthy and sustainable environment. (2024). URL: <https://www.ohchr.org/en/special-procedures/sr-environment>

¹¹ Resolution of the Human Rights Council of 3 April 2024 № 55/2. Mandate of Special Rapporteur on the human right to a clean, healthy and sustainable environment. (2024). URL: <https://docs.un.org/en/A/HRC/RES/55/2>

enjoyment of the human right to a clean, healthy and sustainable environment and protection gaps thereto, etc.¹²

In its Advisory opinion of 2025, the ICJ also recognized that “*the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights*”¹³. Thus, we can see that the court did not recognize that this right belongs to customary international law, but indirectly it is clear from the court's decision, that it is essential for states to ensure the implementation of this right. This recognition reinforces the growing international consensus that environmental protection is not only an environmental matter, but a core human rights obligation of states.

On this issue, the ICJ's opinion did not coincide with the opinions of a number of scholars who consider the right to a healthy environment to be a customary norm (e.g., Rodríguez-Garavito C., Rebecca M. Bratspies)¹⁴. Astrid Puentes Riaño, UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment states, that it is time for the ICJ to recognize the human right to a clean, healthy, and sustainable environment as customary international law¹⁵.

In each case, even without customary status, the right to a healthy environment has gained significant normative weight, guiding states' conduct and shaping the future development of international environmental law, as well as international human rights law.

We also find the protection of environmental human rights within the framework of the African Union. The African Charter on Human and Peoples' Rights of 1981 in article 24 states that “*all peoples shall have the right to a general satisfactory environment favorable to their development*”¹⁶. As we can see, this article emphasizes collective rather than individual environmental human rights and links the right to the favorable environment with the right to development. According to article 16 (2), “*states parties to the present Charter shall take the necessary measures to protect the health of their people*”. Given that the state of the

¹² Ibid.

¹³ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 214-218. Para 393.

¹⁴ Rodríguez-Garavito, C. (2018). A Human Right to a Healthy Environment?: Moral, Legal, and Empirical Considerations. In: Knox JH, Pejan R, eds. *The Human Right to a Healthy Environment*. Cambridge University Press, 155-168.; Bratspies, Rebecca M. (2018). Reasoning Up to Human Rights: Environmental Rights as Customary International Law in *The Human Right to a Healthy Environment* (John Knox and Ramin Pejan, eds.). URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3172991

¹⁵ Puentes Riaño, Astrid. (2025). Healthy Environment: A Human Right and Customary International Law. URL: <https://sdg.iisd.org/commentary/guest-articles/healthy-environment-a-human-right-and-customary-international-law/>

¹⁶ The African Charter on Human and Peoples' Rights. (1981). URL: https://www.oas.org/en/sla/dil/docs/African_Charter_Human_Peoples_Rights.pdf

environment directly affects human health, we can conclude that this article can also be applied to the protection of environmental human rights.

African Charter on the Rights and Welfare of the Child of 1990 in Article 14 (2) (c) imposes an obligation on states to ensure the provision of adequate nutrition and safe drinking water ¹⁷.

African Convention on the Conservation of Nature and Natural Resources of 2003 also guarantees the right of all peoples to a satisfactory environment favorable to their development (Article III (1)) ¹⁸. Here we observe the same approach as in the African Charter on Human and Peoples' Rights, namely the emphasis on the collective nature of this right.

Article XV of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 guarantees the right to food security. Article XVI of the Protocol guarantees the right to equal access to housing and to acceptable living conditions in a healthy environment ¹⁹.

According to the Protocol, women shall have the right to live in a healthy and sustainable environment (Article XVIII) ²⁰. States have to take all appropriate measures to 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; protect and enable the development of women's indigenous knowledge systems ²¹. As we can see it imposes an obligation on states not only to ensure a healthy and sustainable environment for women but also to empower them as active participants in environmental governance. By requiring women's involvement, access to technology, and protection of indigenous knowledge, the Protocol establishes a forward-looking framework where women's participation is a necessary precondition for ensuring a healthy and sustainable environment.

The Asia-Pacific Forum on Sustainable Development (APFSD) is an annual, inclusive intergovernmental forum to support follow-up and review of progress on the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) at the regional

¹⁷ African Charter on the Rights and Welfare of the Child. (1990). URL: https://au.int/sites/default/files/treaties/36804-treaty-african_charter_on_rights_welfare_of_the_child.pdf

¹⁸ African Convention on the Conservation of Nature and Natural Resources. (2003). URL: https://au.int/sites/default/files/treaties/41550-treaty-Charter_ConservationNature_NaturalResources.pdf

¹⁹ Ibid.

²⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. (2003). URL: https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf

²¹ Ibid.

level²². This forum is very important both from the point of view of the implementation of the Sustainable Development Goals and from the point of view of environmental protection and environmental human rights, as they occupy a leading place among the Sustainable Development Goals.

The forum is also noteworthy in terms of focusing attention on certain aspects of environmental human rights. For example, on February 28, 2025, during the 12th Asia-Pacific Forum on Sustainable Development, which took place in Bangkok, a side event titled “Accelerating Environmental Rights Protection for Women in the Asia-Pacific Region” brought together grassroots women, Indigenous leaders, civil society organizations, and policy advocates to push for stronger safeguards for women environmental human rights defenders. The urgent need to protect the rights, safety, and leadership of women in the field of environmental protection was emphasized²³. Ensuring the protection of this category of persons is very important, because according to the International Union for Conservation of Nature, 13% of the documented murders of human rights defenders are women. 40% of these women were defending their rights to environmental resources and land²⁴. Women play a key role in protecting the environment, but unfortunately they often become victims of violence because of their activity. Therefore, attracting international attention to this issue is necessary.

During the 12th Asia-Pacific Forum on Sustainable Development emphasis was also placed on the necessity of protection of the ocean, because the human right to a healthy environment also includes a healthy ocean²⁵. It was also emphasized that climate change affects different groups of the population differently, and that certain groups, such as Indigenous peoples, require special protection. Such forums provide an opportunity to exchange best practices, assess progress in achieving Sustainable Development Goals, draw attention to current problems, and identify priority areas that require immediate solutions.

²² Asia-Pacific Forum on Sustainable Development. (2025). URL: <https://www.unescap.org/events/apfsd12>

²³ Women Environmental and Human Rights Defenders in Asia and the Pacific. (2025). URL: <https://apned.net/apned-women-ehrds-apfsd-2025/>

²⁴ Ibid.

²⁵ Partnering with UN-human rights at the 12th Asia-Pacific forum on sustainable development. URL: <https://oneoceanhub.org/partnering-with-un-human-rights-at-the-12th-asia-pacific-forum-on-sustainable-development/>

1.2 Substantive and Procedural Dimensions of Environmental Human Rights

According to Kerri Woods, environmental human rights are emerging in national and international legal practice and have been invoked by environmental political theorists seeking to explicate and justify obligations to protect and sustain the environment and to secure justice for both contemporary communities and future generations²⁶. Bellinkx V., Casalin D., Erdem Türkelli G., Scholtz W. and Vandenhole W. frame environmental human rights in terms of common concern of humankind. The scholars prove, that international law of human rights is central to enabling a meaningful human rights response to the harmful consequences of climate change²⁷.

According to Emrah Akyüz, environmental human rights are not the right to the environment for its own sake; rather, they are fundamental human rights of individuals to environmental protection²⁸. Anna-Maria Hubert draws attention to the right to science as recognized human right, which should be a central element in the development of international environmental law²⁹. It is difficult to disagree with this, since science is a key to understanding ecological processes, identifying potential environmental damage, and developing mechanisms to its prevention.

According to Alan Boyle, procedural rights are the most important environmental addition to human rights law since the 1992 Rio Declaration on Environment and Development. Any attempt to codify the law on human rights and the environment would necessarily have to take this development into account³⁰.

Environmental rights are a complex legal category that encompasses the whole system of such rights. One example of their definition can be found in Article 9 of the Law of Ukraine “On Environmental Protection”, according to which every citizen of Ukraine has the right to:

- a) a safe environment for life and health (the right to environmental safety);

²⁶ Woods, Kerri. (2016). Environmental Human Rights. In Teena Gabrielson, and others (eds), *The Oxford Handbook of Environmental Political Theory*. Oxford, United Kingdom: Oxford University Press UK.

²⁷ Bellinkx, V., Casalin, D., Erdem, Türkelli G., Scholtz, W., Vandenhole, W. (2022). Addressing Climate Change through International Human Rights Law: From (Extra)Territoriality to Common Concern of Humankind. *Transnational Environmental Law*, 11(1), 69-93.

²⁸ Akyüz, E. (2017). The Scope and Types of Environmental Human Rights. *International Journal of Agriculture Environment and Food Sciences*, 1(1), 38-48. P. 46.

²⁹ Hubert, Anna-Maria. (2020). The Human Right to Science and Its Relationship to International Environmental Law, *European Journal of International Law*, Volume 31, Issue 2, 625–656, <https://doi.org/10.1093/ejil/chaa038>

³⁰ Boyle, Alan. (2012). Human Rights and the Environment: Where Next?, *European Journal of International Law*, Volume 23, Issue 3, 613–642.

b) participation in the discussion and submission of proposals to draft regulatory legal acts, materials on the placement, construction and reconstruction of objects that may negatively affect the state of the environment, submission of proposals to state authorities and local governments, legal entities participating in making decisions on these issues (the right to participate in the discussion of drafts of environmentally significant decisions);

c) participation in the development and implementation of measures to protect the environment, rational and integrated use of natural resources;

d) implementation of general and special use of natural resources;

e) participation in public environmental protection formations;

f) free access to information on the state of the environment (environmental information) and access, use, dissemination and storage of such information, except for restrictions established by law (right to environmental information);

g) participation in public hearings or open meetings on the impact of planned activities on the environment at the stages of site selection, design, construction and reconstruction of facilities, as well as during the conduct of public environmental impact assessment;

g) to receive environmental education;

h) filing lawsuits against state bodies, enterprises, institutions, organizations and citizens for compensation for damage caused to their health and property as a result of negative impact on the environment;

i) judicial review of decisions, actions or inaction of state authorities, bodies of local self-government, their officials regarding violation of environmental rights of citizens in accordance with the procedure prescribed by law ³¹.

Recognition of a person, his rights and freedoms as the highest social value means (from a political and legal point of view) a change in approaches to the relations between the state and the individual. Taking into account the principle of consistency of actions of legislative and judicial bodies in a state governed by the rule of law, it should be noted that the main value orientation when adopting laws, by-laws and individual decisions should not be the interests of the state, its bodies and officials, but the natural inalienable environmental rights of a person ³².

According to Kaidanovych T.M., substantive environmental rights include the following rights:

³¹ Law of Ukraine "On Environmental Protection". Bulletin of the Verkhovna Rada of Ukraine (VVR), 1991, No. 41, p. 546.

³² Hrushkevych, T.V. (2013). The Legal Nature of Constitutional Environmental Rights. *University Scientific Notes*, No. 4 (48), 293-304. P. 302.

to a safe, clean, healthy and sustainable environment;

to protection from discrimination and equal protection of the rights relating to the enjoyment of a safe, clean, healthy and sustainable environment;

to freedom from threats, harassment, intimidation and violence in the exercise of human environmental rights;

to freedom of expression and to seek, receive and impart information on the state of the environment through any media;

to freedom of association and peaceful assembly on environmental issues;

to self-determination: to freely determine one's political status and freely pursue one's economic, social and cultural development;

to freely dispose of one's natural wealth and resources for one's own purposes, without prejudice to any obligations arising from international economic cooperation based on the principle of mutual benefit and international law. In no case shall persons be deprived of their means of livelihood ³³.

It is difficult to disagree with those authors, who consider it necessary to develop unified definitions of such terms as “healthy environment”, “clean environment”, “favourable environment”, etc. In legislative acts, scientific literature, doctrines, various terms are used: safe, clean, healthy, favourable, sustainable, etc. environment. Consequently, the unjustified use of synonyms is allowed, there are no unified approaches to interpreting the analysed concepts, which in general significantly complicates the clarification of the content of the right to a healthy environment. That is, there is a different understanding of what constitutes a criterion of environmental quality and a priority in its protection. According to Kaidanovych T., such vagueness of terms leads to problems in defining the environmental rights of citizens. To solve them, it is necessary to formulate the definitions of these concepts in such a way as to eliminate inconsistency and ambiguity ³⁴.

Procedural environmental human rights include the rights:

to seek, receive and impart environmental information;

to participate in public decision-making on environmental matters;

to have an effective remedy in case of violations of these rights;

³³ Kaidanovych, T.M. (2019). The relationship between human rights and environmental security of Ukraine: legal aspects. *Law and Society*, No. 1., 51-56. P. 54.

³⁴ Tolkachenko, O. (2017). Right to a Favorable Environment in the Legislation of Ukraine and Other States. URL: <https://dspace.onu.edu.ua/server/api/core/bitstreams/c53e38e9-9159-4505-a6f8-0f638690281f/content>

to be informed when arrested of the reasons for the arrest and to be informed promptly of any charges, to be brought promptly before a judge or other officer authorized by law to exercise judicial power upon arrest and to be entitled to trial within a reasonable time or to be released and to compensation for unlawful arrest or detention for environmental beliefs³⁵.

The implementation of the right of citizens to participate in decision-making in the field of environmental protection involves the involvement of the public in the development of interstate, state, regional, local and other territorial programs, local action plans, strategies and other documents; preparation of draft legislative and other normative legal acts; implementation of state environmental expertise with an assessment of the environmental impact of hazardous objects and activities; adoption of relevant documents for the use of natural resources, for the deliberate release of genetically modified organisms into the environment, as well as activities related to environmental pollution, management of hazardous substances, waste and their disposal; expenses related to the implementation of environmental protection measures financed from environmental protection funds³⁶.

A.P. Hetman identified a set of characteristics specific to environmental human rights, arising from their dependence on environmental conditions:

1. The implementation of citizens' environmental rights is linked to meeting environmental needs and protecting environmental interests;

2. In the overall framework of human and civil rights, environmental rights hold a priority status. Their priority derives from the fundamental rights to environmental safety and to an environment that ensures the protection of life and health;

3. When defining citizens' environmental rights, the natural laws governing the development of environmental systems are taken into account. All natural objects collectively form a single environmental system with internal differentiation, because of the inherent qualities of natural resources;

4. Environmental factors play a decisive role in determining how natural resources are assigned to specific entities;

5. The content of environmental human rights is determined by the principles of environmental law, which are based on the features of the legal regulation of environmental

³⁵ Ibid.

³⁶ Abramovsky, R. R. (2018). Regarding the place of the right of citizens to participate in decision-making in the field of environmental protection in the legal status of citizens of Ukraine. *Prekarpathian Legal Bulletin*, Issue 2(23), Volume 4, 90-94. P. 93.

legal relations, as well as the features of the method of legal regulation of public environmental legal relations;

6. The implementation of environmental human rights is mainly under the control of the state, since it regulates many issues in the field of environment. Ensuring environmental rights is the central task of the state's environmental policy;

7. The features of environmental human rights determine the need to choose optimal and effective legal methods and forms of their protection ³⁷.

In some states public environmental inspectors play a significant role in the environmental management activities and as a result contribute to the protection of environmental human rights. For example, in Ukraine public inspectors have the right:

together with employees of the State Environmental Inspectorate, other state bodies that exercise control over the protection, rational use and reproduction of natural resources, state executive bodies and bodies of local self-government, participate in carrying out inspections of compliance by enterprises, institutions, organizations of all forms of ownership and citizens with the requirements of environmental legislation, standards of environmental safety for the protection, rational use and reproduction of natural resources;

to act under the direction of the State Environmental Inspectorate (the authority that appoints public inspectors) they carry out raids and inspections and prepare inspection reports;

to prepare protocols on administrative offenses when detecting violations of environmental legislation, responsibility for which is provided for by the Code of Ukraine on Administrative Offenses, and submit them to the relevant State Environmental Inspectorate body in order to bring the guilty person to justice;

to deliver persons who have committed violations of environmental legislation to local government bodies, internal affairs bodies and headquarters of public formation for the protection of public order and the state border, if the identity of the violator cannot be established at the scene of the offence;

to check documents confirming the right to use wildlife objects, stop vehicles (including floating) and inspect items such as hunting and fishing equipment, harvested products and other items;

in legally prescribed cases, they are authorized to take photographs, make audio and video recordings, and use these materials as additional tools for preventing and detecting

³⁷ Environmental law: textbook / edited by Hetman, A. P. Charkiv: Publishing house "Law", 2013. 432 p. ISBN 978-966-458-486-6. P. 74.

violations of environmental protection legislation, including the rational use and reproduction of natural resources;

to assist in preparing and submitting to judicial authorities materials concerning compensation for damages arising from breaches of environmental protection legislation, and to serve as witnesses;

to explain to citizens the requirements of environmental legislation and their environmental human rights;

to participate in environmental impact assessment in accordance with the Law of Ukraine “On Environmental Impact Assessment”;

to receive, in accordance with the established procedure, information about the state of the environment, sources of negative impact on it, and measures taken to improve the environmental situation ³⁸.

Citizens of Ukraine who have reached the age of 18, have experience in environmental protection activities and have passed an interview in the bodies of the State Environmental Inspectorate may be public inspectors. A citizen who wishes to be a public inspector shall submit to the relevant body of the State Environmental Inspectorate a written application and recommendation from an organisation, or a written petition from the state inspector for environmental protection. Public inspectors shall be appointed by the Chief State Inspector of Ukraine for Environmental Protection and by the chief state inspectors for environmental protection of the respective territories. Appointment shall take place only after the applicant has successfully completed an interview with the heads of the structural divisions of the State Environmental Inspectorate and demonstrated knowledge of the fundamentals of environmental legislation ³⁹.

We agree with the scholars (e.g., H. Chopko) who claim that the modern legal regulation of public environmental monitoring, carried out at the national and international levels, in every way contributes to the establishment of the basic principles of this type of oversight in the field of environmental protection. In particular, the appointment of public inspectors on a competitive basis contributes to the transparency of their selection and the involvement of broad segments of the population in public control activities ⁴⁰.

³⁸ Order of the Ministry of Ecology and Natural Resources of Ukraine “On approval of the Regulations on Public Environmental Inspectors” № 88 of 27.02.2002 88. URL: <https://zakon.rada.gov.ua/laws/show/z0276-02#Text>

³⁹ Ibid.

⁴⁰ Chopko, H. (2023). Public environmental control: legal aspects of its implementation and specific features. *Visnyk of the Lviv University. Series Law*, Issue 77, 235–241. URL: <http://publications.lnu.edu.ua/bulletins/index.php/law/article/viewFile/12095/12410>. P. 238.

The idea of creating such an institute is interesting. People who understand environmental issues, who are ambitious, want to help promote environmental protection in the area where they live and to help prevent environmental crimes can really bring a lot of benefit to the region. But this institute should still, in our opinion, be at least a little paid. This would encourage people to get involved as public environmental inspectors. Alternatively, local governments could provide funding, since they are interested in environmental protection, particularly within their territories. Public environmental inspectors help protect water resources, forests, rivers, and land resources from pollution, poaching, and logging. As this work is performed beyond regular working hours and serves the public good, it deserves at least a modest remuneration.

In 2021 there were about 500 such inspectors operating throughout Ukraine. And the State Environmental Inspectorate continued to work on expanding this network. It included powerful and authoritative eco-activists, environmental specialists and concerned citizens⁴¹. The most common offenses, which are discovered by them: violation of hazardous waste disposal rules, illegal export of hazardous waste, illegal dumping of pollutants into water bodies, illegal import of prohibited chemicals, violation of drinking water standards, animal cruelty, poaching, pollution or destruction of protected areas⁴².

In 2024, public inspectors in Ternopil drew up 55 protocols, on the basis of which 55 individuals were held administratively liable and fined a total of almost UAH 30,000 (USD 718)⁴³. This is one example that proves that the institute of public environmental inspectors really works.

Its biggest advantage is the ability to instantly respond to a detected violation of environmental law. Such an opportunity is not within the powers of any other environmental protection body. In practice, local communities often encounter violations of environmental legislation that they are unable to promptly influence or prevent. Among the existing instruments of public control in the field of environmental protection are: citizens' appeals to the State Environmental Inspectorate regarding violations of environmental legislation, the activities of public inspectors, and the possibility of involving full-time ecologists in the

⁴¹ Who and how can become a public environmental inspector? (2021). URL: <https://eco.rayon.in.ua/news/402670-zakhist-dovkilliya-khto-i-yak-mozhe-stati-gromadskim-inspektorom>

⁴² Ministry of Environmental Protection and Natural Resources of Ukraine. How to become a public inspector? (2025). URL: <https://mepr.gov.ua/biznesu/pryrodoohoronnyj-naglyad/najbilsh-chasti-zapytannya/>

⁴³ In the Ternopil region, public environmental inspectors drew up protocols for 55 violators. (2025). URL: <https://ternopoliany.te.ua/zhittya/98853-na-ternopilshchyni-hromadski-inspektory-u-sferi-ekolohii-sklaly-protokoly-na-55-porushnykiv>

activities of united territorial communities. The mechanism for citizens' appeals to the State Environmental Inspectorate requires a clear identification of the violated environmental norms and a thorough understanding of the relevant legislation. Such appeals cannot be anonymous, which in some circumstances may expose individuals to the risk of retaliation by violators. This method is not effective enough, and if, as a result of an unscheduled inspection, the State Environmental Inspectorate inspectors fail to identify the declared violation, the initiator of such an inspection will be obliged to pay an administrative fine. For example, in November 2020, the State Environmental Inspectorate recorded an appeal from citizens regarding a violation of waste management rules by the collective enterprise “Mykolaiv Inter-farm Road and Construction Site No. 38”, which was engaged in the extraction of construction sand. As a result of an unscheduled inspection by the State Environmental Inspectorate, this violation was not recorded because the inspection was carried out after a warning and the alleged violators had enough time to take preventive measures ⁴⁴.

In Latvia public volunteer environmental inspectors assist the State Environmental Service in detecting minor environmental offences as well ⁴⁵. They are mainly involved in detecting such offenses like illegal fishing and littering. In 2021 54 public volunteer environment inspectors had participated in fishing inspections ⁴⁶.

Estonia provides an opportunity for citizens to contribute to biodiversity conservation by serving as public volunteer environmental inspectors. These individuals may assist government bodies in supervising compliance with environmental regulations through reporting threats to habitats and participating in the protection of semi-natural communities ⁴⁷. An example of good practice is Vabatahtlik Kalakaitse, an Estonian grassroots volunteer fish protection organization, which began as a small initiative by nature-minded enthusiasts and has developed into one of Estonia's most prominent citizen-driven conservation movements. Today, volunteers undertake essential work to protect the country's rivers, lakes, and coastal

⁴⁴ Haulyak, O., Ivanov, E., Blazhko, N., Polunina, O., Haulyak, Y. (2020). Nature protection in the field of mineral extraction in Ukraine: regulatory aspects and application practice. URL: <https://www.prostir.ua/?news=hromadskyj-kontrol-u-haluzi-ohorony-navkolyshnoho-seredovyscha>

⁴⁵ Latvian State Environment Service continues battling illegal fishing. (2021). URL: <https://bnn-news.com/latvian-state-environment-service-continues-battling-illegal-fishing-221294>

⁴⁶ Ibid.

⁴⁷ Volunteer Abroad Estonia: Nature Conservation. (2025). URL: <https://www.natucate.com/en/trips/volunteer-abroad-estonia-nature-conservation>

ecosystems. These volunteers assist in night-time patrols, raise public awareness about environmental protection and contribute to the protection of Estonia's aquatic habitats ⁴⁸.

Thus, the institute of public volunteer environmental inspectors illustrates how involvement of the public concerned can help to apply procedural environmental human rights in practice. By empowering citizens to act as guardians of nature, the state strengthens environmental legal enforcement and, as a result, ensures an increase in the level of protection of environmental human rights. To maximize effectiveness, modest remuneration or public volunteer environmental inspectors could increase their participation in environmental protection.

A separate issue worthy of attention is the need to create specialized environmental courts that would deal exclusively with environmental cases. Nowadays, more and more scholars are inclined to support this approach. They believe that it will increase the effectiveness of environmental human rights protection and also to speed up the process of considering this type of cases.

For example, George P. Smith II. justifies the need for the creation of special environmental courts by the need of judges who resolve environmental disputes to master specific scientific issues that general jurisdiction judges do not possess. State bar association continuing legal education programs can help judges to acquire the necessary knowledge ⁴⁹. It is difficult to disagree with the scholar that such training can be provided specifically for judges of specialized courts.

Scott C. Whitney acknowledges the possibility of pressure on specialized environmental courts from the side of industry ⁵⁰. However, it proves that the effectiveness of the judicial system cannot be impaired by their creation and, according to the scholar, there is no need to fear that environmental courts will not have sufficient institutional capacity to withstand this pressure ⁵¹.

According to J. Michael Angstadt and Maddison S. Schink, environmental courts could complement the development of environmental law ⁵². Thus, based on their research, scientists

⁴⁸ Pampolina, Lily. (2025). The volunteer organisation guarding Estonia's rivers. URL: <https://eurofish.dk/the-volunteer-organisation-guarding-estonias-rivers/>

⁴⁹ Smith II, George P. (1973). Does the Environment Need a Court? *Judicature*, 57, 150-153. URL: <https://scholarship.law.edu/cgi/viewcontent.cgi?article=1718&context=scholar>. P. 153.

⁵⁰ Whitney, Scott C. (1973). The Case for Creating A Special Environmental Court System - A Further Comment, *Wm. & Mary L. Rev.*, 15, 33-56. URL: <https://scholarship.law.wm.edu/wmlr/vol15/iss1/3/>. P. 55.

⁵¹ *Ibid.* P. 56.

⁵² Angstadt, J. Michael, Schink, Maddison S. (2023). Specialist environmental courts and tribunals: A systematic literature review and case for earth system governance analysis. *Earth System Governance*,

prove that specialized courts will contribute not only to more efficient trial of environmental cases, but also to the development of environmental science.

Smith, D. C. argues that environmental courts add additional expertise to the resolution of environmental cases⁵³. Nicholas A. Robinson proves that environmental courts help improve the state of the environment and strengthen the rule of law⁵⁴.

Brian J. Preston points out that unlike general jurisdiction courts, which are conservative and slow to change, environmental courts, as separate courts, are much more flexible and innovative⁵⁵, which should undoubtedly also be attributed to the advantages of this type of courts. The scholar also highlighted certain characteristics that environmental courts should have. Among these characteristics, it is worth highlighting the requirement that they should enjoy comprehensive jurisdiction with respect to the administrative, civil and criminal enforcement of environmental laws⁵⁶.

According to the UNEP, specialized environmental courts and tribunals contribute to implementation SDG Goal 16 – to provide access to justice for all and build effective, accountable and inclusive institutions at all levels. According to it, there are over 1,200 specialized environmental courts in 44 countries at the national or state/provincial level, with 20 additional countries discussing or planning their creation⁵⁷.

We will give some examples of specialized environmental courts in individual countries to demonstrate their features.

In the state of Vermont (USA) there is an Environmental Division, which is a statewide court which deals with environmental law cases. This division hears appeals and enforcement actions that include:

appeals from municipal panels;

Volume 18. URL: <https://www.sciencedirect.com/science/article/pii/S2589811623000290>

⁵³ Smith, D.C. (2018). Environmental courts and tribunals: changing environmental and natural resources law around the globe. *Journal of Energy & Natural Resources Law*, 36(2), 137-140.

⁵⁴ Robinson, Nicholas A. (2012). Ensuring Access to Justice Through Environmental Courts. *Pace Environmental Law Review*, Volume 29, Number 2. URL: <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1691&context=pehr>

⁵⁵ Preston, Brian J. (2012). Benefits of Judicial Specialization in Environmental Law: The Land and Environment Court of New South Wales as a Case Study, *Pace Environmental Law Review*, 396. URL: <https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1692&context=pehr>. P. 44.

⁵⁶ Preston, Brian. (2014). Characteristics of Successful Environmental Courts and Tribunals. *Journal of Environmental Law*, 26. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2770879

⁵⁷ UNEP. (2016). Environmental Courts & Tribunals: A Guide for Policy Makers. URL: <https://www.unep.org/resources/report/environmental-courts-tribunals-guide-policy-makers>

appeals arising from Act 250 decisions (it is a Vermont law passed in 1970 that aims to protect natural resources and strike a balance between the well-being of the city and a healthy and safe environment)⁵⁸;

appeals from the Agency of Natural Resources and Land Use Review Board;

municipal enforcement actions;

agency of Natural Resources and Land Use Review Board and enforcement actions⁵⁹.

Most of this court's hearings are held remotely with using video conferencing, except when the judge requires the party to appear in court in person, or when it is necessary to provide evidence. If a courtroom hearing is necessary, it is held in the area where the case began so that litigants do not need to travel a big distance, which undoubtedly makes the litigation easier for the parties⁶⁰. The court hears from 44 to more than 100 cases per year⁶¹.

Some representatives draw attention to the complexity of the legal proceedings before the aforementioned court and the need to have a legal advisor to assist in the case⁶². But environmental cases are always complex and without the necessary knowledge (primarily on environmental legislation) it is difficult to defend one's rights. This once again proves the need to create separate courts specializing in environmental issues and the protection of environmental human rights.

An interesting practice is the assessment by state bodies of the effectiveness of environmental legislation and mechanisms for its enforcement. Based on this assessment, improvements in environmental protection are proposed⁶³.

India also has a specialized court that deals with environmental issues – National Green Tribunal. It was established in 2010 by the adoption of the National Green Tribunal Act. The court hears cases related to environmental protection, conservation of forests and other resources, protection of environmental human rights, as well as compensation for violations of

⁵⁸ Vermont Natural Resources Council. What is Act 250? (2025). URL: <https://vnrc.org/act-250/>

⁵⁹ Vermont Judiciary. Environmental Division. (2025). URL: <https://www.vermontjudiciary.org/environmental>

⁶⁰ Ibid.

⁶¹ JUSTIA US Law. Vermont Superior Court, Environmental Division Decisions. (2025). URL: <https://law.justia.com/cases/vermont/environmental-court/>

⁶² SRH Law. Legislative Report on Vermont's Environmental Permitting – Potential for Dissolution of Environmental Court and Natural Resources Board. (2012). URL: <https://www.srhlaw.com/legislative-report-provides-insight-on-shumlin-administrations-review-of-environmental-permitting-focus-is-on-permit-appeals-possible-dissolution-of-environmental-court-and-natural-resource/>

⁶³ Report on Improving Vermont's Environmental Protection Process Legislative Report Prepared Pursuant to JRH.19 (R-264). URL: https://studiesandreports.ccrpcvt.org/wp-content/uploads/2017/01/LegislativeReport_ImprovingEnviroProtProcess_20111216.pdf

these rights. The judges have the interdisciplinary knowledge necessary to consider environmental cases ⁶⁴.

The National Green Tribunal Act of 2010 empowers the court to regulate its own procedural issues, i.e. the provisions of the Civil Procedure Code and the Indian Evidence Act of 1872 do not apply. In this case, the court is guided by the principles of natural justice. This approach is justified, since environmental cases have significant specificity. The court establishes the parties to the dispute, responds to them with prompt responses by e-mail, which saves time. The court also considers notifications of significant environmental damage, even if no lawsuit has been filed, which is also a very interesting practice worth following. If the court considers it appropriate, it applies to the relevant state authorities for reports, as well as to experts. Moreover, the court issues executive orders to state authorities to take necessary measures, including actions aimed at the reduction of pollution ⁶⁵.

A notable practice involves appointing individual members or committees to oversee the timely implementation of court orders. When deemed appropriate, the committees may include former high court judges and former experts in the relevant fields. As in the Vermont Environmental Court, cases may be heard by videoconference ⁶⁶. The court is guided by its own special procedural rules. A lawsuit can be filed without a lawyer ⁶⁷. The Court, through its practice, influences the interpretation of principles of environmental law, such as the concept of sustainable development, precautionary principle, principle of intergenerational equality, public trust doctrine and polluter pays principle ⁶⁸.

One of the most prominent environmental cases decided by the Supreme Court of India is the case *M.C. Mehta v. Kamal Nath* (1997). This case significantly influenced the development of environmental jurisprudence in India through the formation of the “public trust doctrine” ⁶⁹. In this case, the Ministry of Environment granted a private company permission to lease forest land and build a hotel complex along the river. The company carried out dense cementing of embankments along the Beas River, which led to a change in its course and washing away of adjacent lawns, and soon to major floods. The plaintiff based his claim on the

⁶⁴ National Green Tribunal. (2025). URL: <https://www.greentribunal.gov.in/about-us>

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Singhal, Jash. (2025). Environmental Justice in India: Legal Frameworks and Recent Judicial Interventions. URL: <https://lawyersarc.in/environmental-justice-in-india/>

⁶⁹ Sengupta, Archita. (2022). Case analysis: *M.C. Mehta v. Kamal Nath & Ors*, 1996. URL: <https://www.juscorpus.com/case-analysis-m-c-mehta-v-kamal-nath-ors/>

violation of the ecological balance of the environment and the violation of the natural conditions of the river and, as a result, the right to live a healthy life without the pollution of the environment. This right has been recognized as a fundamental right of every citizen. The judges who considered the case applied the “public trust doctrine”, cancelled the permission to use the land and obliged the company to restore the previous state of the environment and compensate for the damage. The riverbank was to be open for public use. Public trust doctrine increases the efficiency of India’s environmental legislation and obliges the state to protect natural resources ⁷⁰.

The National Green Tribunal has recognised that this doctrine applies to climate cases. Although the case was dismissed on procedural grounds, it is significant, firstly, because it extends the doctrine to climate cases and secondly, because it recognises the role of young people in climate cases, as the case was brought by a nine-year-old climate activist, Ridhima Pandey, who sought greater action by India to tackle climate change and to amend the Environment (Protection) Act of 1986 to include climate as a component of the term “environment”. The main argument of the claimant was that all children have the right to a healthy environment under the principle of intergenerational equality. Children are the most affected by climate change. India is the third largest producer of CO₂ (after China and the USA), so the above-mentioned rights of children are not protected. The court found that the Paris Agreement is being implemented by the Indian government and therefore the case was closed.

Thus, we can conclude that specialized environmental courts strengthen the protection of environmental human rights by ensuring more professional and informed decision-making and incorporating expert panels. Their procedures can be adapted to the specific needs of environmental litigation, including faster resolution of cases and simplified access to justice. This is particularly important where delays may worsen the state of environment or even lead to irreversible consequences.

⁷⁰ Supreme Court of India. *M.C. Mehta v. Kamal Nath* ((1997) 1 SCC 388). Judgment. URL: <https://www.lawfinderlive.com/archivesc/115168.htm?AspxAutoDetectCookieSupport=1>

1.3. The Right to Food and International Legal Protection against Desertification

One of the global problems of humanity, which threatens the human right to food, is desertification. The population needs productive land capable of restoration. Therefore, high-quality legal regulation of land protection from desertification is needed at the international and national levels, as well as the development of international standards in the field of adaptation of agriculture to climate change, ensuring monitoring of land quality, the implementation of control over the activities of agricultural producers, holding agricultural producers accountable for violations of legislation in the field of land use, reproduction and protection.

As of today, desertification is one of the world's most global economic problems. According to the UN, 3.2 billion people, or almost one third of the global population, are affected by desertification and land loss. The loss of land through drought and desertification, which is being driven, in part, by climate change, can have huge impacts on agriculture, development, migration and national and regional economies and sometimes leads to conflict⁷¹. Out of 1.84 billion people, 4.37% are exposed to severe or extreme drought⁷². Though desertification affects Africa the most, where two-thirds of the continent are deserted or drylands, this problem is not unique to Africa⁷³. Desertification leads to increased poverty (particularly in rural areas) along with declining biodiversity and reduced access to water resources.

According to FAO, land degradation results from a combination of factors. The causes of desertification include natural drivers, such as soil erosion and salinization, however, human activities such as excessive cultivation of land, deforestation, overgrazing, and irrigation in violation of norms and requirements, are now among the leading contributors⁷⁴. Climate change, which is also a consequence of human activity, also contributes to desertification. Therefore, with the availability of high-quality international and national legislation, it is possible to restore and protect land resources and territory, which are necessary to ensure biological diversity.

The UN Convention to Combat Desertification (UNCCD), whose objective is to “*combat desertification and mitigate the effects of drought in countries affected by severe*

⁷¹ United Nations. (2024). One third of global population affected by desertification and land loss. URL: <https://news.un.org/en/audio/2024/06/1151111>

⁷² Interactive LDN Targets and Actions Explorer. (2025). URL: <https://data.unccd.int/ldntargets>

⁷³ UNCCD FAQ. (2025). URL: <https://www.unccd.int/unccd-faq>

⁷⁴ FAO warns of “silent crisis” as land degradation threatens billions. (2025). URL: <https://news.un.org/en/story/2025/11/1166251>

drought or desertification”⁷⁵, establishes the implementation of integrated strategies that, in the long term, maintain and improve land productivity, conserve and make sustainable use of soil and water resources, and restore areas degraded by desertification. All of this is aimed at promoting sustainable development in the affected areas and improving the living conditions of the population⁷⁶.

In 2017 the FAO adopted Voluntary Guidelines for Sustainable Soil Management⁷⁷. The FAO Voluntary Guidelines are science-based international standards that set the direction for sustainable soil management. Their main advantage is their universality. At the same time their main disadvantage is their voluntary nature and dependence on the political will and resources of separate states.

Unfortunately, the above Voluntary Guidelines are still under-applied. One of the reasons for this situation is the lack of political incentives. Therefore, we believe that it is necessary to strengthen cooperation in this area at the international level and exchange best practices.

In 2024 the Council of the EU adopted conclusions urging a comprehensive EU-wide action plan aimed at combating desertification, land degradation and drought, with a goal of building resilience to drought and achieving Land Degradation Neutrality (LDN) by 2030⁷⁸. This EU-wide action has not been adopted yet. In each case, as we can see, it was recognized at the EU level that there was an increase in the severity of desertification and the need for a unified fight against this problem at the European level.

One of the most progressive countries in terms of protection of land from desertification is Spain. Therefore, we will focus on its experience. In Spain in 2022 the National strategy to combat desertification was adopted. It is based on the following principles:

a systemic and interdisciplinary approach: desertification is a complex and multifaceted phenomenon that must be addressed through an integrated and interdisciplinary approach that considers the different components that make up the land: soil, water, vegetation and other components of the biota and their interrelationships, as well as the demands and needs that

⁷⁵ United Nations Convention to Combat Desertification. (1994).

URL: <https://www.unccd.int/resource/convention-text>

⁷⁶ Order TED/776/2025, of July 8, which updates the National Strategy to Combat Desertification in accordance with the provisions of Law 43/2003, of November 21, on Forests, and approves its Implementation Plan for the period between 2025 and 2027. (2025). URL: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2025-15140

⁷⁷ FAO. (2017). Voluntary Guidelines for Sustainable Soil Management. URL: <https://openknowledge.fao.org/server/api/core/bitstreams/9a5b9373-3558-43b3-b732-f69326a7314d/content>

⁷⁸ Combating desertification in the EU: Council urges action for a sustainable future. (2024). URL: <https://www.consilium.europa.eu/en/press/press-releases/2024/10/14/combating-desertification-in-the-eu-council-urges-action-for-a-sustainable-future/>

society has for the land's resources and the goods and services derived from them for the sustainability of development and human well-being;

territoriality and landscape scale: implementation must be done at the landscape scale, considering each of its component units, their interrelationships, and ecological and biogeochemical processes, so that different orientations and interests can be combined while maintaining and improving the land's natural capital and the flows of goods and services;

precautionary principle: when the analysis and assessment of desertification risk conclude that there are reasonable grounds to fear the deterioration of the condition and state of the natural resources associated with the land, land protection measures will be adopted even without absolute scientific evidence;

seeking synergies: solutions based on the management and sustainable use of land will be promoted to, together with other strategic environmental instruments, create multifunctional landscapes that maximize the conservation of natural resources, facilitate the conservation of biodiversity, contribute to climate change mitigation and adaptation, and provide a sustainable economic benefit;

scientific evidence (the Strategy is based on the best available science, whose results are accessible and usable in decision-making processes);

cross-cutting and multi-sectoral integration: the fight against desertification requires the incorporation into sectoral policies of scientific and technical criteria that consider the effects of these policies on land resources, in order to ensure the coherence and alignment of the objectives of all policies related to the use and exploitation of land resources and to avoid undesirable or unforeseen effects;

shared governance and multi-scale cooperation: the Strategy will promote public participation and cooperation for effective governance and the sharing of power and responsibilities among different territorial levels, strengthening territorial cohesion.

participation and social responsibility: development of mechanisms that facilitate the involvement of stakeholders;

adaptive management: the Strategy is a flexible document that allows action in an environment of uncertainty and complexity, and to respond to future changes in climatic, ecological, social, economic, and cultural conditions;

intergenerational nature: the Strategy seeks to integrate economic and social development within the limits of the land's potential capacity to avoid transferring the impacts of overexploitation to new generations;

inclusivity and gender perspective: the Strategy will promote the inclusion of a gender perspective at all levels of decision-making;

international dimension: the Strategy will contribute to the objectives of other international treaties and conventions on the environment and sustainable development ⁷⁹.

María Medina Vidal highlighted the following most important provisions of the Strategy: developing an Implementation Guide; including restoration of land affected by desertification into the National Restoration Plan (NRP); updating the National Plan for Priority Actions in hydrological/forestry restoration, erosion control, and desertification prevention; launching a National Soil Inventory; developing the Desertification Atlas of Spain; creation of a National Committee to Combat Desertification; creation of a national Advisory Body to Combat Desertification; creation of a Technical Unit to Combat Desertification; participatory preparation of the reporting to the UNCCD; increased support for active participation in the UNCCD ⁸⁰.

Thus, as we can see Spain's 2022 National Strategy to Combat Desertification represents one of the most comprehensive and forward-looking policy frameworks in Europe. Built on principles of interdisciplinarity, territorial and landscape-scale planning, precaution, scientific evidence, inclusivity, and shared governance, the Strategy recognizes desertification as a complex socio-ecological challenge that demands coordinated action across sectors and levels of government. Its emphasis on adaptive management, intergenerational responsibility, and alignment with international environmental commitments positions Spain as a leader in sustainable land governance. Its holistic approach offers a model that other countries facing similar risks can adapt.

National Strategy and Action Plan for Combating Desertification 2024-2030 of Turkey provide for the analysis of legislative framework on desertification/land degradation and institutionalization of control mechanisms ⁸¹. Moreover, data produced by monitoring systems should be reported periodically ⁸². The Directorate General of Combating Desertification and Erosion under the Ministry of Environment, Urbanization and Climate Change was created. Among its duties and authorities belong: to combat desertification and erosion with a focus on

⁷⁹ Estrategia Nacional de Lucha contra la Desertificación. (2022). <https://www.unccd.int/sites/default/files/2023-04/Spain%20-%20National%20Strategy%20to%20Combat%20Desertification.pdf>. P. 34-36.

⁸⁰ María Medina Vidal. (2025). International good practices in the development and implementation of UNCCD National Action Plans. Spain's National Strategy to Combat Desertification. 1st Implementation Plan 2025-2027. URL: https://www.optain.eu/sites/default/files/04_MEDINA_VIDAL.pdf

⁸¹ ÇMUSEP. (2024). National Strategy and Action Plan for Combating Desertification 2024-2030, General Directorate of Combating Desertification and Erosion Publications, Ankara. URL: https://www.unccd.int/sites/default/files/2025-04/CMUSEP_INGILIZCE_281124.pdf

⁸² Ibid. P. 19.

the integrity of river basins, develop integrated rehabilitation plans and projects aimed at controlling avalanches, landslides, and floods, conduct the necessary studies and project work for these initiatives, implement the projects, monitor their progress, provide project support to relevant institutions, and facilitate cooperation and coordination among organizations to establish policies and strategies related to these actions and operations; to plan for the enhancement of watersheds at both national and regional levels to address desertification and erosion, and to define corresponding policies and strategies; oversee the sending of satellites and the provision of satellite data for combating desertification and erosion, as well as for climate and environmental action purposes⁸³. National Strategy and Action Plan for Combating Desertification 2024–2030 represents a significant institutional and governance upgrade in the country’s approach to land degradation. This institutionalization of responsibilities reduces fragmentation and strengthens accountability.

In 1999 National action programme to combat drought and desertification was adopted in Italy⁸⁴. This was the first document adopted by Italy in the field of combating desertification. The adoption of this National action programme was a significant step forward in overcoming the problem of land degradation, but is no longer sufficient to ensure EU initiatives. It does not contain clear budgetary commitments and implementation timeline.

Greek National action plan for combating desertification was adopted in 2001⁸⁵. It defines principles, identifies risks, and outlines measures in the threatened areas (measures concerning the agricultural sector, measures related to the forest sector, measures concerning fauna, measures concerning the stock-raising sector, measures concerning the water resources sector, measures concerning the socio-economic sector). Greece faces rapidly intensifying desertification, and the National action plan for combating desertification has not been modernized to match the scale of the problem. For example, provisions on monitoring are outdated, temporal and spatial programming of measures and actions are too general.

As we can see, the content of national plans and strategies for combating desertification in different states is different. Spain’s National strategy to combat desertification of 2022 is well-developed in terms of scope, detail and operational depth. At the same time in a significant number of states, national plans and strategies no longer meet modern needs. Among the shortcomings are often weak monitoring mechanisms, or their absence altogether, failure to

⁸³ Ibid. P. 21-22.

⁸⁴ National action programme to combat drought and desertification. (1999).
URL: <https://www.unccd.int/sites/default/files/naps/italy-eng2000.pdf>

⁸⁵ Greek national action plan for combating desertification. (2021).
URL: <https://www.unccd.int/sites/default/files/naps/greece-eng2001.pdf>

regulate the issue of liability for violations of legislation in the field of land use and reproduction, lack of provisions on financing, lack of reporting obligations, measures in the threatened areas also vary and often contain too general recommendations. Therefore, in our opinion, it is necessary to strengthen international cooperation and exchange of experience, as well as the development of international standards in this area. FAO Voluntary Guidelines for Sustainable Soil Management of 2017 provide principles of soil protection, encourage states to integrate soil protection into policy, but does not contain implementation mechanisms or operational plan. Therefore, provisions of the guidelines should be supplemented.

Another important issue is the adaptation of agriculture to climate change. The EU Strategy on Adaptation to Climate Change explicitly includes agriculture as a priority sector for climate-resilience measures. It speaks about the necessity of further development and implementation of adaptation strategies and plans at all levels of governance⁸⁶. According to the European Commission, the Common Agricultural Policy (CAP) after 2027 aims to strengthen the resilience of European farming between 2028 and 2034⁸⁷. Rules for the Land Use Sector 2021 to 2025 speaks about necessity to “*optimise land use planning and identify win-win practices*”⁸⁸.

Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 aims to ensure restoration of ecosystems in order to ensure biodiversity and resilience. It establishes an obligation for EU member states to set effective and area-based restoration measures to cover at least 20% of land by 2030, and all land by 2050⁸⁹. It introduces binding targets but still leaves substantial flexibility to member states.

As we can see, the EU’s provisions on adaptation of agricultural practices to climate change are broad, because the EU sets the framework, while member states should establish specific measures for resilient agricultural practices. At the same time EU legislation does not

⁸⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change. (2021). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:82:FIN>. Para 7.

⁸⁷ European Commission. (2025). Future CAP proposal aims to protect Sustainability and Resilience in Farming. URL: https://agriculture.ec.europa.eu/media/news/future-cap-proposal-aims-protect-sustainability-and-resilience-farming-2025-10-24_en

⁸⁸ Regulation of the European Parliament and of the Council amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review. (2021). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0554>. Para 1.5.2.

⁸⁹ Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869. (2024). URL: <https://eur-lex.europa.eu/eli/reg/2024/1991/oj/eng>

specify which restoration methods should be used, and which agricultural practices member states should prioritize.

FAO guidelines (Voluntary Guidelines for Sustainable Soil Management, FAO Climate-Smart Agriculture Framework) are influential, but they are not detailed enough to function as a full international standard for adaptation of agricultural practices to climate change. That is why we think that adoption of international standards in this sphere is also necessary.

Unfortunately, there are no binding international instruments that require states to monitor soil quality. FAO Voluntary Guidelines for Sustainable Soil Management of 2017 encourage monitoring, but this is only a recommendation without setting specific indicators. This is not enough to ensure the protection of land resources and reverse global soil degradation.

On the basis of the decisions taken by the 12th session of the Conference of Parties to the UNCCD (COP.12) Land Degradation Neutrality (LDN) indicators were adopted ⁹⁰. They are recommended under the UNCCD framework and are voluntary for target-setting, but they do not create binding legal obligations. Harmonized monitoring standards are necessary, because comparable data would help to better regulate obligations of states and monitor their implementation.

Australian National Soil Strategy prioritize enhanced soil-data collection and reporting mechanisms according to the UNFCCC and Convention on Biological Diversity ⁹¹, soil innovation and stewards, enhancing soil ecosystem services, and maximizing resource use efficiency – for example, maintaining year-round vegetation and ground cover, increasing areas of rehabilitated and replanted native vegetation, maintaining or improving soil structure, minimizing soil disturbance, minimizing acidification in low-pH soil, reducing soil contamination, and encouraging soil organic carbon and biota. ⁹².

The EU adopted the Directive 2025/2360 on soil monitoring and resilience (Soil Monitoring Law), which obliges states to monitor and assess soil health across their territories using common soil descriptors ⁹³. This regional international legal regulation is a very good example. A similar document should be adopted at the international level. International legal regulation of soil-quality monitoring is necessary.

⁹⁰ LDN methodological note. (2015). URL: <https://www.unccd.int/resources/publications/ldn-methodological-note>

⁹¹ Australian Government. National Soil Strategy. (2021). URL: <https://www.agriculture.gov.au/sites/default/files/documents/national-soil-strategy.pdf>. P. 38.

⁹² Ibid. P. 40.

⁹³ Directive (EU) 2025/2360 of the European Parliament and of the Council of 12 November 2025 on soil monitoring and resilience (Soil Monitoring Law). (2025). URL: <https://eur-lex.europa.eu/eli/dir/2025/2360/oj/eng>

The importance of preserving lands important for biological and landscape biodiversity should be highlighted. Let us give the most successful examples of foreign legislation. Federal Act on the Protection of Nature and Cultural Heritage of Switzerland adopted in 1966 and amended in 2022 is aimed at protection of biological diversity. Articles 23n and o establish the duty of due diligence, including traditional knowledge (23p), and express the possibility of this applying to genetic resources in Switzerland (23q). It also establishes fines and criminalization incurred with infringement ⁹⁴. Conservation Act of New Zealand of 1987 distinguishes wilderness areas, which indigenous natural resources should be protected. No livestock, vehicles, or motorized vessels (including hovercraft and jet boats) shall be allowed to be taken into or used in it and no helicopter or other motorized aircraft shall land or take off or hover for the purpose of embarking or disembarking passengers or goods in it ⁹⁵. According to Section 12 of the Nature Diversity Act of Norway, to prevent or reduce harm to biological, geological, or landscape diversity, industrial and other activities should use environmentally sound methods, technologies, and locations. These choices must be based on a broad assessment of past, current, and future impacts on nature, as well as relevant economic factors, so that they provide the best overall outcome for society ⁹⁶. These examples confirm that successful foreign legislation combines strict protection of sensitive areas with proactive obligations on users and operators, ensuring that biodiversity and landscape values are preserved not only through prohibitions but also through responsible planning and sustainable decision-making.

Economic and legal mechanisms for stimulation of reproduction of low fertility are also important. According to article 70 a of the Swiss Federal Act on Agriculture direct payments to farmers (which can be considered as one of economic stimulation mechanisms) can be obtained only if proof of ecological performance can be provided. Proof of ecological performance according to the Act includes: appropriate conditions for livestock; balanced use of fertilizers; an adequate proportion of land set aside for biodiversity; appropriate soil protection; specific choice and application of plant protection products ⁹⁷. According to Soil Contamination Countermeasures Act of Japan of 2002 financial assistance is provided for soil-remediation

⁹⁴ Federal Act on the Protection of Nature and Cultural Heritage of Switzerland. (1922). URL: <https://ampeid.org/documents/switzerland/federal-act-on-the-protection-of-nature-and-cultural-heritage/>

⁹⁵ Conservation Act of New Zealand. (1987). URL: https://www.legislation.govt.nz/act/public/1987/0065/latest/DLM104684.html?search=ts_act%40bill%40regulation%40deemedreg_Conservation+Act+1987_resele_25_a&p=1. Article 20 (3).

⁹⁶ Act of 19 June 2009 No.100 Relating to the Management of Biological, Geological and Landscape Diversity (Nature Diversity Act). URL: <https://www.regjeringen.no/en/documents/nature-diversity-act/id570549/>

⁹⁷ Federal Act on Agriculture. (1998). URL: https://lex.weblaw.ch/lex.php?norm_id=910.1&source=SR&lex_id=20929&file=en-pdf_file_a.pdf. Art. 70 a.

(article 45 (i)) ⁹⁸. The examples show that effective protection and restoration of soil quality require both preventive ecological standards and economic incentives.

⁹⁸ Soil Contamination Countermeasures Act of Japan. (2002).
URL: <https://www.japaneselawtranslation.go.jp/en/laws/view/2038/en>

CHAPTER 2. INTERNATIONAL LEGAL MECHANISMS FOR THE PROTECTION OF THE ENVIRONMENTAL RIGHTS OF VULNERABLE CATEGORIES OF THE POPULATION

2.1 International Standards in the Field of Protection of the Rights of Persons with Disabilities and the Right to a Healthy and Safe Environment

Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights of 1966 recognizes the right of each person to have access to the highest possible standards of physical, as well as mental health. According to the 1975 Declaration on the Rights of Disabled Persons, disabled persons have the same fundamental rights as other persons of the same age, including the right to a decent life. Disabled persons have the right to treatment, rehabilitation and social inclusion, education, vocational training, rehabilitation and assistance to enable them to realize their full potential. The Declaration also enshrines the obligation of states to take into account the needs of disabled persons in economic and social planning ⁹⁹.

The World Programme of Action concerning Disabled Persons, adopted by the General Assembly in resolution 37/52 of 3 December 1982, stressed the right of persons with disabilities to enjoy equal opportunities with other citizens and to participate equally in the improvement of living conditions which depend on the state of development of economy and social sphere. According to the Programme of Action, rehabilitation measures which are taken for the purpose of protection of people with disabilities are not satisfactory for achievement of the goals of “full participation and equality”. Experience shows that the impact of disability on a person’s daily life is largely determined by the environment ¹⁰⁰. This environment is undoubtedly also affected by climate change.

The 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted taking into account the experience which was received during the United Nations Decade of Disabled Persons (1983-1992). The political and moral basis of the

⁹⁹ Declaration on the Rights of Disabled Persons. UN General Assembly resolution 3447 (XXX). (1975). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-disabled-persons#:~:text=They%20have%20the%20right%2C%20according,of%20economic%20and%20social%20planning.>

¹⁰⁰ United Nations World Programme of Action concerning Disabled Persons, adopted by the General Assembly by resolution 37/52 of 3 December 1982. URL: <https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/united-nations-world-programme.pdf>. Bod 21.

rules is the International Bill of Human Rights. They demand from the states to make strict moral and political commitments and to implement measures with the aim to ensure that persons with disabilities have the same opportunities as other persons. They set out important principle of cooperation and require states to take responsibility, to act and highlight areas of crucial importance which need improvements with the aim to ensure quality of life for the persons with disabilities and to achieve their active participation in all spheres of life and their equality with others. The rules list measures that states should implement to ensure the rights of people with disabilities and emphasize the need for cooperation between state authorities and public organizations. However, the issue of protecting of people with disabilities from climate change is not addressed at all.

The 2006 Convention on the Rights of Persons with Disabilities, in its preamble, affirms the universal nature, interdependence and interconnectedness of all human rights and freedoms and the need to guarantee their full enjoyment to people with disabilities without discrimination, and recognizes that disability is the concept which evolves and that the barriers that exist between people with disabilities and the environment must be removed¹⁰¹. The Convention contains a wide list of rights of persons with disabilities that countries must ensure: equality before the law, liberty and security of person, independent living and inclusion in society, freedom of expression and belief and access to information, the right to the highest standards of health without discrimination (this high standard should be guaranteed to persons with disabilities as well), the right to rehabilitation, the right to an adequate standard of living and social protection, and many others.

According to article 25 of the Convention, the states undertake to take all appropriate measures to ensure access to health care, including medical rehabilitation, that takes into account the gender aspect. In particular, the states must

(a) provide persons with disabilities with the same scope, quality and standard of free or affordable health care and programmes as are provided to others, including in the field of sexual and reproductive health and public health programmes for the whole population;

(b) provide health care that persons with disabilities, including children and the elderly, specifically need because of their disability, including early identification and, where appropriate, intervention and services designed to minimize or prevent further disability;

¹⁰¹ Convention on the Rights of Persons with Disabilities. (2006). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

(c) provide such health care as close as possible to the person's place of residence, including in rural areas;

(d) require health professionals to provide persons with disabilities with the same quality of care as that provided to others, including on the basis of free and informed consent, including by raising awareness of the human rights, dignity, independence and needs of persons with disabilities through professional training and the publication of ethical standards for both public and private health care;

(e) prohibit discrimination against persons with disabilities in the provision of health insurance and life insurance, where such insurance is permitted under national law, and such insurance shall be provided in a fair and equitable manner;

f) prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

Recognizing that disability is an evolving concept, the Convention prescribes a dynamic approach that allows for adaptation over time and in different socio-economic conditions. In light of climate change and its impact on people with disabilities, we believe that the scope of state obligations towards people with disabilities extends to protecting their health from increased temperatures, even though this right is not explicitly provided for in the Convention.

The 1989 UN Convention on the Rights of the Child, in Article 23, establishes the obligation of states to ensure that a mentally or physically disabled child enjoys a full and decent life in conditions that ensure dignity, promote self-reliance and enable the child to participate actively in society. States recognize the right of a disabled child to special care and shall, within their available resources, promote and ensure to the child and those responsible for him or her the assistance required, appropriate to the child's condition and the circumstances of the parents or others responsible for the child. Recognizing the special needs of a disabled child, the assistance shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others responsible for the child, and shall be designed to ensure effective access by the disabled child to education, vocational training, health care, rehabilitation, preparation for employment and recreation, in a manner conducive to the child's fullest possible participation in society and the highest possible level of development of his or her personality, including his or her cultural and spiritual development. A mentally or physically disabled child shall enjoy a full and dignified life in conditions which ensure dignity, promote self-confidence and facilitate his or her active participation in the life of the community. Such a child has the right to special care and appropriate assistance from the state. In order to meet the special needs of a disabled child, free and effective access to services in

the fields of education, vocational training, medical care, rehabilitation, preparation for work and access to recreational facilities must be ensured ¹⁰².

Evacuation of citizens due to climate disasters is somewhat similar to the evacuation of citizens during military conflicts, where people with disabilities should be provided with special attention because of their limited capabilities. In Ukraine in 2022 the Methodological recommendations for the evacuation of people with disabilities were prepared within the framework of the project “Ensuring gender-sensitive inclusion of persons with disabilities in humanitarian response” with the support of the United Nations Partnership on the Rights of Persons with Disabilities (UNPRPD), implemented by the Joint Programme of UNDP, UN Women, UN Children's Fund, and UN Population Fund. When developing the methodological recommendations, the results of a rapid assessment of the experience of evacuation of persons with disabilities in Ukraine as a result of military operations, conducted in the fall of 2022, as well as recommendations from domestic volunteer and public organizations (associations), the international humanitarian organization CBM of the US Department of Homeland Security, were taken into account. The methodological recommendations are designed to help authorities and legal entities prepare for evacuation, ensure the evacuation itself and the placement of the population after evacuation in such a way that the rights and interests of people with disabilities during the relevant processes are ensured at the proper level ¹⁰³.

According to the Methodological recommendations, checklist for considering the needs of persons with disabilities when planning evacuation measures includes the following points:

1) persons with disabilities who may need assistance during evacuation are identified and accounted for in advance, their needs are known;

2) members of the emergency and rescue team and those accompanying people with disabilities are identified and prepared in advance (are trained and have first-aid skills, communication skills for interacting with people with different types of disabilities (including physical, mental, intellectual, or sensory disabilities) and are familiar with the use of assistive devices for persons with disabilities.);

3) an appropriate early warning and notification system is in place: information and notification of people with disabilities is provided in a timely manner and in accessible formats;

¹⁰² Convention on the Rights of the Child. (1989). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁰³ The Methodological recommendations for the evacuation of people with disabilities. (2022). URL: <https://www.undp.org/uk/ukraine/publications/metodychni-rekomendatsiyi-shchodo-evakuatsiyi-lyudey-z-invalidnistyu>

4) evacuation routes are accessible and properly planned, when planning evacuation measures, the movement routes, stopping places and their duration, location and equipment of medical points, heating points, food, water supply points along the entire movement route must be equally accessible to both persons without disabilities and persons with disabilities;

5) evacuation transport is available in sufficient numbers and is accessible and/or has reasonable accommodation for people with disabilities to board/disembark;

6) accommodation centres (including entrances, toilets and showers) are architecturally accessible to persons with disabilities and/or have reasonable accommodation for them ¹⁰⁴.

These methodological recommendations can be used in the development of national action plans aimed at combating climate change and their consequences as well as international standards in this sphere. Persons with disabilities should also be involved in the development of these national action plans and international standards. This will help to better take into account their needs and ensure the realization of their rights.

When we are looking at the advisory opinions of international courts on climate change obligations, for example advisory opinion of the Inter-American Court of Human Rights which contains detailed obligations of states in the sphere of prevention climate change and countering its consequences ¹⁰⁵, we do not find there detailed obligations of states towards persons with disabilities, although they should be there, since this category of persons requires special protection. Instead, we find general provisions mainly concerning the obligation, that when providing information or gathering data the persons with disabilities must be taken into account ¹⁰⁶. Similar provision we can find concerning the right to social security protection ¹⁰⁷. As a result, the rights of persons with disabilities are not integrated into national strategies on climate change mitigation of individual states. Thus, according to the Status Report on Disability Inclusion in National Climate Commitments and Policies developed by the International Disability Alliance in 2022, the list of state parties to the UNFCCC that refer to persons with disabilities in their NDC or INDC includes only 35 states ¹⁰⁸. Many of the references to persons with disabilities, which can be found in states' INDCs and NDCs are too broad in nature and do not contain concrete measures and as a result have no practical

¹⁰⁴ Ibid.

¹⁰⁵ Inter-American Court of Human Rights. Advisory opinion ao-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf

¹⁰⁶ Ibid. Para 711 and 899.

¹⁰⁷ Ibid. Para 764.

¹⁰⁸ International Disability Alliance. Status Report on Disability Inclusion in National Climate Commitments and Policies. (2022). URL: https://www.internationaldisabilityalliance.org/sites/default/files/drcc_status_report_english_0.pdf

significance. Overall, the analysis of NDCs, which is revealed in the Status Report, demonstrates that states are neglecting their obligations to respect, protect, and fulfil the rights of persons with disabilities in their responses to the climate crisis ¹⁰⁹. Furthermore, according to the report, no state parties to the Paris Agreement currently refer to persons with disabilities in their climate mitigation policies ¹¹⁰. Therefore, adding to the Paris Agreement of provision requiring from states consideration of the needs of persons with disabilities while developing climate mitigation policies is necessary. And mention of persons with disabilities in them cannot be general but must contain detailed provisions. As a result, states will be forced to take into account the rights of persons with disabilities at least because of the reporting mechanisms. As a result, things should move in a positive direction. Adding of such provision to the UNFCCC will also not be superfluous, since the consideration of the needs of persons with disabilities in the implementation of this convention is also at a low level.

Small island states should certainly pay more attention to the rights of persons with disabilities, since the issue of climate change is most sensitive for them. However, for example, the Kiribati Climate Change Policy, which was developed in 2018, does not mention persons with disabilities. On the other hand, the lack of state obligations in relation to this group of persons can be partly justified if the state has chosen a comprehensive approach to the issue of climate change consequences. The issue of preventing climate change and overcoming its consequences should be included in all sectors of the economy ¹¹¹. Therefore, international cooperation is needed at the international level to exchange best practices, which, unfortunately, are not developed in this sphere. In implementing such cooperation, it is necessary to involve persons with disabilities.

We agree with the scholars (e.g., Stein Penelope J.S.), that further investigation in this sphere with the aim of looking best practises is necessary ¹¹². Small island states need to improve their strategies in the sphere of prevention of climate change ¹¹³. Examples of good practice can be found for example in Jamaica where for persons with disabilities the Early

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Disability and climate change in the pacific. Findings from Kiribati, Solomon Islands, and Tuvalu. (2022). URL: <https://pacificdisability.org/wp-content/uploads/2022/08/PDF-Final-Report-on-Climate-Change-and-Persons-with-Disabilities.pdf>

¹¹² Stein, Penelope J.S. et al. (2024). Advancing disability-inclusive climate research and action, climate justice, and climate-resilient development. *The Lancet Planetary Health*, Volume 8, Issue 4, 242 – 255.

¹¹³ Leal, Filho W., Krishnapillai, M., Sidsaph, H., Nagy, G.J., Luetz, J.M., Dyer, J., Otoara, Ha'apio M., Havea, P.H., Raj, K., Singh, P., et al. (2021). Climate Change Adaptation on Small Island States: An Assessment of Limits and Constraints. *Journal of Marine Science and Engineering*, 9(6). URL: <https://www.mdpi.com/2077-1312/9/6/602>

warning system was created, within which personnel training is also carried out ¹¹⁴. In Mozambique people with disabilities were involved into the monitoring of the situation in order to assess the readiness to emergency situations ¹¹⁵. On Ternate Island adaptive capacity of 60 villages was assessed and special methodology for this assessment was previously developed ¹¹⁶. Sharing experiences that have proven themselves in practice could help improve the situation in this sphere.

2.2 International Legal Mechanisms of Protection of Environmental Rights of Women

In international law, there are a number of documents that directly or indirectly recognize the environmental rights of women and, as a result, impose additional obligations on states to protect this category of persons. Recognition of these rights for women by the international community is important not only for ensuring gender equality. It also contributes to environmental protection.

Convention on the Elimination of All Forms of Discrimination against Women of 1979 in Article 14 (2) (h) places an obligation on states to ensure that women, especially those living in rural areas, have adequate living conditions, including housing, sanitation, water supply, etc. ¹¹⁷, thus prohibiting discrimination on the basis of gender and in the sphere of environmental rights protection.

UN Environment Programme's Global Gender and Environment Outlook (GGEO) report stresses that the protection of gender equality and the protection of the environment must go hand in hand, and that gender-and-environment approaches are essential to ensure sustainable and equitable management of natural resources and the protection of ecosystems ¹¹⁸. According to the Outlook, gender equality is a driving force for social change, including

¹¹⁴ Mclymont-Lafayette, Indi, Wedderburn, Judith, Williams-Raynor, Petre, Mclymont-Lafayette, Indi, Wedderburn, Judith, Williams-Raynor, Petre. (2014). Climate change, gender & persons with disabilities in small island developing. Friedrich Ebert Stiftung (Jamaica and the Eastern Caribbean). URL: <https://library.fes.de/pdf-files/bueros/fescaribe/11389.pdf> <https://library.fes.de/pdf-files/bueros/fescaribe/11389.pdf>

¹¹⁵ Spark. Inclusive Rural Transformation. Climate action: eight ways to include people with disabilities. (2023). URL: <https://sparkinclusion.org/learningcentre/climate-action-eight-ways-to-include-people-with-disabilities/>

¹¹⁶ Ridwan Lessy, Mohammad, Lassa, Jonatan, Zander, Kerstin Katharina. (2025). Development of small island vulnerability index to achieve sustainable development goals: Insight from Ternate Volcanic Island, Indonesia. *Environmental Challenges*, 19. URL: <https://www.sciencedirect.com/science/article/pii/S2667010025000514>

¹¹⁷ Convention on the Elimination of All Forms of Discrimination against Women. (1979). <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

¹¹⁸ UN Environment Programme. UN Environment Programme's Global Gender and Environment Outlook (GGEO). (2018). URL: <https://www.unep.org/resources/report/global-gender-and-environment-outlook-ggeo>

on the path to sound environmental policies ¹¹⁹. The Outlook cites interesting research findings that show that involving women in the development of environmental legislation, or even international treaties, would help raise standards in this sphere. In 2003, research showed that women were 14% more likely to support legislation that would strictly prohibit the cruelty to farmed animals, 19% were more likely to support legislation that would prohibit research on laboratory animals, and 10% were more likely to support legislation that would prohibit all hunting (28% of women compared to 18% of men) ¹²⁰. A study conducted in 2003 in the US also showed that women are more progressive in the environmental sphere. The study showed that 33 % of women were inclined to recognize the rights of animals and humans on an equal level, while only 17 % of men were inclined to such legislative changes ¹²¹. Therefore, ensuring women's participation in the development of environmental policy, as well as their work in bodies involved in natural resource management, is extremely important ¹²².

Despite some progress in achieving gender equality, progress in ensuring women's environmental rights is insufficient. For example, according to the research conducted and presented in the UN Environment Programme's Global Gender and Environment Outlook, only 37% of states guarantee the same rights to own, use and control land to both women and men, the law of 4 % of states does not guarantee the same rights to own, use and control land to women and men, or women have no legal rights to own, use and control land and in 59 % of states the law guarantees the same rights to own, use and control land to women and men, but there are some customary, traditional or religious practices that discriminate against women ¹²³.

The 2015 Paris Agreement declares in its preamble that states, when taking action to combat climate change, should respect, promote and take into account their international obligations regarding gender equality, women's empowerment and intergenerational justice ¹²⁴. The agreement thus recognizes gender inequality in the face of climate change and requires states to take it into account in fulfilling its obligations under the agreement.

¹¹⁹ UNEP. (2016). Global Gender and Environment Outlook. United Nations Environment Programme, Nairobi, Kenya. URL: https://www.genevaenvironmentnetwork.org/wp-content/uploads/2020/05/gender_and_environment_outlook_opt.pdf. P. 198.

¹²⁰ Ibid. P. 39.

¹²¹ Moore, David W. (2003). Public Lukewarm on Animal Rights. <https://news.gallup.com/poll/8461/public-lukewarm-animal-rights.aspx>

¹²² UNEP. (2016). Global Gender and Environment Outlook. United Nations Environment Programme, Nairobi, Kenya. URL: https://www.genevaenvironmentnetwork.org/wp-content/uploads/2020/05/gender_and_environment_outlook_opt.pdf. P. 198. P. 10.

¹²³ Ibid. P. 11.

¹²⁴ Paris Agreement. (2015). URL: https://unfccc.int/sites/default/files/english_paris_agreement.pdf

The Women's Major Group (WMG) was created at the 1992 Earth Summit in Rio de Janeiro, Brazil, where governments recognized women as one of the nine important groups in society for achieving sustainable development. It is an official participant in the United Nations processes on Sustainable Development and the focal point for UN-DESA, ECOSOC and the General Assembly for all UN Sustainable Development policies. Since 1996, the Women's Group has been actively participating in the processes of the United Nations Environment Programme. It aims to empower women in global environmental policy. The group is open and works with all interested organizations that support gender equality in achieving the Sustainable Development Goals ¹²⁵.

The Women's Major Group at UN Environment (WMG-UNEA) has as core mandate to facilitate women's civil society perspectives in the policy space and processes of the United Nations Environment Assembly (UNEA). The WMG-UNEA cooperates closely with the WMG working on the 2030 Agenda for Sustainable Development but has its own structure ¹²⁶. The main goal of the WMG-UNEA is to bring a women's perspective on environmental protection to the international community within the framework of UN environmental programs and the United Nations Environment Assembly.

The UNEP began to recognize the importance of taking into account women's perspectives and ensuring gender equality in environmental protection and achieving sustainable development goals since 1985. This is evidenced by the fact that the UNEP decided to adopt the Decision 23/11 on Gender Equality in the Field of Environment, which emphasizes the importance of integrating women into environmentally significant decision-making and incorporating gender aspects into environmental policies ¹²⁷.

It is difficult to disagree with scholars (e.g., O. Razumkov) who point out that currently, women are more likely than men to adopt environmentally friendly practices: avoiding plastic bags and disposable tableware, choosing products with less packaging and less harmful household products. This is primarily due to the unequal distribution of household responsibilities and the unpaid reproductive work traditionally performed by women, so the increase in awareness of responsible consumption among men is closely related to the change

¹²⁵ The Women's Major Group. (2024). URL: <https://womensmajorgroup.org/about-us-3/>

¹²⁶ Women's Major Group at UN Environment / UNEA. (2024). URL: https://womensmajorgroup.org/wp-content/uploads/2018/05/UNEP-WMG-Principles-and-Values-Statement_FINAL.pdf

¹²⁷ UNEP Environment Programme. Women. (2024). URL: <https://www.unep.org/civil-society-engagement/major-groups-modalities/major-group-categories/women>

in social norms in society towards gender equality ¹²⁸. Therefore, undoubtedly, involving women in decision-making in the environmental sphere is a positive experience.

At the 25th Conference of the Parties to the Framework Convention on Climate Change, which was held on 2 Dec - 13 Dec 2019 the participants focused on gender equality and human rights in the context of climate justice ¹²⁹. At the conference Enhanced Lima work programme on gender and its gender action plan was enacted (Decision 3/CP.25) ¹³⁰. In this document the connection between human rights, gender equality and climate change was affirmed and it was recognized that taking into account gender aspects in the formation and implementation of climate policy increases its ambition; therefore, states should involve women in its formation and implementation. Countries were also called upon to strengthen support for women's leadership in the fight against climate change, to strengthen information work in this area, and to strive to achieve gender equality in the implementation of the UN Framework Convention on Climate Change, as well as the Paris Agreement.

According to statistics provided by the ECOSOC, 80% of the population displaced because of climate change are women and girls, and the risk of them dying as a result of natural disasters is 14 higher compared to men ¹³¹. Resolution of the ECOSOC E/2024/58 calls for integrating gender questions into the United Nations policies and programs ¹³². Gender mainstreaming was on the ECOSOC agenda in 2025 as well ¹³³.

The need for states to ensure equal access for women and men to natural and land resources is required by the 2030 Agenda for sustainable development, namely its Goal 5 A. And this provision is important, since access to the above-mentioned resources gives economic opportunities, which affect the quality of life, and they must be ensured for both genders. However, statistical data show that these Sustainable Development Goals are not being fulfilled by countries at a sufficient level. Only 13% of agricultural land is owned by women. 164

¹²⁸ Razumkov, O. (2022). Ukrainian Center for Economic and Political Research. Gender perspective of the environmental protection sector in Ukraine. URL: https://razumkov.org.ua/images/2022/07/15/we_act_ecology_ukr_report.pdf. P. 40.

¹²⁹ UN Climate Change Conference - December 2019. (2019). URL: <https://unfccc.int/conference/un-climate-change-conference-december-2019>

¹³⁰ Enhanced Lima work programme on gender and its gender action plan. (2019). URL: <https://unfccc.int/decisions?f%5B0%5D=conference%3A4252>

¹³¹ Economic and Social Council (ECOSOC) Resolution E/2025/58. (2025). URL: <https://docs.un.org/en/E/2025/58>

¹³² ECOSOC E/2024/58. Comprehensive consideration of gender issues in all strategies and programs in the Organization system of the United Nations. (2024). URL: <https://docs.un.org/ru/E/2024/58>

¹³³ ECOSOC E/2025/58. Mainstreaming a gender perspective into all policies and programmes in the United Nations system. (2025). URL: <https://docs.un.org/en/E/2025/58>

countries (out of 180 studied) recognize women's right to land ownership, but only 52 countries guarantee the implementation of this right in practice. This gap between legislative provision and its implementation in practice is explained by discriminatory customary norms in individual countries ¹³⁴.

Another problem that Women Watch points out is the limited access of women, especially in rural areas, to economic resources that are also necessary for the cultivation of natural resources, as well as the need for women to spend a huge amount of time collecting water and firewood, which are necessary for cooking and caring for children. Therefore, infrastructure projects aimed at facilitating women's access to vital natural resources in rural areas are urgently needed. At the same time, if any projects in this sphere are implemented, women do not participate in planning and implementation of these projects ¹³⁵, which is unacceptable, as women's opinions on these projects should be taken into account.

According to the report of the UN, ensuring that women have better access to, and control of, natural resources such as land, water, forests and minerals in addition to improving the economic situation of women can also improve the chances of long-term peace and recovery in war-torn countries. Women's rights to access natural resources are ignored during the elaboration of peace agreements, as a result of which women's rights to natural resources and their needs are rarely met during the peacebuilding process. For instance, the peace agreements in Timor-Leste and Bougainville did not include any provisions on women's access and rights to land, exacerbating land-related vulnerabilities for many groups of women and ultimately undermining their recovery ¹³⁶.

Other UN studies show that when women are given land ownership, it leads to increased productivity. An interesting example is Tanzania, where 80% of women work in agriculture.

¹³⁴ United Nations (Office of the United Nations High Commissioner for Human Rights) and United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). Realizing women's rights to land and other productive resources. Second edition. (2020). URL: <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Realizing-womens-rights-to-land-and-other-productive-resources-2nd-edition-en.pdf>. P. 11.

¹³⁵ Women Watch. (2025). Overview: Access to Productive Resources, Assets, Services and Infrastructure. URL: <https://www.un.org/womenwatch/feature/ruralwomen/overview-access.html>

¹³⁶ UN Women. (2013). Empowering women in natural resource management critical for lasting peace in war-torn countries, says UN report. URL: <https://asiapacific.unwomen.org/en/news-and-events/stories/2013/11/empowering-women-in-natural-resource-management>

Studies have shown that women who have been given stronger land rights are earning up to 3.8 times more income and are more likely to have individual savings ¹³⁷.

According to the investigation conducted by the FAO, climate change widens the income gap between female-headed and male-headed households by USD 37 billion a year, and floods by USD 16 billion a year. A 1° C increase in long-term average temperatures is associated with a 34 percent reduction in the total incomes of female-headed households, relative to those of male-headed households. Extreme temperatures push children to increase their weekly working time by 49 minutes relative to prime-aged adults, mostly in the off-farm sector, closely mirroring the increase in the work burden of women ¹³⁸. These research results prove that climate change does not affect women and men equally. The negative consequences for women are much greater. This is due to the fact that women have historically had fewer rights and gender-based disparities have not been overcome. Although there is progress in this sphere, not in all countries women have access to natural resources on an equal basis with men. Women also spend significantly more time on housework and raising children, which also affects income levels. Climate change affects women living in rural areas even more.

The state's policy in the field of combating climate change should take into account the above-mentioned differences and pay attention to women and children, especially in rural areas. However, unfortunately, as the report of FAO titled “The Unjust Climate: Measuring the impacts of climate change on rural poor, women and youth” notes, that rural residents who are most affected by climate change, namely women and children are rarely mentioned when developing policy documents. In the nationally determined contributions and national adaptation plans of the 24 states analysed in this report, only 6 percent of the 4,164 climate actions proposed mention women, 2 percent explicitly mention youth, less than 1 percent mention poor people and about 6 percent refer to farmers in rural communities ¹³⁹. This deficiency must be eliminated.

On the positive side, there is a growing international focus on the issue of women's greater vulnerability to the impacts of climate change. Thus, the Belém gender action plan adopted at the COP 30 is also aimed at the strengthening of action of women living in the rural

¹³⁷ United Nations. (2023). Securing Women's Land Rights for Increased Gender Equality, Food Security and Economic Empowerment. URL: <https://www.un.org/en/un-chronicle/securing-women%E2%80%99s-land-rights-increased-gender-equality-food-security-and-economic>

¹³⁸ FAO. (2024). The Unjust Climate: Measuring the impacts of climate change on rural poor, women and youth. URL: <https://openknowledge.fao.org/server/api/core/bitstreams/5f714e89-2bdd-4313-8b72-45504d00953a/content>. P. 3.

¹³⁹ Ibid.

territories and Indigenous women in prevention of climate change ¹⁴⁰. The action plan draws attention to the necessity of integration of social and economic considerations into climate change mitigation processes and the necessity to ensure effective and equitable transformation which will take into consideration the needs and vulnerability of women as well. Gender-transformative social protection programs are also required by the Belem Action Mechanism for a Global Just Transition ¹⁴¹.

During the conference nationally determined contributions of the states were criticised. States didn't do enough to fulfil the obligations according to the Paris agreement. At the COP 30 therefore the attention was stressed on the need to align NDCs with the aim of limiting global warming to 1.5°C ¹⁴². Involving women in decision-making processes would undoubtedly help improve national policies on climate change prevention.

The negative moment is that at the COP 30 the states failed to agree on a binding schedule to phase out fossil fuels. States' commitments in this sphere are not concrete. The conference failed to address fossil fuels directly and that is why is criticised by scholars ¹⁴³. That is why the COP 31 will have to address this issue.

It should be stated that COP 30 was not the first COP which addressed women's rights in climate change. COP26 conference which was organized in Glasgow also address women's rights in in this sphere through initiatives like the Glasgow Women's Leadership Statement ¹⁴⁴ and the Glasgow Climate Pact ¹⁴⁵. According to Glasgow Women's Leadership Statement women and girls should be involved in creating and leading innovative climate solutions at all

¹⁴⁰ Key Takeaways from COP30 in Belém. (2025). URL: <https://climateseed.com/blog/key-takeaways-cop30>

¹⁴¹ The Belem Action Mechanism for a Global Just Transition. (2025). URL: https://climatenetwork.org/wp-content/uploads/2025/10/BAM_DiscussionPaper_20251011-2.pdf

¹⁴² Belém COP30 delivers climate finance boost and a pledge to plan fossil fuel transition. (2025). URL: <https://news.un.org/en/story/2025/11/1166433>

¹⁴³ Harvej, Fiona. (2025). Beyond the negative headlines, some truly good things came out of Cop30. URL: <https://www.theguardian.com/environment/2025/nov/27/beyond-the-negative-headlines-some-truly-good-things-came-out-of-cop30>; Caballero, Lucia. (2025). Cop30: five reasons the UN climate conference failed to

deliver on its “people’s summit” promise. URL: <https://theconversation.com/cop30-five-reasons-the-un-climate-conference-failed-to-deliver-on-its-peoples-summit-promise-269750>; Da Matta, Patricia. (2025). COP 30 Delivers Progress – But Seems to Have Missed Its Moment. URL: <https://nature4climate.org/cop-30-delivers-progress-but-seems-to-have-missed-its-moment/>

¹⁴⁴ Gender Equality and Climate Change. (2021). URL: <https://www.gov.scot/news/gender-equality-and-climate-change/>

¹⁴⁵ Glasgow Climate Pact. (2021). URL: <https://unfccc.int/documents/310475>

levels ¹⁴⁶. The Glasgow Climate Pact addresses women's rights by integrating gender perspectives into climate policies ¹⁴⁷.

At the same time, we agree with the scholars who stress attention on the necessity to implement gender equality initiatives in different states, because just declarations and political commitments are not enough ¹⁴⁸. The International Union for the Conservation of Nature conducted a study, which showed that climate change also increases gender-based violence ¹⁴⁹. It proves the seriousness of the issue and the necessity to address the gender inequality issue in relation to climate change.

Priority theme of the sixty-sixth session of the UN Commission on the Status of Women, which took place in March 2022 was achieving gender equality in climate change ¹⁵⁰. During the session conclusions on “Achieving gender equality and the empowerment of all women and girls in the context of climate change, environmental and disaster risk reduction policies and programmes” were agreed ¹⁵¹. The conclusions encourage to integrate gender perspective into international, regional and national policies and plans in the sphere of prevention of climate change.

The Beijing+30 Action Agenda, a United Nations initiative led by UN Women also requires achieving women’s equal and meaningful participation in decision-making on natural resources, disaster risks, the environment and climate action ¹⁵². That is, we can see that the UN recognizes the importance of women's leadership in the fight against climate change.

¹⁴⁶ Gender equality and climate change: Glasgow Women's Leadership statement. (2021). URL: <https://www.gov.scot/publications/glasgow-womens-leadership-statement-gender-equality-climate-change/>

¹⁴⁷ Glasgow Climate Pact. (2021). URL: <https://unfccc.int/documents/310475>

¹⁴⁸ Morrow, K. (2022). Cop26 and beyond: participation and gender – more of the same? *Transnational Legal Theory*, 13(2–3), 191–217. URL: <https://www.tandfonline.com/doi/full/10.1080/20414005.2023.2171347#abstract>

¹⁴⁹ Climate breakdown “is increasing violence against women”. (2020). URL: <https://www.theguardian.com/environment/2020/jan/29/climate-breakdown-is-increasing-violence-against-women>

¹⁵⁰ UN Women. (2022). CSW66. URL: <https://www.unwomen.org/en/csw/csw66-2022>

¹⁵¹ Achieving gender equality and the empowerment of all women and girls in the context of climate change, environmental and disaster risk reduction policies and programmes. E/CN.6/2022/L.7. (2020). URL: <https://docs.un.org/en/E/CN.6/2022/L.7>

¹⁵² UN-Women (United Nations Entity for Gender Equality and the Empowerment of Women). (2025). Women’s Rights in Review 30 Years After Beijing. New York: UN-Women. URL: <https://www.onumulheres.org.br/wp-content/uploads/2025/03/womens-rights-in-review-30-years-after-beijing-en.pdf>. P. 22.

2.3 International Legal Regulation of Protection of the Environmental Rights of Indigenous Peoples

According to the World Bank Group, indigenous peoples are culturally distinct societies and communities. Although they make up approximately 6% of the global population, they account for about 19% of the extreme poor population ¹⁵³, and they are very dependent on the land where they live and natural resources.

The main purpose of the UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007 ¹⁵⁴ is to establish universal framework of minimum standards for the survival, dignity, and well-being of Indigenous peoples, which would be applicable worldwide, but it also has provisions aimed at the protection of the environment and environmental rights of Indigenous peoples. Article 25 provides that Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources. Article 26 guarantees the rights of Indigenous peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired and states have an obligation to recognize these rights and ensure their protection. At the same time the customs, traditions and land tenure systems of the Indigenous peoples should be respected ¹⁵⁵.

According to article 29, indigenous peoples have the right to the conservation and protection of the natural environment and the productive capacity of their lands and resources. It obliges the states to develop programs aimed at this conservation and protection of the environment. States also have an obligation to take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands of Indigenous peoples without their free, prior and informed consent. All aforementioned programs and measures should be not only developed, but also implemented, and monitoring of their implementation should be conducted.

Article 32 ensures the right of Indigenous peoples to determine priorities and develop strategies for the use of their lands and resources. If states want to approve any project, which

¹⁵³ World Bank Group. Indigenous Peoples. (2025). URL: <https://www.worldbank.org/en/topic/indigenouspeoples>

¹⁵⁴ UN Resolution 61/295. Declaration on the Rights of Indigenous Peoples. (2007). URL: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹⁵⁵ Ibid.

can affect the lands or resources of Indigenous peoples, their prior consent for such project should be obtained. This consent must be free and informed. First of all, we are talking about the projects concerning mining of mineral resources or the use of water resources.¹⁵⁶

International Labour Organization also adopted some conventions aimed at protection of rights of Indigenous peoples. These conventions also contain provisions aimed at the protection of their environmental rights.

Article 11 of the ILO Convention 107 concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries guarantees the right of ownership, collective or individual, of Indigenous people over the lands which they traditionally occupy¹⁵⁷. According to article 12, Indigenous people shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations¹⁵⁸. And even when these exceptional preconditions are met, Indigenous peoples according to the convention shall be provided with lands of quality at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development¹⁵⁹. Article 14 obliges states to provide Indigenous peoples with the necessary amount of land to ensure their normal existence and to promote the development of lands already in their possession.

Indigenous and Tribal Peoples Convention, which was adopted by the International Labour Organization in 1989 (Convention 169), defines Indigenous peoples as peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.¹⁶⁰ This is the only definition of Indigenous peoples which we can find in international conventions.

Article 7 (3) of the Indigenous and Tribal Peoples Convention obliges states to conduct environmental impact assessment of planned development activities. The results of these

¹⁵⁶ Ibid.

¹⁵⁷ Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries. (1957). URL: <https://www.refworld.org/legal/agreements/ilo/1957/en/17944>

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Indigenous and Tribal Peoples Convention. (1989). URL: <https://www.ohchr.org/en/instruments-mechanisms/instruments/indigenous-and-tribal-peoples-convention-1989-no-169>

studies shall be considered as fundamental criteria for the implementation of these activities. According to Article 7 (4) of the convention, governments shall take measures, in co-operation with Indigenous peoples, to protect and preserve the environment of the territories they inhabit ¹⁶¹.

Article 15 protects the right of Indigenous peoples to natural resources and their right to participate in their use, management and conservation. If resources are owned by the state and it plans to extract them, or grants a permit for their extraction, it must be ensured that consultations are held with representatives of Indigenous peoples, and that their interests are protected. Also, the damage caused to Indigenous peoples as a result of extraction of mineral or other natural resources must be compensated, and the environmental conditions restored to their previous state.

According to article 23 (1), hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of cultures of Indigenous peoples and in their economic self-reliance and development. Governments have the obligation to strengthen and promote these activities. Article 23 (2) requires that upon the request of the Indigenous peoples, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of Indigenous peoples, as well as the importance of sustainable and equitable development ¹⁶².

Article 7 (1) provides for the right of Indigenous peoples to independently determine their development. States should create the opportunities for them to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

American Declaration on the Rights of Indigenous Peoples in article XIX guarantees the right to protection of a healthy environment. According to it, Indigenous peoples have the right to live in harmony with nature and to a healthy, safe, and sustainable environment, essential conditions for the full enjoyment of the rights to life and to their spirituality, cosmovision, and collective well-being. ¹⁶³ Further in the same article we find provisions similar to those in the Declaration of the Rights of Indigenous Peoples, adopted within the framework of the UN, that Indigenous peoples have the right to protection of the environment, the land resources they

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ American Declaration on the Rights of Indigenous Peoples. (2016). URL: <https://www.oas.org/en/sare/documents/decamind.pdf>

inhabit, as well as provisions requiring that states must develop and implement programs that will ensure this protection.

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the Special Rapporteur on the Rights of Indigenous Peoples, which were created within the UN have also addressed environmental rights through studies and recommendations. The EMRIP is composed of seven independent experts on the rights of Indigenous Peoples, who are appointed by the Human Rights Council and are selected based on competence and experience in the rights of Indigenous Peoples ¹⁶⁴. The Report of the EMRIP of 14 – 18 July 2025 highlighted the important role of traditional economies of Indigenous peoples in supporting combating climate change, preserving biodiversity and ensuring food security ¹⁶⁵.

Marina A.R. de Mattos Vieira and Lieselotte Viaene draw attention to the need to expand access for representatives of Indigenous peoples to international institutions in order to convey their views on the protection of their rights ¹⁶⁶. According to Reyes-García V., Fernández-Llamazares Á. and Aumeeruddy-Thomas Y., biodiversity policies must take into account Indigenous peoples' knowledge and understanding of nature ¹⁶⁷. Carmona R., Reed G. and Ford J. stress attention that this also applies to marine environmental protection policy, as well as climate policy ¹⁶⁸.

In the Los Cedros protected forest case, the Constitutional Court of Ecuador confirmed that nature, and in this particular case the Los Cedros cloud forest, which is a reserve, are subjects of law, banned all mining activities, and revoked those permits that had been issued for mining previously. In this case, the forests were recognized as a reserve in 1994, but in 2017 the Ministry of the Environment, Water and Ecological Transition granted a mining permit to a state-owned company (ENAMY MP). A year later, a lawsuit was filed to revoke these licenses. The plaintiffs (the Decentralized Autonomous Municipal Government of Cotachi)

¹⁶⁴ Expert Mechanism on the Rights of Indigenous Peoples. (2025). URL: <https://www.ohchr.org/en/hrc-subsiidiaries/expert-mechanism-on-indigenous-peoples>

¹⁶⁵ Human Rights Council. (2025). Expert Mechanism on the Rights of Indigenous Peoples. URL: <https://docs.un.org/en/A/HRC/EMRIP/2025/3>

¹⁶⁶ Vieira, Marina A R de Mattos, Viaene, Lieselotte. (2024). Indigenous Peoples' Rights at the United Nations Human Rights Council: Colliding (Mis)Understandings? *Journal of Human Rights Practice*, Volume 16, Issue 2, 512–532. URL: <https://academic.oup.com/jhrp/article/16/2/512/7614932>

¹⁶⁷ Reyes-García, V., Fernández-Llamazares, Á., Aumeeruddy-Thomas, Y. et al. (2022). Recognizing Indigenous peoples' and local communities' rights and agency in the post-2020 Biodiversity Agenda. *Ambio*, 51, 84–92. URL: <https://link.springer.com/article/10.1007/s13280-021-01561-7>

¹⁶⁸ Carmona, R., Reed, G., Ford, J. et al. (2024). Indigenous Peoples' rights in national climate governance: An analysis of Nationally Determined Contributions (NDCs). *Ambio*, 53, 138–155. URL: <https://link.springer.com/article/10.1007/s13280-023-01922-4#citeas>

alleged violations of the procedural environmental rights of local communities, as well as the rights of nature as a subject of law. The court sided with the plaintiff, recognizing the violation of Article 73 of the Constitution of Ecuador, which guarantees the rights of nature, and recognizes the threat of extinction of biological species in the forests. According to paragraph 131 of the decision, the state must take into account the complex biodiversity of the forest, which is a reserve, adhere to the preventive principle and protect the rights of nature, in particular species that are at high risk of extinction and destruction, and prevent harmful changes to fragile ecosystems¹⁶⁹. Paragraph 134 indicates that the court considered it plausible that the mining activity would cause the damages, amounting to a clear violation of the rights of nature, including the rights to the existence of species and ecosystems and to the regeneration of their cycles, structure, functions, and evolutionary processes¹⁷⁰.

It is worth noting, that in the preamble of the Constitution of Ecuador we find the statement celebrating „nature, the Pacha Mama (Mother Earth), of which we are a part and which is vital to our existence”¹⁷¹. This is a notably non-anthropocentric conception of environmental concerns rooted in indigenous beliefs¹⁷².

There are many examples of successful lawsuits filed by Indigenous peoples in national courts in order to limit environmental pollution and protect their environmental rights. One such example is the Atrato River case, in which Indigenous communities of the Atrato river basin brought a lawsuit against the Colombian Ministry of Ecology and Sustainable Development to stop mining and deforestation, as well as dumping waste into the Atrato River. It was claimed that the environmental rights of the Indigenous people living in the area were violated because illegal mining activities affected the environment where they lived and disrupted the natural balance of the area. The local population began to suffer from various diseases, including malaria. The courts of first and second instance rejected the lawsuit, and the case was brought before the Constitutional court.

The Constitutional court established the state’s obligation to take the necessary measures to overcome the serious crisis caused by illegal mining. The case demonstrated a high level of environmental degradation and an alarming decline in fish populations. It was

¹⁶⁹ Case No. 1149-19-JP/20. (2021). URL: https://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcBldGE6J3RyYW1pdGUnLCB1dWlkOic2MmE3MmIxNy1hMzE4LTQyZmMtYjJkOS1mYzYzNWE5ZTAwNGYucGRmJ30=

¹⁷⁰ Ibid.

¹⁷¹ Constitution of Ecuador. (2008). URL: https://www.constituteproject.org/constitution/Ecuador_2021

¹⁷² Prieto, Gustavo. (2021). The Los Cedros Forest has Rights: The Ecuadorian Constitutional Court Affirms the Rights of Nature. VerfBlog, 2021/12/10. URL: <https://verfassungsblog.de/the-los-cedros-forest-has-rights/>

demonstrated that illegal mining has a direct impact on the well-being and health of population, led to changes in the traditional life of Indigenous peoples living in the area and affected their customs. Natural resources constitute the environment of Indigenous peoples, and their culture, traditions and way of life developed on the basis of their special relationship with the environment and biodiversity. The natural environment of Indigenous peoples and their culture are interdependent, so the protection of the environmental rights of Indigenous peoples is crucial for the preservation of their identity. Based on this interdependence, the court introduced the concept of biocultural rights of Indigenous peoples.

The Constitutional court confirmed the importance of applying the precautionary principle and appropriate regulatory and preventive measures at an early stage in order to prevent environmental damage. The precautionary principle stands as a highly important legal tool, as it responds to the technical and scientific uncertainty that often surrounds environmental issues, due to the incommensurability of some polluting factors, the lack of adequate measurement systems, or the fading of damage over time ¹⁷³.

The court also found that the Colombian government failed to comprehensively ensure environmental protection and enjoyment of claimants' human rights by failing to prevent river pollution from mining and stated that in order to protect these rights, the government had to consider climate change (among other issues) when developing mining and energy public policies ¹⁷⁴. It means, that the court recognized the duty of state to act in order to protect the environment.

In the decision we find an interesting approach, which consists in the fact that the Atrato River, its basin, and tributaries were recognized by the court as a right-holder entitled to protection, conservation, maintenance, and restoration by the state and ethnic communities. Consequently, the court ordered the national government to exercise legal guardianship and representation over the river's rights (through the institution designated by the President of the state, which could very well be the Ministry of the Environment) in conjunction with the ethnic communities that inhabit the Atrato River basin in Chocó. Thus, the Atrato River and its basin will henceforth be represented by a member of the plaintiff communities and a delegate from the Colombian government, who will be the guardians of the river. To this end, the government,

¹⁷³ Judgment T-622/16. Environmental precautionary principle and its application to protect people's right to health - Case of ethnic communities living in the Atrato River basin who report health problems as a result of illegal mining activities. (2016). URL: https://ecojurisprudence.org/wp-content/uploads/2022/02/Colombia_Principle-of-Environmental-Precaution-and-its-Application-to-Protect-Peoples-Right-to-Health_123.pdf

¹⁷⁴ Atrato River Decision T-622/16 of November 10, 2016. URL: <https://climatecasechart.com/non-us-case/atrato-river-decision-t-622-16-of-november-10-2016/>

headed by the President, had to appoint its representative within one month of notification of this judgment. Within that same period, the plaintiff communities had to choose their representative. Additionally, and for the purpose of ensuring the protection, recovery, and proper conservation of the river, its legal representatives had to design and form a commission of guardians of the Atrato River. This commission must consist of the two designated guardians and an advisory team. This advisory team may be formed and supported by all public and private entities, universities (regional and national), natural resource research centres, and environmental organizations (national and international), community organizations, and civil society organizations that wish to participate in the project to protect the Atrato River and its basin ¹⁷⁵.

Thus, we can see, that Constitutional court of Columbia also determined the obligation of state to establish concrete guardianship arrangements aimed at the protection of the Atrato River and provided for the participation of the public in it, as well as participation of ethnic communities. This provision of the court's decision is quite innovative, as it provides for the creation of a new institution - ecological guardianship (in this specific case, a river). This decision may have an impact on the introduction of environmental guardianship for other natural objects.

The court also ordered to develop and implement a plan to decontaminate the Atrato River basin and its tributaries and in conjunction with the plaintiff ethnic communities, to implement an action plan to neutralize and permanently eradicate illegal mining activities. Thus, the Constitutional court of Columbia recognized intrinsic value of nature and the fact that nature (specifically the Atrato River) can be considered as a subject of rights, not merely an object of property or resource use. In this case we also can see the interconnection between constitutional rights of nature and environmental rights of Indigenous peoples.

This decision is also in line with modern global movement which seeks to give rivers, animals, plants and entire ecosystems the same legal protection that humans have. The ideas for this movement arose as a result of the publication of the article "Should Trees Have Standing – Toward Legal Rights for Natural Objects was published" in 1972, which was written by

¹⁷⁵ Judgment T-622/16. Environmental precautionary principle and its application to protect people's right to health - Case of ethnic communities living in the Atrato River basin who report health problems as a result of illegal mining activities. (2016). URL: https://ecojurisprudence.org/wp-content/uploads/2022/02/Colombia_Principle-of-Environmental-Precaution-and-its-Application-to-Protect-Peoples-Right-to-Heath_123.pdf. Para 10.2.

professor Christopher Stone ¹⁷⁶. Rights of Nature is now recognized in Canada, Colombia, Ecuador, Bangladesh, Mexico and other states ¹⁷⁷. Rights of Nature legal frameworks may play a crucial role in shifting the system and transforming the law from treating nature as property to recognizing it as a rights-bearing entity ¹⁷⁸.

The Inter-American Court of Human Rights (IACtHR) also recognized nature as subject of law, not its object. We can find this recognition in its Advisory opinion OC-32/25, issued on July 3, 2025. It is the first decision of the international court in which it was explicitly affirmed that nature can hold legal rights under international law. Of course, it also concerns its components such as rivers, forests, and ecosystems.

Recognition of ecosystems as subjects of law is essential to ensure its integrity and functions. According to paragraph 280 of this advisory opinion, this recognition makes it possible to overcome inherited legal conceptions that regarded of nature exclusively as an object of property or an exploitable resource. Recognising nature as a subject of rights also implies making visible its structural role in the vital balance of the conditions that make the habitability of the planet possible. This approach strengthens a paradigm centred on the protection of the ecological conditions essential for life and empowers local communities and Indigenous peoples, who have historically been the guardians of ecosystems and possess deep traditional knowledge about their functioning ¹⁷⁹. According to the IACtHR, such approach is necessary for ensuring of Sustainable Development Goals and a dignified and healthy environment, indispensable for the realisation of human rights and is in line with principle of progressivity ¹⁸⁰. Decision of the IACtHR could influence future national courts' decisions worldwide. We can also expect amendments to constitutions and international agreements, at least in Latin American countries.

The IACtHR stressed attention to the dependence of Indigenous peoples on the state of natural environment. In the aforementioned advisory opinion it refers to Indigenous peoples 380 times.

¹⁷⁶ Stone, Christopher D. (1972). Should Trees Have Standing?-Towards Legal Rights for Natural Objects. *Southern California Law Review*, 45, 450-501. URL: <https://iseethics.wordpress.com/wp-content/uploads/2013/02/stone-christopher-d-should-trees-have-standing.pdf>

¹⁷⁷ Rights of Nature: A Global Movement. (2023). URL: <https://transitiontowngreatermedia.org/rights-of-nature-a-global-movement/>

¹⁷⁸ Bioneers. Rights of nature. (2025). URL: <https://bioneers.org/rights-of-nature-media-collection/>

¹⁷⁹ Inter-American Court of Human Rights. Advisory opinion ao-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia. Climate emergency and human rights. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf. Para 280.

¹⁸⁰ Ibid. Para 281.

It was not the first advisory opinion of the IACtHR concerning the protection of environmental human rights. On 7 February 2018, the Inter-American Court of Human Rights issued an Advisory Opinion on the environment and human rights ¹⁸¹. The court made it clear that the right to a healthy environment is a fundamental human right; that degradation of the environment, including adverse impacts of climate change, affects the enjoyment of this fundamental human right and others; and, that states have an obligation to ensure that their actions (and the actions of those under their effective control) do not impact the enjoyment of these fundamental rights – including the rights of those living outside the state’s own borders ¹⁸².

Kichwa Indigenous People of Sarayaku v. Ecuador ¹⁸³ is another landmark decision concerning the protection of the environmental rights of Indigenous peoples and the obligation of a state to ensure that Indigenous peoples are consulted before decisions that may have an impact on the environment are made. In this case, in 2012, the Inter-American Court of Human Rights found that Ecuador had violated Article 21 of the American Convention on Human Rights because the Kichwa Indigenous People of Sarayaku were not consulted when granting a permit for oil extraction activities.

The IACtHR also found a violation of the right to life, as recognized in Articles 4(1) and 5(1) of the American Convention on Human Rights, as well as the right to property under Articles 21 and 1(1) and the right to judicial protection guaranteed by Articles 8(1) and 25. Forests were cut down, environmentally hazardous materials were used, which led to environmental pollution. Military units were even present during these activities in order to overcome the resistance of the population, which also, in the court’s opinion, demonstrates that the state supported these activities, which grossly violated the norms of both national and international law ¹⁸⁴.

¹⁸¹ Inter-American Court of Human Rights. Advisory Opinion OC-23/17 of November 15, 2017 requested by the Republic of Colombia on 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). URL: <https://www.refworld.org/jurisprudence/caselaw/iacrthr/2017/en/123157>

¹⁸² Advisory Opinion (OC-23/17) – Inter-American Court of Human Rights. (2018). URL: https://elaw.org/resource/iachr_co2317#:~:text=The%20Court%20made%20it%20clear,that%20their%20actions%20and%20the

¹⁸³ Inter-American Court of Human Rights. Case of the Kichwa indigenous people of Sarayaku v. Ecuador judgment of June 27, 2012. (Merits and reparations). URL: https://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf

¹⁸⁴ Ibid. Para 193.

The IACtHR ordered Ecuador to remove explosive materials from the territory inhabited by Indigenous people, pay compensation for material and moral damage, amend national legislation so that to require consultations with Indigenous peoples when planning activities that would harm the environment, publicly apologize, and ensure that a similar situation does not occur again.

The importance of the decision lies in the international court's recognition of the state's obligation to obtain permission from Indigenous peoples for environmentally hazardous activities and in establishing requirements for consultations. Economic activities cannot be carried out to the detriment of the environment.

A notable fact is that the IACtHR in its decision referred to ILO Convention No. 169, according to which consultations must be carried out in good faith and in a manner that takes into account the circumstances of the case ¹⁸⁵. Furthermore, as the court notes, consultations with representatives of Indigenous peoples cannot be a formality but must truly provide an opportunity for dialogue between the parties, based on the principles of mutual respect and trust and aimed at reaching a consensus between the parties. At the same time, the obligation to carry out consultations is the responsibility of the state and cannot be transferred to private companies ¹⁸⁶. In this case, it was not the state that was trying to reach a consensus, but the oil company itself, which was interested in producing oil. Therefore, the requirements for consultation were violated.

International law does not contain provisions that would establish procedural rules for consultations. Therefore, national legislation of individual countries may differ in details. However, as the IACtHR noted, when consulting with representatives of Indigenous peoples, it is necessary to take into account indigenous forms of decision-making, as well as the customs, values and practices of Indigenous peoples ¹⁸⁷. The mining company in this case communicated with some members of the Indigenous peoples, but their political organization was not taken into account.

In addition, as the court noted, consultations must be informed, that is, the public must be warned about all the risks of the planned activity and the results of the environmental impact assessment ¹⁸⁸. Otherwise, they would not be objective.

¹⁸⁵ Ibid. Para 185.

¹⁸⁶ Ibid. Para 186-187.

¹⁸⁷ Ibid. Para 202.

¹⁸⁸ Ibid. Para 208.

Thus, as we see, the IACtHR has described in detail the requirements for consultations that must be held with Indigenous peoples before granting permission for an activity that may cause harm to the environment and affect the lives of Indigenous peoples. In the case, the court also recognized the connection between the state of the environment and the traditions and values of Indigenous peoples, which can only be guaranteed if the environment is safe and healthy.

Unfortunately, Ecuador did not comply with the IACtHR's decision on time, and the court had to additionally impose an obligation to hold consultations with representatives of Indigenous peoples in order to clear the territories of dangerous explosives that were harmful to the environment and human health¹⁸⁹. The case also raised the level of eco-activism in the country¹⁹⁰. In 2020, Indigenous peoples were again forced to file a lawsuit against Ecuador for failing to fulfil its obligations¹⁹¹.

According to Amnesty International, consultations with Indigenous peoples should be carried out not only in the case of large projects, as the court decision requires, but also in all other cases where environmental damage is possible, that is, even in small-scale projects¹⁹².

Mayana (Sumo) Awas Tingni Community v. Nicaragua case is a landmark decision in the field of environmental rights of Indigenous peoples. In this case, the Inter-American Court of Human Rights found that Nicaragua violated the rights of Indigenous peoples to own their ancestral lands and natural resources, as well as their right to defend these rights in court.

In 1990, Nicaragua granted a private company permission to carry out mining activities on 62,000 hectares of forest, land that the Indigenous Mayagna Awas (Sumo) Tingni Community, which consisted of approximately 142 families, considered their land. Jaime Castillo Felipe, who represented the Indigenous people in the case, appealed to the Inter-American Commission of Human Rights, which referred the case to the Inter-American Court of Human Rights, alleging a violation of Article 21 (right to property) and Article 25 (judicial protection) of the American Convention on Human Rights.

¹⁸⁹ Amazon Watch. (2024). Historic Legal Victory Achieved by the Kichwa Indigenous People of Sarayaku. URL: <https://amazonwatch.org/news/2024/0118-historic-legal-victory-achieved-by-the-kichwa-indigenous-people-of-sarayaku>

¹⁹⁰ Boujikian, Elizabeth Tamara Athena. (2023). Collective Mobilization: A Case Study on the Kichwa Indigenous Peoples of Sarayaku. URL: <https://jps.library.utoronto.ca/index.php/respublica/article/view/41492/31778>. P. 44.

¹⁹¹ CEJIL. (2020). The Kichwa indigenous people of Sarayaku return to the Ecuadorian Constitutional Court to ensure that the Inter-American Court's decision is implemented. URL: <https://cejil.org/en/press-releases/el-pueblo-indigena-kichwa-de-sarayaku-regresa-a-la-corte-constitucional-ecuatoriana-para-garantizar-que-se-implemente-el-fallo-de-la-corte-interamericana-2/>

¹⁹² Amnesty International. (2011). Amicus Curiae. Case of the Kichwa people of Sarayaku vs Ecuador. URL: <https://www.amnesty.org/fr/wp-content/uploads/2021/07/amr280012011en.pdf>. Para 17.

The Inter-American Court of Human Rights recognized that Indigenous peoples have a right to land even without formal title, that their territory must be demarcated in accordance with customary law and Indigenous traditions, and ordered a halt to mining operations until Indigenous peoples' rights were protected. This was the first decision of the international court which recognized Indigenous peoples' rights to land, and it also recognized that Indigenous peoples' rights are closely linked to the environment. According to the court's decision, land resources are the basis for the development of Indigenous peoples' culture, spiritual life and existence, as well as for the transmission of their traditions to future generations ¹⁹³. The Court found a violation of Article 21 of the American Convention on Human Rights in connection with articles 1(1) and 2.

Claudio M Grossman points out the flaw in the decision, as the court did not address the issue of reparations. According to the scholar, 30,000 US dollars does not cover the harm caused to the Indigenous people ¹⁹⁴. S. James Anaya and Claudio Grossman argue that this happened due to procedural errors, as the plaintiffs were not notified in a timely manner about the need to provide evidence of the amount of damages ¹⁹⁵.

As I.G. Agung Made Wardana points out, the access to justice for Indigenous peoples in the protection of environmental rights remains fragile. The requirement to exhaust all remedies in the event of the need to cancel concessions leads to situations where significant environmental damage is caused ¹⁹⁶. James Anaya points out the need to give Indigenous peoples a say in the granting of concessions. This right, unfortunately, is often violated ¹⁹⁷. However, as Isabel Madariaga Cuneo notes, the participation of Indigenous peoples' representatives has continued to deepen in the development of international instruments aimed at the protection of the rights of Indigenous peoples. An example is the participation of

¹⁹³ Inter-American Court of Human Rights. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua Judgment of August 31, 2001. URL: https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf. Para 149.

¹⁹⁴ Grossman, Claudio M. (2006). Mayagna (Sumo) Awas Tingni Community v Nicaragua Case. URL: <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1793>

¹⁹⁵ Anaya, S. James, Grossman, Claudio. (2002). The Case of Awas Tingni v. Nicaragua: A Step in the International Law of Indigenous Peoples. Arizona Journal of International and Comparative Law, Volume 19, 1. URL: https://digitalcommons.wcl.american.edu/facsch_lawrev/560/. P. 14.

¹⁹⁶ Wardana, I.G. Agung Made. (2012). Access to justice for indigenous peoples in international law. Journal Hukum Internasional, Volume 9, Number 2, 309-325. URL: <https://media.neliti.com/media/publications/39214-EN-access-to-justice-for-indigenous-peoples-in-international-law.pdf>. P. 323.

¹⁹⁷ James Anaya. (2005). Indigenous peoples' participatory rights in relation to decisions about natural resource extraction: the more fundamental issue of what rights indigenous peoples have in lands and resources. Arizona Journal of International & Comparative Law Vol 22, No. 1, 7-17. URL: <http://arizonajournal.org/wp-content/uploads/2015/11/Anaya-Formatted-Galleyproofed.pdf>. P. 16.

Indigenous peoples in the development of the Draft American Declaration on the Rights of Indigenous Peoples¹⁹⁸.

The protection of the environmental rights of Indigenous peoples has received considerable attention from the Human Rights Committee. Let us examine some of its decisions to trace the trend in the understanding of the environmental rights of this category of population by one of the most authoritative UN bodies in the field of human rights protection.

In September 2022, in the case of *Torres Strait Islanders v. Australia* (2022), the Human Rights Committee found Australia in violation of the International Covenant on Civil and Political Rights because it violated the climate rights of Indigenous peoples. In this case eight Indigenous Australians and their six children from low-lying Boigu, Poruma, Warraber, and Masig Islands filed a complaint against Australia, accusing it of violation of articles 2, 6, 17, 24 and 27 of the Covenant. Article 2 of the Covenant sets out the general framework of states' obligations, article 6 guarantees the right to life, article 17 protects the right to family life, article 24 protects the rights of children, article 27 affirms the right to enjoy culture. The authors of the communication argued that they were among the groups of population most affected by climate change, which, among other things, had a huge impact on their culture and traditional way of life.

Australia was accused of failing to take precautionary measures, of failing to adopt the necessary action programs aimed at preventing climate change and protecting the population from its consequences, including the failure to modernize the seawall. One of the arguments cited was the case of *Graham Barclay Oysters v. Ryan* of the High Court of Australia, which stated that state authorities do not owe a duty of care for failing to adopt the necessary regulatory acts in the field of prevention of environmental damage, and as a result, for the lack of guarantees for the protection of environmental human rights, including the right to life.

Australia argued that the case was inadmissible because the authors of the communication had not sufficiently proven that they were victims of wrongdoing and there was no connection between Australia's insufficient action to combat climate change and the violation of the rights of the authors of the communication.

The Committee found violations of articles 17 and 27 of the Covenant and therefore did not examine a violation of article 24. At the same time, the Committee did not find a violation

¹⁹⁸ Cuneo, Isabel Madariaga. (2005). The rights of indigenous peoples and the Interamerican human rights system. *Arizona Journal of International & Comparative Law*, Vol 22, No. 1, 54-63. URL: https://repository.arizona.edu/bitstream/handle/10150/659118/10_22ArizJIntlCompL_53_2005.pdf?sequence=1&isAllowed=y. P. 63.

of article 6, since in its opinion, Australia could have taken actions aimed at protection of the lives of the population during the next 10-15 years. A violation of article 17 was found because the Committee recognized that environmental degradation affects family life, as well as the traditions of Indigenous peoples. A violation of article 2 was also not examined because its provisions overlap with the provisions of other articles.

The case proved that the dams had flooded the graves of Indigenous peoples and food supplies, which also threatened their traditional diet. The authors of the communication also managed to prove that their ceremonies were traditional and culturally significant only if they were performed in the territory they had traditionally inhabited. Australia failed to explain the delay in upgrading the protective dam. Therefore, a violation of Article 27 was found.

The Committee thus recognized the link between insufficient action to protect populations from climate change and violations of the rights of Indigenous peoples, including the right to transmit their traditions and culture to future generations. It was recognized that the state of the environment affects the ability of Indigenous peoples to maintain their traditional way of life. Furthermore, this is the first case in which the Committee recognized that the violation of states' climate commitments may entail violations, including of the rights of Indigenous peoples.

CHAPTER 3. ENFORCING ENVIRONMENTAL HUMAN RIGHTS: PRACTICE OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE AND THE EUROPEAN COURT OF HUMAN RIGHTS

3.1 Ensuring Environmental Human Rights: Insights from the Aarhus Convention Compliance Committee

Although the Aarhus Convention was developed and adopted within the framework of the Economic Commission for Europe, which is a regional commission of the UN, it is open for signature by all UN member states with the consent of the Conference of the Parties. As of 1 April 2025, there are 48 parties to the Convention. Among them are all EU member states, countries in Eastern Europe, the Caucasus and Central Asia, several non-EU Western European countries (Norway, Switzerland, Iceland). The Protocol on Pollutant Release and Transfer Registers (PRTRs), to which 38 states have acceded, and the Convention's amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms, which entered into force in April 2025 and to which 33 states have acceded¹⁹⁹ were also adopted.

The Protocol on Pollutant Release and Transfer Registers was developed based on the provisions of the Aarhus Convention. It aims to enhance public access to information by establishing coherent, nationwide pollutant release and transfer registers²⁰⁰. UN Member States may become parties to the Protocol, regardless of whether they are party to the Aarhus Convention or not. It should contribute to increasing public participation in making decisions that may affect the state of the environment and generally reduce emissions.

Each state party to the Protocol has undertaken to create a pollutant release and transfer register, which will contain information on pollution from facilities that carry out activities covered by the Protocol, i.e. which are listed in Annex I to it. Activities are divided by sectors (e.g., energy sector, production and processing of metals, mineral industry, chemical industry, waste and waste-water management, paper and wood production and processing, intensive livestock production and aquaculture, etc.). States may expand the range of facilities whose

¹⁹⁹ UNECE. Status of ratification. (2025). URL: <https://unece.org/environment-policy/public-participation/aarhus-convention/status-ratification>

²⁰⁰ Protocol on Pollutant Release and Transfer Registers – Declaration. OJ L 32, 4.2.2006, 56–79.

emissions must be entered in the register. Reducing the number of facilities is not possible. Protocol also establishes reporting rules for diffuse sources, namely transport and small and medium-sized enterprises.

The created registers must be freely accessible on the Internet, which must be free of charge and convenient for the public to use. The search system must provide the ability to search by individual parameters, for example, by pollutant or location of the facility. The register must have a convenient structure and must also have links to other relevant registers. The information in it must be up to date, cover emissions of at least 86 pollutants, a list of which can be found in the annex II to the Protocol ²⁰¹.

Amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms was first presented in 2005, but since then it has lacked a sufficient number of ratifications to enter into force. The ratification of the amendment by Ukraine in 2024 was the last necessary vote for the amendment to come into force in 2025.

Amendment on public participation in decisions on the deliberate release into the environment and placing on the market of genetically modified organisms expands the scope of the Aarhus Convention to issues related to GMOs. It supplements the Aarhus Convention with a new Article 6-bis, which provides for the obligation of the state to provide for early and effective information and public participation prior to making decisions on whether to permit the deliberate release into the environment and placing on the market of genetically modified organisms ²⁰².

The Aarhus Convention is the first international instrument to set out clear obligations of States on access to justice in environmental matters. Recognizing the right to a safe environment, this Convention guarantees the so-called “procedural environmental rights”: the right of the public to access environmental information (the first pillar of the Convention), the right of the public to participate in decision-making (the second pillar) and the right to access justice in environmental matters (the third pillar). The Convention imposes clear obligations on

²⁰¹ Kyiv Protocol on Pollutant Release and Transfer Registers. (2006). URL: <https://eur-lex.europa.eu/EN/legal-content/summary/kyiv-protocol-on-pollutant-release-and-transfer-registers.html?fromSummary=28>

²⁰² 13.b. Amendment to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters Almaty, 27 May 2005. URL: https://treaties.un.org/doc/Treaties/2005/05/20050527%2008-35%20AM/Ch_XXVII_13_bp.pdf

the public authorities of the participating states to ensure these procedural environmental rights. The Aarhus Convention entered into force in 2001²⁰³.

The Aarhus Convention is a constitutional instrument for individuals to influence environmental protection. Emphasising the need to protect, preserve and improve the state of the environment, the Convention sets out clear obligations for states in the sphere of access to justice in environmental matters. Article 9(3) of the Aarhus Convention provides that “*each Party shall ensure, subject to the conditions specified in its national law, if any, that members of the public have access to administrative or judicial proceedings to challenge acts and omissions of private persons and public authorities that are contrary to its national law relating to the environment*”. It is important to emphasise that the scope of acts and omissions covered by this provision is much broader than that set out in Article 9(1) and (2) (protection of the right to information and the right of the public to participate in decision-making) and refers to the violation of any provision of national environmental law. The Aarhus Convention allows states to establish conditions for standing for members of the public, but such conditions must meet the objectives of the Convention to ensure broad access to justice in environmental matters. The possibility for the public to initiate legal proceedings supports the implementation of environmental law and contributes to environmental improvement²⁰⁴.

To monitor the implementation of the provisions of the Aarhus Convention, the Aarhus Convention Compliance Committee was established in 2002. It has the right to consider complaints about violations of the Convention submitted by any State Party, the Secretariat or representatives of the public. The Committee submits its report to the Conference of the Parties, which takes appropriate measures in relation to the state violating the Aarhus Convention. The democratic nature of this monitoring mechanism lies in the fact that, in addition to states, members of the public may initiate cases before the Committee and enjoy the same procedural rights as government representatives. Such rights include: the right to provide evidence, explanations, the right to access meetings of the Committee, the right to provide draft decisions of the Committee, participate in the Conference of the Parties and monitor the implementation of decisions. The public can initiate cases concerning violations of the Convention by the state

²⁰³ Svák, Ján, Mareček, Lukáš a kol.: Úvod do verejného medzinárodného práva. Bratislava: Wolters Kluwer, 2024. P. 844.

²⁰⁴Ibid. P. 844.

of which they are citizens (or in which a public organization is registered) or by another state that is a party to the Aarhus Convention ²⁰⁵.

The Constitutional Court of the Slovak Republic also ruled on the violation of Article 9(3) of the Aarhus Convention. In a case dealing with the active legal standing of the public concerned under Act No. 71/1967 Coll. on Administrative Procedure and by continuing the proceedings concerning an exception to the ban on hunting on protected animals, the validity of which had expired, a civil association dealing with nature conservation acted on the complainant's side. The complainant sought a review of the legality of the decision of the Minister of the Environment by which he dismissed the complainant's appeal against the decision of the Ministry, by which the latter dismissed the applicant's appeal against the decision of the Ministry, which, on the basis of the application, allowed the hunting association to deviate from the prohibitions imposed by Section 35(1)(b) and (e) of Act No. 543/2002 Coll. on Nature and Landscape Protection to kill/shoot one individual brown bear in a specific hunting ground. Neither the regional court nor the supreme court agreed with the complainant. In its 2021 decision, the Constitutional Court pointed out that the role of the public concerned in proceedings before public authorities is, as the complainant also emphasized, to represent the public interest in environmental protection. While a party to the proceedings has the right to protect their own subjective rights (According to Article 44(1) of the Constitution - everyone has the right to a favourable environment), the public concerned represents the public interest in environmental protection as a whole (According to Article 44(2) of the Constitution, everyone is obliged to protect and enhance the environment and cultural heritage). Therefore, the public concerned does not have to demonstrate, when using its active standing to bring an action, that the subjective rights in the field of the environment of its members or other persons have been affected. The active standing to bring an action of the public concerned must be understood as one of the possibilities for fulfilling Article 44(2) of the Constitution. The concept of identifying the public concerned is grounded in understanding that the environment lack its own advocates, even though it affects everyone. The role of “environmental advocates” is fulfilled by the public concerned. The public interest in examining the exemption and its possible environmental harm remains, even after the exemption has expired. The public interest requires that the justification and legality of such an exemption (an exemption from prohibited

²⁰⁵ Shutyak, S., Alekseeva, E., Voytiuk, I., Kravchenko, O. *Human rights and environmental protection: educational program of a distance course for trainers (judges-teachers)*. 1 st ed. Lviv: Publishing House “Manuscript”, 2018. P. 24.

activities under Section 35(1)(b) and (e) of Act No. 543/2002 Coll. authorizing the killing of a legally protected animal) be subject to review by an independent court ²⁰⁶.

The Constitutional Court emphasised that if it accepted the legal conclusions of the administrative courts expressed in these proceedings, in practice, a situation may arise where exceptions to the hunting ban of animals protected by law will not be considered by the courts at all. Although the public concerned would theoretically have the opportunity to appeal in court the exception to the hunting ban, in practice the contested exception would never even be examined for procedural reasons. A similar view was taken by the Aarhus Convention Compliance Committee in the case ACCC/C/2008/24 against Spain, where an initial application by an NGO concerning land-use planning was rejected as premature and its subsequent application was rejected as late and, therefore, never was examined as to its content. Such a procedure, which could also signal the existence of a systemic problem in the examination of issues of public interest in the field of the environment, is, in the opinion of the Constitutional Court, in clear contradiction with Art. 44 para. 2 and 4 of the Constitution, Art. 9 para. 3 of the Aarhus Convention, as well as with the purpose of the Aarhus Convention. The Constitutional Court of the Slovak Republic held that the applicant's fundamental right to judicial protection under Article 46(1) of the Constitution, his right to have the legality of administrative decisions reviewed under Article 46(2), his right to a fair trial under Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, and his right under Article 9(3) of the Aarhus Convention to access administrative and judicial procedures to challenge environmentally harmful acts or omissions of public authorities had been violated ²⁰⁷. As we can see, the decisions of the Aarhus Convention Compliance Committee significantly influence the practice of the Constitutional Court of the Slovak Republic ²⁰⁸.

Concerning the access to environmental information (pillar I of the Aarhus Convention), it extends to the entire public. Everyone has the right to access environmental information.

The Aarhus Convention, in Article 2, paragraph 3, establishes the minimum amount of environmental information that should be available to the public. Environmental information in the article is divided into certain categories (the state of the components of the environment and their interactions, factors and measures that affect or may affect the components of the environment, cost-benefit analysis and other economic analysis and assumptions used in the

²⁰⁶ Judgment of the Constitutional Court of the Slovak Republic of January 19, 2021, sp. zn. I. ÚS 529/2019.

²⁰⁷ Ibid.

²⁰⁸ Svák, Ján, Mareček, Lukáš a kol.: Úvod do verejného medzinárodného práva. Bratislava: Wolters Kluwer, 2024. P. 845-847.

decision-making process on issues related to the environment, as well as the state of human health and safety and living conditions). States cannot narrow its scope; they can only expand it.

Unlike the right to access environmental information, which applies to absolutely all persons, the right to participate in decision-making that has an impact on the environment and the right to access environmental justice apply only to the public concerned.

In the case ACCS/C/2008/24 against Spain, the Committee found a violation of the Aarhus Convention by Spain because the public authority failed to respond to a request for environmental information within 3 months without explaining the reasons for such delay and because it charged an excessively high fee for copying documents (2.05 euros per page of copy) ²⁰⁹. The Aarhus Convention Compliance Committee determined that there was a violation of Article 4(2) of the Convention, which states that environmental information must be provided as soon as possible – no later than one month after receipt of the request. If the volume or complexity of the information is large, this period may be extended to two months, but the applicant must be informed of the extension and the reasons. That is, an extension of the period for providing environmental information is possible only in exceptional cases (due to complexity and volume). There was also a violation of Article 4(8), which provides for the possibility of charging a fee for providing environmental information, but allows this to be done only within reasonable limits. In assessing the reasonable limits of the fee for providing environmental information, the Committee took as a basis the commercial copying fee, which at that time was EUR 0.03 per page at the place where the environmental information was provided and which was equivalent to the standard commercial charges for copying these documents in the member states of the United Nations Economic Commission for Europe ²¹⁰.

In the case ACCS/C/2009/37, the Committee found a violation of article 4 (1) by Belarus due to the requirement to formulate reasons for interest when applying for environmental information ²¹¹. The Committee also found a violation by Belarus of article 6(7) of the Aarhus Convention due to the absence in the country of procedures for prompt notification of the results of environmental impact assessments. In this case, information on the results of the environmental impact assessment of the construction of the hydroelectric power station project

²⁰⁹ ACCC/C/2008/24 Spain. URL: <https://unece.org/acccc200824-spain>. Para 115.

²¹⁰ Ibid. Para 79.

²¹¹ ACCC/C/2009/37 Belarus. (2009). URL: https://unece.org/fileadmin/DAM/env/pp/compliance/C2009-37/Findings/ece_mp.pp_2011_11_eng_add2.pdf. Para 72.

was not made public. As a result, the public concerned was not promptly informed about its construction²¹².

In the case ACCC/C/2009/43 against Armenia when granting a mining license, the information provided to the public concerned during public hearings was not complete. Moreover, the public hearings took place after the license has been issued, meaning that the public could not influence the situation. The Committee noted that public participation in public hearings cannot be merely formal. State authorities must ensure that the public's opinion is truly taken into account²¹³.

In 2008 British citizens submitted a communication to the Aarhus Convention Compliance Committee alleging a breach by the United Kingdom of Great Britain and Northern Ireland of its obligations under Article 3(8) and Article 9(4) of the Aarhus Convention by failing to provide fair, equitable, timely and not excessively costly review procedures against Hinton Organics (Wessex) Ltd, seeking an injunction against unpleasant odours emanating from the operator's waste composting site near the applicants' homes.²¹⁴ Following the lifting of the interim injunction on the operator's activities, the authors of the communication were required to pay the costs of the operator, as well as those of the Environment Agency and Bath and North East Somerset Council, totalling approximately £25,000²¹⁵. In addition, the authors of the communication alleged that the state violated article 3, paragraph 8, of the Convention by requiring them to pay the Council and Agency's costs immediately, rather than awaiting the outcome of the trial. This provision ensures that persons exercising their rights under the Convention are not penalized in any way for their involvement²¹⁶.

In this case, the composting and recycling plant was located on a residential road a few hundred meters from the homes of the authors of the communication. The Council granted planning permission for the plant in 1999, and the waste management licence was granted by the Agency in 2010. For several years, residents had complained about the operator's activities because of excessive odours. The Agency had periodically fined the operator and even started legal proceedings, which had also resulted in a fine. The applicants claimed that the authorities

²¹² ACCC/C/2009/37 Belarus. (2009). URL: https://unece.org/fileadmin/DAM/env/pp/compliance/C2009-37/Findings/ece_mp.pp.2011.11_eng_add2.pdf. Para 103.

²¹³ ACCC/C/2009/43 Armenia. (2009). URL: https://unece.org/fileadmin/DAM/env/pp/compliance/C2009-43/Findings/ece.mp.pp.2011.11.add.1.rus_040713.pdf. Para 33-34.

²¹⁴ ACCC/C/2008/23 United Kingdom. (2008). URL: https://unece.org/env/pp/cc/accc.c.2008.23_united-kingdom

²¹⁵ Findings and recommendations of the Aarhus convention compliance committee with regard to communication ACCC/C/2008/23 concerning compliance by the United Kingdom. (2008). URL: https://unece.org/DAM/env/pp/compliance/C2008-23/findings/C23_Findings.pdf

²¹⁶ Ibid.

had not been doing enough and applied to the court to have the operator's activities stopped and to have the damage compensated. The High Court had granted an interim injunction on the grounds that the excessive smell was causing environmental pollution and posed a risk to public health. Following the interim injunction, the operator appealed against it and the Agency, and the Council made a statement to the court raising the issue of a possible conflict between its status as a regulator and an arbitrator.

The Aarhus Convention Compliance Committee is convinced that the urgent payment of the court fee did not facilitate the access to justice of the author of the communication, especially considering the fact that the author of the communication proposed to place the funds in an interest-bearing account until the court delivered decision.

The Committee found a violation of Article 9(4) of the Aarhus Convention because the state had failed to ensure that the costs of the proceedings falling within the scope of Article 9 were not prohibitively expensive. The costs of the proceedings, amounting to £39,454, were, in the Committee's opinion, excessive. Furthermore, the appointment of costs was unfair, as the authors of the communication were required to cover the full while the operator bore none. Concerning article 3, paragraph 8, the Aarhus Committee did not give a clear answer. According to the Committee, the Agency's demand for payment for its services does not necessarily constitute a violation of this provision of the Convention, although under certain conditions this violation is possible.

The importance of the right of access to environmental information requires effective guarantees, including, the impossibility of restricting this right by classifying environmental information as a commercial secret. There is a practice of the Aarhus Convention Compliance Committee on this issue as well.

Regarding the restriction of the provision of information due to its confidentiality, the Aarhus Convention Compliance Committee has repeatedly ruled that the conditions for recognizing information as confidential, as defined by the Aarhus Convention, cannot be expanded. Let us give an example of such cases.

On 18 November 2014, the non-governmental organization Environment-People-Law submitted a communication to the Aarhus Compliance Committee alleging non-compliance by Ukraine with its obligations under articles 3 (1), 4 (1), (3), (4) and (6), 6 (1)–(4) and (6)–(9) and 9 (2), of the Aarhus Convention in connection with production-sharing agreements (PSAs) and mineral extraction permits for the Yuzivska and Oleska oil fields²¹⁷. The circumstances of the

²¹⁷ ACCC/C/2014/118 Ukraine. (2018). URL: https://unece.org/env/pp/cc/accc.c.2014.118_ukraine

case were as follows. In November 2011, the Government of Ukraine announced by decree a tender for the Yuzivska oil field. According to the tender, a mandatory condition for the investor was to involve a state-owned company in the project as a co-investor. In May 2012, the winner of the tender was Schell. In 2013, the investment project was approved by the Kharkiv and Donetsk city councils and in December 2013, the Ministry of Environment and Natural Resources approved the results of environmental impact assessment. The mining permit was granted for 50 years. Neither of the regional councils published the draft of the production-sharing agreement and did not invite or collect comments from the public. The similar situation was with the Oleska oil field, which is located on the territory of Lviv and Ivano-Frankivsk Regions. The mining permit was granted for 50 years to the Chevron Ukraine BV and Nadra Oleska Ltd, again without the public having the right to comment on the content of the agreement.

During the development of the investment agreements (Yuzivska and Oleska PSAs), representatives of the public did not participate at all during environmental impact assessment and did not have the opportunity to make comments at the time of issuing the permit for mineral extraction. In August 2013, the author of the communication (non-governmental organization Environment-People-Law) filed a lawsuit with the Kyiv Administrative Court because of the violation of the right to participate in a decision making process that will have environmental consequences and with a request to oblige the Cabinet of Ministers of Ukraine not to approve the Oleska PSA, since it had not yet been approved at that time. The court of first instance dismissed the lawsuit. The court of second instance upheld the decision of the court of first instance, reasoning that the plaintiffs had not demonstrated how the agreement would affect them. Therefore, in the court's opinion, they had no right to challenge its legality. Cassation court dismissed the lawsuit on procedural grounds. In May 2013, the author of the communication filed a lawsuit with the Lviv Administrative Court with the goal to obtain access to the Yuzivska PSA.

The court ruled that since a certain part of the agreement was confidential, the refusal to provide access to it was legal. However, the court did not examine the legality of declaring the information confidential. The Lviv Administrative Court found the refusal to provide permission to familiarize the public with the terms of the permit for the extraction of natural minerals unlawful and ordered to provide the agreement to the non-governmental organization Environment-People-Law. Despite the fact that the executive service issued a fine twice, a copy of the agreement was never provided.

The author of the communication argued that the recognition of the full text of the agreement and all related documents issued by the Cabinet of Ministers as confidential was a violation of the Aarhus Convention. According to the non-governmental organization Environment-People-Law, PSAs and mineral extraction permits are considered as documents containing environmental information and therefore the refusal to provide information on the agreements, as well as copies of mineral extraction permits, is a violation of Article 4(1) of the Aarhus Convention. The author of the communication agree that the Convention contains exceptions to disclosure – article 4(3) and (4), but in this case the balance between confidentiality and the public interest was violated.

In addition, information on the planned activities during the environmental impact assessment should be made public and posted online on the official website of the Unified Register of the EIA. According to national legislation, all information related to the environmental impact assessment should be freely available on this website. Article 4 (7) of the Law of Ukraine on Environmental Impact Assessment requires free access of the entire public to information that is important for making decisions related to the environment. The Yuzivska and Oleska projects are subject to paragraph 20 of Annex I to the Convention, which requires an environmental impact assessment to be carried out with the participation of the public when issuing a permit for the extraction of minerals. Articles 6(1)-(4), (6)-(8) of the Convention were violated because the environmental impact assessment was carried out after the approval and signing of the investment agreement, the public was not given the right to participate, information about the planned activities was not made public, the public was not given the opportunity to comment and the text of the agreements and permits for mining was not made public ²¹⁸. Article 9(2) was violated because the Kyiv Court of Appeal did not see a violation of the law in the fact that the communicant was denied the right to participate in a decision-making process that would have environmental consequences due to the claimant's lack of sufficient interest.

According to the Aarhus Convention Compliance Committee, a mineral resource extraction agreement is clearly an activity that affects elements of the environment, such as land, soil, natural sites and landscape. The text of the agreement therefore clearly falls within the scope of environmental information under Article 2(3) of the Aarhus Convention. Article 4(1) requires that copies of documents be publicly accessible and, subject to the provisions of Articles 4(3) and 4(4), the full text must be made available upon request. The conditions for

²¹⁸ Ibid. Para 87.

non-disclosure of information listed in Articles 4(3) and 4(4) are exceptions and cannot be extended. That is, information other than listed in the above-mentioned articles cannot be declared confidential. Provisions in the agreement prohibiting disclosure cannot affect the obligation to provide environmental information upon request under Article 4 of the Convention. If a member of the public requests access to a document containing environmental information, except for the provisions on confidential information, the full text of the document must be provided. In the present case, according to the Aarhus Convention Compliance Committee, none of the conditions for confidentiality under Articles 4(3) or 4(4) were satisfied. The public has the right to inspect agreements and permits related to mineral extraction. Therefore, the refusal to provide access to the documents upon request constituted a violation of Article 4(1) of the Aarhus Convention.

As regards the violation of Article 6, where the extraction of petrol and natural gas exceeds the threshold set out in paragraph 12 of Annex I to the Aarhus Convention, the activity falls within Article 6(1)(a) of the Convention. However, since the agreements have not been made public, the Aarhus Convention Compliance Committee could not determine whether this threshold has been exceeded in the present case and whether public participation is mandatory under the Annex to the Convention. However, there has been a violation of national legislation (Article 11 of the Law of Ukraine on Environmental Impact Assessment), which required public participation in the environmental impact assessment in this case. As a result, in the Committee's view, there has been a violation of Article 6(1)(a) of the Convention, without the necessity of considering the provisions of the Annex to the Aarhus Convention. That is, the requirement of the Law of Ukraine to carry out an environmental impact assessment at the project implementation stage rather than during its development, constitutes a violation of Article 6(4) of the Aarhus Convention.

The Committee found the decision of the Kyiv Court of Appeal to be unlawful because the request was made by a non-governmental organization whose purpose is environmental protection and therefore it did not have to prove its interest and how it was affected by the treaties. Therefore, Article 9 (2) was also violated in this case.

According to the Committee, national legislation which requires making an appeal within twenty days from the decision of the court of first instance, and not from the date on which the court rendered its decision, is a violation of the obligation to comply with the

requirement that review procedures under article 9(2) be fair in accordance with article 9(4) of the Convention ²¹⁹.

Failure to provide the text of the agreements and permits for the extraction of mineral resources to the author of the communication for inspection immediately constitutes a violation of Article 9(4) of the Convention.

In light of these findings, the Conference of the Parties recommended that Ukraine take the necessary legislative, regulatory, administrative or other measures to remedy the situation.

The decision in the ACCC/C/2004 case against Kazakhstan is the first decision of the Aarhus Convention Compliance Committee in which it was recognized the right of a public organization that made a request for environmental information to appeal against a state body's refusal to grant this information ²²⁰. In 2004, the NGO "Green Salvation" appealed to the Aarhus Convention Compliance Committee with a statement that Kazakhstan had violated paragraphs 1 and 7 of article 4, paragraph 6 of article 6 and paragraph 1 of article 9 of the Aarhus Convention. A draft Law on the import and disposal of radioactive waste in the territory of Kazakhstan was being prepared in Kazakhstan, which was supported by the national nuclear company "Kazatomprom". In 2001, the head of this company submitted to the parliament an amendment to the national legislation authorizing the import and disposal of foreign radioactive waste in the territory of Kazakhstan. The NGO "Green Salvation" requested the nuclear company to provide information supporting the provision on importing and disposing of foreign radioactive waste. It did not receive a response to the request. Therefore, it applied to the courts of various instances to oblige the company to provide information. The claims were rejected because the courts did not recognize the right of NGOs to file a claim in their own name, and not in the name of their individual members, from whom the public organization did not have power of attorney. According to Kazakhstan, the NGO did not fall under the definition of "public concerned" according to the Convention (Article 2 (5)). In addition, the second argument from the side of Kazakhstan was that the company "Kazatomprom" was not involved in the decision-making procedure.

Regarding Kazakhstan's argument that, as a matter of practice, request for information must specify their reasons, the Committee noted that article 4 (1) of the Convention explicitly excludes any requirement for such justification ²²¹.

²¹⁹ Ibid. Para 148.

²²⁰ ACCC/C/2004 Kazakhstan. URL: https://unece.org/env/pp/cc/accc.c.2004.01_kazakhstan

²²¹ Ibid. Para 20.

Article 9 (1) of the Aarhus Convention obliges the parties to ensure that any appeal procedure in case of denial of access to information is quick. The procedure of quick consideration was not taken into account in the legislation of Kazakhstan, which is a violation of the Convention (Article 9 (1)). According to the Aarhus Convention Compliance Committee, bodies performing state functions (in this case the National Atomic Company “Kazatomprom”) are obliged to implement the provisions of Article 4 (1) and (2) of the Convention. Since the state did not ensure their implementation, it violated its obligations under the Convention, established in Article 9 (1).

In the case ACCS/C/2005/11 against Belgium, the Aarhus Convention Compliance Committee found that Article 9 (3), applies to all acts or omissions of private individuals and public authorities which violate national environmental law ²²² and concerns, inter alia, construction permits and planning decisions. In Belgium, there was no administrative procedure for third parties, including environmental NGOs, to appeal. In this case, most of the contested judgments were delivered before the Aarhus Convention entered into force for Belgium. However, the Committee noted that if Belgium continued to fail to provide NGOs with possibility to appeal construction permits and planning decisions, this would constitute a violation of Article 9, paragraphs 2 to 4, and therefore called on Belgium to remedy the relevant deficiencies in its legislation.

Where judicial review is available, the procedures must be fair, equitable, timely and not prohibitively expensive. The court records cannot be such as to prevent individuals from going to trial.

In the case ACCS/C/2006/18 against Denmark, the author of the communication claimed that he had no means of influencing Denmark to comply with the EU Birds Directive, which was in breach of the Aarhus Convention. The author of the communication unsuccessfully appealed to the police and the public prosecutor’s office, then to the Nature Protection Board of Appeal, which replied that it had no jurisdiction in the field of enforcement of EU directives and that it had referred the application to the Forest and Nature Agency for consideration and possible further action, but the Agency did not respond.

According to the Aarhus Convention Compliance Committee, article 9 (3) of the Aarhus Convention gives the right to members of the public to challenge acts or omissions concerning wildlife violation of national environmental legislation including wildlife. In this case culling of the rooks was prohibited by the legislation of the EU but was allowed by national legislation.

²²² ACCS/C/2005/11 Belgium. URL: https://unece.org/env/pp/cc/accc.c.2005.11_belgium. Para 26.

According to the Committee, since in some cases national courts must apply EU environmental legislation even though it has not yet been implemented into national law, EU legislation constitutes a part of national law of EU member states and therefore falls under Article 9(3) of the Aarhus Convention.

Article 9, paragraph 3, refers to “*the criteria, if any, laid down in national law*”, but the Convention does not define these criteria or list criteria that may not be applied²²³. However, as the Committee notes, these criteria cannot be established in such a way that all, or almost all, environmental organizations, or other members of the public, will not be able to challenge an act or omission that violates national environmental law.

The party did not apply to the Forest and Nature Agency directly, did not apply to the Ministry of the Environment, did not apply to the court, therefore the Committee was not convinced that Denmark had violated the Aarhus Convention. Moreover, immediately after the application to the Committee, Denmark brought its national legislation into line with the Birds Directive in such a way that hunting on rooks without a permit is prohibited and the Forest and Nature Agency was obliged to act to stop illegal hunting. If the agency fails to take the necessary action at the request of the environmental organization, the organization can apply to the court. This example is important because the Aarhus Convention Compliance Committee recognized that EU environmental law falls under Article 9, paragraph 3 of the Aarhus Convention.

3.2 Protection of Environmental Human Rights at the European Court of Human Rights

Within the Council of Europe, the most effective mechanism at the international level to which an individual can apply is the European Court of Human Rights (ECtHR). The European Convention on Human Rights (ECHR) does not contain any provisions aimed at environmental protection. However, the number of environmental cases before the European Court of Human Rights is constantly growing. The decisions of the ECtHR are binding, and states must implement them. As a result, the practice of the ECtHR has had a significant positive impact on environmental protection in the member states of the Council of Europe. Given the significant effectiveness of applications to the ECtHR and the real possibility of individuals to protect their rights, we will consider the key decisions of the ECtHR in this area in order to

²²³ ACCS/C/2006/18 Denmark. URL: https://unece.org/env/pp/cc/accc.c.2006.18_denmark. Para 29.

establish key aspects of the application of the ECtHR from the point of view of the protection of environmental human rights.

The first environmental case considered by the ECtHR was the case of *Lopez Ostra v. Spain*. The case is significant because it was the first time when the court of the Council of Europe recognized the human right to an environment that is safe for human life and health. This was a progressive decision at the time, since at that time a UN resolution guaranteeing the right to a clean, healthy, and sustainable environment had not yet been adopted (it was adopted in 2022)²²⁴. It should be noted that no article of the European Convention on Human Rights protects environmental human rights. The ECtHR, by a broad interpretation of Article 8 of the Convention, extended its scope to environmental disputes. By this interpretation it admitted that the right to a healthy environment is indeed important. Violation of environmental legislation by state authorities, as well as by private individuals, can pose a threat to human health and life. And the ECtHR recognized this.

In the aforementioned case, the plant began operating without the legally required license and emitted significant pollutants, which immediately harmed the health of residents of the city of Lorca, particularly those living near the plant. After numerous appeals from health institutions, the city council ordered the cessation of part of the plant's activities, however, those activities that were permitted continued to cause significant damage to the environment and threaten public health.

The applicant complained about the authorities' passive attitude towards the activity, which was causing harm to the environment and the health of citizens and demanded that the plant's activities be stopped. The expert report confirmed that the plant's activities posed a threat to public health and, moreover, were done in an unsuitable location for such activities. However, the domestic court found that the plant's activities did not pose a serious threat to the residents living nearby, but rather affected the quality of life and therefore, in the opinion of the court, the applicant's fundamental rights had not been violated. The court found no violations on the part of the local authorities and did not consider the issue of the plant's lack of a license at all. The second-instance court confirmed this position.

The ECtHR found a violation of Article 8 of the Convention in the case, awarded the applicant appropriate compensation and ordered Spain to take appropriate measures to restore the violated right in connection with the pollution of the environment. The ECtHR recognized

²²⁴ Resolution adopted by the General Assembly A/RES/76/300. The human right to a clean, healthy and sustainable environment. (2022). URL: <https://docs.un.org/en/A/RES/76/300>

that the right to a healthy environment and the right to private life are inextricably linked, since the quality of the environment undoubtedly affects the quality of private life of people. It ruled that the defendant state failed to maintain a fair balance between the interest in the economic well-being of the city of Lorca (having a sewage treatment plant) and the applicant's effective exercise of the right to respect for her home and her private and family life ²²⁵.

If a national court decision had required public authorities to act in a certain way in order to protect the environment and human health, but those authorities have ignored the decision for a long period of time. According to the ECtHR the state must bear responsibility. This is evidenced by the decision in the case of *Taşkin and others v. Turkey* ²²⁶.

In 1994, Turkey's Ministry of Environment approved the use of sodium cyanide leaching technology to extract gold from a mine in Ovacık (district of Bergama). Applicants who lived near the mine asked the authorities to delay the ministry's decision on the grounds that the use of cyanide poses a threat of groundwater contamination and other environmental damage as well as a threat to human life and health. The İzmir Administrative Court did not satisfy the claim. The Supreme Administrative Court took into account the results of the environmental impact assessment and reports of various experts, acknowledged the existing risks to local ecosystems and human health and overturned the judgement of the court of first instance. Based on this decision of the Supreme Administrative Court, the administrative court annulled the permit for mining activity issued by the Ministry of the Environment. In 1997 the applicants sent letters containing enforcement notices to the Ministry of the Environment, the Ministry of Energy and Natural Resources and the Ministry for Forests, as well as to the İzmir provincial governor, requesting enforcement of the administrative courts' decisions. In 1998 the applicants filed a lawsuit in the Ankara District Court against the above-mentioned ministries and the Prime Minister for non-enforcement of the courts' decision. In 1998 the İzmir provisional governor's office ordered the closure of the mine, but cyanide was found at the site the following month during the inspection of the area by the police. Later, the operator again received permission from the Ministry to mine gold using cyanide. That is, in this case there was a failure to implement the court's decision and a lack of action by state authorities to ensure the enforcement of the court's decision. Due to the failure of state authorities to implement the court decision, the ECtHR found a violation of Article 8 of the Convention.

²²⁵ The decision in the case of *Lopez Ostra v. Spain* (of 9 December 1994, No. 16798/90). Para 58.

²²⁶ Case of *Taşkin and others v. Turkey*. (Application no. 46117/99).

We can observe a similar situation in the case of *Dzemyuk v. Ukraine*²²⁷. In this case the applicant alleged that there had been a violation of Articles 6 and 8 of the Convention because a cemetery had been constructed near the house where he lived, despite a court ban on such a construction. The applicant owned the house in Tatariv, a resort town in Carpathian region. A plot of land was chosen for the construction of the cemetery, which was located only 38 meters from the applicant's house, as well as near two rivers (at a distance of 30 and 70 meters). The All-Ukrainian Bureau of Environmental Investigations informed the mayor that the construction of the cemetery posed a risk of pollution of rivers and wells with drinking water, as well as contamination of adjacent land plots due to contamination of groundwater. However, the cemetery began its operation. In 2002 the Regional Environmental Health Inspectorate of the Ministry of Health refused to approve the construction plan. The same year the applicant started to suffer hypertension and various cardio-related diseases, which was confirmed by medical certificates. In 2003 the Urban Development Department informed the city council that the area near the applicant's house was not suitable for construction of the cemetery because the requirement established by law for cemeteries to be at least 300 meters away from populated areas and at least 50 meters away from rivers was not met. In 2005 the Regional State Administration informed the applicant that the only way to resolve the issue was to resettle him. The applicant appealed to the court, which found that the construction of the cemetery violated the law and banned the burial. However, the court's decision was not enforced. Therefore, the ECtHR found a violation of Article 8 of the Convention.

Let's analyse more recent cases. In the case of *Cannavacciuolo and Others v. Italy* of 2025 the ECtHR examined the state's obligations in the field of waste management. In the Campania region, waste, including hazardous waste, had been accumulating for years and waste had been incinerated, causing significant health damage to local residents. The court found a violation of Article 2 of the European Convention of Human Rights because Italy had failed to act despite being aware of the threat. This reaffirmed the state's obligation to act with due diligence. Italy had provided evidence that it had taken steps to identify areas of contamination. However, the court noted that such action must be systematic and not sporadic²²⁸.

This case is important for the development of the precautionary principle. In it, the ECtHR clearly established that the state has a duty to prevent harm in cases when scientific certainty about harm is incomplete. The court also specified this duty. Firstly, the state must

²²⁷ Case of *Dzemyuk v. Ukraine* (application no. 42488/02, decision of 04 February 2014).

²²⁸ Case of *Cannavacciuolo and others v. Italy* (application no. 51567/14, decision of 27 February 2025). Para 400.

carry out a full assessment of the threat: identify the site that is being polluted, identify the source of the pollution, its nature and extent, and take action to manage the risks and assess their impact on public health ²²⁹. Undoubtedly, the requirement of implementation of the precautionary principle will strengthen the protection of environmental human rights.

We also observe a change in the ECtHR's approach to the need to prove a direct connection between the obligation and the health damage that the applicant suffered. In this case, the court noted that since the applicant had lived for decades in a contaminated area, there is no need to prove a connection between the diseases dangerous to health and exposure to harmful substances. Thus, we observe a shift in the court's practice regarding the approach to proving a causal link. Such an approach will also contribute to strengthening the protection of environmental human rights.

In the case of *Cannavacciuolo and Others v. Italy* of 2025, it was proven that Italy should have prevented the creation of illegal waste dumps and illegal waste incineration. In addition, the right of the population to information about existing risks was violated, which once again confirmed the need to protect procedural environmental human rights.

In the *Greenpeace Nordic and Others v. Norway* (28 October 2025) case, the breach of the state's obligation to properly carry out an environmental impact assessment when granting a mining permit was considered. This type of activity has an impact on the climate and, as a result, on the quality of life of the population. Therefore, the assessment of the impact of such an activity on the environment must be comprehensive and integrated. During public consultations, objections were raised to the granting of licenses for the extraction of petroleum in the Barents Sea, as this could weaken Norway's ability to meet its climate obligations under international law. *Greenpeace Nordic and Young Friends of the Earth Norway* applied to the national court with a request to cancel the license. The Supreme Court of Norway confirmed the legality of the permit for the extraction of petroleum, so the NGOs together with 6 individuals filed a lawsuit with the ECtHR.

The ECtHR didn't find the violation of article 8 of the Convention, but it defined minimum requirements for environmental impact assessments in the case of projects that may have an impact on climate change. According to the ECtHR, licensing of petroleum exploration cannot be assessed in a vacuum but must necessarily be considered in the light of its cumulative consequences for petroleum policy and for the climate as a whole ²³⁰; an adequate, timely and

²²⁹ Ibid. Para 391.

²³⁰ Case of *Greenpeace Nordic and Others v. Norway* (application no. 34068/21, decision of 28 October 2025). Para 283.

comprehensive environmental impact assessment in good faith and based on the best available science must be conducted before authorising a potentially dangerous activity that may be harmful to the right of individuals to effective protection by the state authorities from serious adverse effects of climate change on their life, health, well-being and quality of life ²³¹. In the context of petroleum production projects, the environmental impact assessment must include, at a minimum, a quantification of the GHG emissions anticipated to be produced. Moreover, at the level of the public authorities, there must be an assessment of whether the activity is compatible with their obligations under national and international law to take effective measures against the adverse effects of climate change. Lastly, informed public consultation must take place at a time when all options are still open and when pollution can realistically be prevented at source ²³².

The protection of climate human rights has been recognized by the European Court of Human Rights in the decision in the case of *Verein Klimaseniorinnen Schweiz and others v. Switzerland*, which was issued in 2024. Although the European Court of Human Rights does not use the term “right to a safe climate” in its decision, recognizing the right of individuals and NGOs to apply to it in cases where states do not do enough to fulfil their international obligations in the sphere of prevention of climate change, it has actually recognized the right to the protection of this right. The criteria that must be present for an individual to apply to the ECtHR with a climate claim are set by the court in the decision very strictly (the level and severity (risk) of the adverse consequences of the government action or inaction affecting the applicant must be significant and there must be an urgent need to ensure the individual protection of the applicant due to the absence or insufficiency of any appropriate measures to mitigate the harm), while the criteria for public organizations are realistic. Therefore, we can expect an increase in the number of climate cases before the ECtHR. Providing the possibility to apply to the ECtHR to protect public, rather than individual, rights is also a significant shift in the court's protection of environmental rights. This has not been observed in previous decisions in this area.

Practice of the ECtHR had influence on the practice of Human Rights Committee. For example, in the case *Portillo Cáceres v. Paraguay* ²³³ the applicants claimed that article 17 of the International Covenant on Civil and Political Rights should be interpreted in the light of the

²³¹ Ibid. Para 318.

²³² Ibid. Para 319.

²³³ *Portillo Cáceres v. Paraguay*, Communication No. 2751/2016, U.N. Doc. CCPR/C/126/D/2751/2016. URL: <https://juris.ohchr.org/casedetails/2784/en-US>. Para 3.7.

ECtHR's jurisprudence aimed at protection of environmental human rights. The UN Human Rights Committee found Paraguay responsible for violation of the rights to life, privacy, family, home, and effective remedy due to its failure to regulate and prevent harmful agrochemical use by farmers that caused severe health problems to the local population, and the death of Rubén Portillo Cáceres. In this case people were repeatedly exposed to toxic chemicals due to lack of enforcement of environmental and agricultural regulations by the Paraguay. Industrial farms didn't meet the requirement of national legislation of a 100 – metre buffer zone between areas where pesticides were used and human settlements ²³⁴. Besides, during criminal investigation the presence of banned agrochemicals was proved ²³⁵. The Ministry of the Environment of Paraguay acknowledged the fact of the lack of oversight over the activities of farmers ²³⁶.

The Human Rights Committee interpreted the provisions of the International Covenant on Civil and Political Rights considering the ECtHR's practice. The Committee also recognized that a state has an obligation to take positive action to protect the right to a life. The Human Rights Committee recalled its general comment № 36, in which it has declared that individuals have entitlement to enjoy a life with dignity and to be free from acts and omissions that would cause their premature or unnatural death ²³⁷. The Committee also stated that states may be in violation of article 6 of the International Covenant on Civil and Political Rights even if threats and situations of violation of national environmental legislation do not result in loss of life ²³⁸.

The Human Rights Committee also recognized that degradation of environment can affect the realization of human rights, including the right to life, guaranteed by article 6 of the Covenant ²³⁹. Concerning article 17, which guarantees the right to privacy, family, home or correspondence, according to the Committee, it encompasses protection from environmental pollution ²⁴⁰. Here we can see the same approach as the ECtHR has.

Because Paraguay has failed to make controls upon the activities of farmers, which caused environmental pollution, damage to human health of the local population and even death, the Human Rights Committee found the violation of articles 17 and 6 of the International Covenant on Civil and Political Rights in this case. The right to effective remedy guaranteed

²³⁴ Ibid. Para 2.3.

²³⁵ Ibid. Para 2.11.

²³⁶ Ibid. Para 2.18.

²³⁷ General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life. (2018). CCPR/C/GC/36.

²³⁸ Portillo Cáceres v. Paraguay, Communication No. 2751/2016, U.N. Doc. CCPR/C/126/D/2751/2016. URL: <https://juris.ohchr.org/casedetails/2784/en-US>. Para 7.3.

²³⁹ Ibid. Para 7.4.

²⁴⁰ Ibid. Para 7.7.

by article 2 (3) of the Covenant was also violated in the case *Portillo Cáceres v. Paraguay*, because the investigation was conducted inefficiently, was delayed, and not all evidence was taken into account. Thus, we can see that the practice of the Committee in the field of environmental human rights protection is identical to the practice of the ECtHR.

CHAPTER 4. ADVISORY OPINIONS OF INTERNATIONAL COURTS ON CLIMATE CHANGE OBLIGATIONS AND HUMAN RIGHTS

4.1 The ITLOS Advisory Opinion on Climate Change and International Law: the First Advisory Opinion on Obligations of States with Respect to Climate Change

In May 2024 the International Tribunal for the Law of the Sea (ITLOS) has rendered its first advisory opinion on climate change and its impact on sea water. Advisory opinion is important for the development of both international climate change law and international maritime law. In the advisory opinion the ITLOS dealt with the challenge of interpretation of provisions of the UNCLOS in the context of their application in the sphere of prevention of climate change. The ITLOS also answered an important question of whether obligations under the international climate change law (mainly the Paris Agreement and the UNFCCC) take precedence over obligations under the UNCLOS. Besides, the Tribunal dealt with the interpretation of obligations of states in the sphere of mitigation of climate change. The ITLOS also paid considerable attention to the interpretation of principle of common but differentiated responsibilities and concept of due diligence.

According to the summary report of the Intergovernmental Panel on Climate Change of 2023, the global surface temperature in the first two decades of the 21st century (2001–2020) was 0.99 °C higher than in the years 1850–1900. The global surface temperature has increased faster since 1970 than in any other 50-year period for at least the last 2,000 years. The probable range of the total increase in global surface temperature caused by human activity from 1850–1900 to 2010–2019 is 0.8 °C to 1.3 °C, with a best estimate of 1.07 °C ²⁴¹. As a result, we observe global climate changes that are large-scale, rapid, and that have a negative impact on nature and the population of individual communities, especially those that have historically contributed the least to these changes.

According to the above-mentioned report, warming will continue to increase in the near future (2021-2040) mainly due to increased cumulative CO₂ emissions in almost all considered scenarios. In the short term, it is more likely that global warming will not reach 1.5 °C in a

²⁴¹ Intergovernmental Panel on Climate Change. (2023). Summary for Policymakers. In: AR6 Synthesis Report: Climate Change 2023. URL: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf. Para. 10.

scenario with very low greenhouse gas emissions and is likely or very likely to exceed 1.5 °C in scenarios with higher emissions ²⁴².

Increasing of emissions released during the last century reinforce greenhouse effect. Many of released gases come from the burning of fossil fuels in factories, automobiles, aircrafts, during production of energy and heat, or in agriculture. Carbon dioxide is most responsible for warming. Other greenhouse gases include methane, nitrous oxide and methyl bromide. Deforestation also increases the warming effect.

Climate change has a negative impact on the environment. The consequences of global warming are: the rise of the sea level and melting of glaciers, increasing intensity and frequency of extreme weather events such as hurricanes, floods, droughts and storms, water shortages, desertification and reduced soil productivity, loss of biodiversity, etc. By Resolution 43/53 of 6 December 1988, the UN General Assembly recognized that climate change is a common concern of humanity, which requires necessary and timely measures to combat climate change by all states ²⁴³. All this indicates the need to determine the concrete obligations of states in the field of prevention of climate change.

The ITLOS advisory opinion on climate change and international law issued on May 21, 2024, contributed to the developing an understanding of what responsibilities states have in the sphere of prevention of climate change. This decision is historic and will undoubtedly influence future international climate change litigation. It is not only because it is the first advisory opinion to be issued by an international court on climate change. What is important is that in the advisory opinion the ITLOS answered the question of whether obligations under the Paris Agreement and the UNFCCC take precedence over obligations under the UNCLOS, which also has a significant impact on the volume of responsibilities of states. It also contributed to the development of the principles of international environmental law. All this indicates the importance of the advisory opinion, so let's dwell in more detail on its individual provisions.

Let's stop at first at the Tribunal's jurisdiction. In accordance with article 159, paragraph 10 of the UNCLOS, the International Seabed Authority or the Council has the right to refer to the Seabed Disputes Chamber any questions of law arising in the course of the performance of its functions ²⁴⁴. As we can see this provision concerns only the Seabed Disputes Chamber. The

²⁴² Ibid. Para 18.

²⁴³ UN General Assembly Resolution 43/53 "Protection of Global Climate for Present and Future Generations of Mankind". (1988). URL: <https://www.ipcc.ch/site/assets/uploads/2019/02/UNGA43-53.pdf>.

²⁴⁴United Nations Convention of the Law of the Sea. (1982). URL: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

jurisdiction to give advisory opinions at the request of the Assembly or the Council on legal questions arising within the scope of their activities only by this chamber is also expressed in Article 191 of the UNCLOS. Nevertheless, as we can see, the ITLOS itself rendered an advisory opinion. As Ruys T. and Soete A. claim, the ITLOS' advisory jurisdiction is not explicitly enshrined in its constituent instrument, but was rather asserted in the "Tribunal's, homemade, rules of procedure"²⁴⁵.

According to paragraph 84 of the Advisory opinion on climate change and international law, the jurisdiction of the ITLOS to render an advisory opinion is based on article 21 of its Statute. The Tribunal stated that it has jurisdiction in all "disputes" and "applications" submitted to it in accordance with the UNCLOS and in all "matters" when it was conferred to it by any other agreement²⁴⁶. The same approach to the determination of the jurisdiction was expressed by the ITLOS earlier in its Advisory opinion regarding illegal, unreported and unregulated fishing, in which the ITLOS didn't find serious reasons not to render an advisory opinion²⁴⁷. In paragraph 95 of the Advisory opinion on climate change and international law the ITLOS determined prerequisites which must be met for the Tribunal to have jurisdiction to render an advisory opinion: a) existence of an international agreement related to the purposes of the UNCLOS which specifically provides for the submission to the ITLOS of a request for an advisory opinion; b) submission of a request by a body authorised by or in accordance with the agreement; c) the request must concern a legal question²⁴⁸. At the same time the ITLOS has a discretionary power to refuse to give an advisory opinion even when these prerequisites are satisfied, although the Tribunal recognised that it shouldn't do so without compelling reasons²⁴⁹.

Boyle A.E. points out on the fragmentation of the jurisdiction of the ITLOS²⁵⁰. Mossop J. proposes to make changes to the UNCLOS in order to determine clear instructions for

²⁴⁵Ruys, T., Soete, A. (2016). "Creeping" Advisory Jurisdiction of International Courts and Tribunals? The case of the International Tribunal for the Law of the Sea. *Leiden Journal of International Law*, 29(1), 155-176.

²⁴⁶Statute of the International Tribunal for the Law of the Sea. (1982). URL: https://www.itlos.org/fileadmin/itlos/documents/basic_texts/statute_en.pdf

²⁴⁷Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4, at p. 21. Para. 54

²⁴⁸ITLOS. Advisory Opinion on Request submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024.

²⁴⁹Ibid. Para 111.

²⁵⁰Boyle, A.E. (1997). Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction. *International and Comparative Law Quarterly*, 46(1), 37-54.

ITLOS to consider requests for advisory opinions ²⁵¹. It is difficult to disagree with this proposal. Of course, the ITLOS can also use article 138 of the Rules of the Tribunal of 1997, according to which the ITLOS may give an advisory opinion on a legal question if an international agreement related to the purposes of the UNCLOS specifically provides for the submission to the Tribunal of a request for such an opinion. According to paragraph 2 of this article, a request for an advisory opinion shall be transmitted to the Tribunal by whatever body authorized to do so in accordance with the agreement ²⁵². According to the scholars, the statement that the Statute of the ITLOS or the Rules of the Tribunal take precedence over the convention as to the possibility of providing an advisory opinion is not entirely correct. Of course, as Wolfrum R. states, advisory opinion of the ITLOS is non-binding, but still authoritative and its jurisdiction must be properly determined ²⁵³.

Advisory opinion on climate change and international law was requested by the Commission of Small Island States on Climate Change and International Law, which at the time of the filing of the request had six parties. These are states which greenhouse emissions are low, but which are highly vulnerable to the consequences of climate change.

The questions were read as follows: “*What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea, including under Part XII, which regulates the protection and preservation of the marine environment:*

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?” ²⁵⁴.

²⁵¹Mossop, J. (2023). Reimagining the Procedural Aspects of Part XV of the United Nations Convention on the Law of the Sea. *The International Journal of Marine and Coastal Law*, 38(2), 378-401. URL: https://brill.com/view/journals/estu/38/2/article-p378_11.xml?srsId=AfmBOooylxjNHIIVzgwypxBGGEM8m8Spz5cfbxB2uDL4ndHsFV5DsOeE

²⁵² Rules of the Tribunal (ITLOS/8) as adopted on 28 October 1997 and amended on 15 March 2001, 21 September 2001, 17 March 2009, 25 September 2018, 25 September 2020 and 25 March 2021.

²⁵³ Wolfrum, R. (2013). Advisory Opinions: are they a suitable alternative for the settlement of international disputes?, in Wolfrum, R. and Gätzschmann, I. (eds.), *International Dispute Settlement: Room for Innovations?* P. 33-123.

²⁵⁴ ITLOS. Advisory Opinion on Request submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024. Para 102.

As we can see the ITLOS had a task to clarify the provisions of the law of the sea taking into account challenges which states are facing in connection with climate change.

The ITLOS made a request to all state parties to the UNCLOS and intergovernmental organisations according to the tribunal competent to provide professional information on the subject to present written statement on questions put to the ITLOS. African Union, International Seabed Authority, Pacific Organisation asked to add them to the list of intergovernmental organisations, which can provide a statement. The ITLOS allowed it to be done. Written statement was provided to the ITLOS by 35 states and 8 intergovernmental organisations ²⁵⁵. Providing everyone an opportunity to present their opinions proves the democratic nature of the process and the seriousness of the Tribunal's approach. The ITLOS held oral proceedings. Several intergovernmental organisations on their request were granted permission to act as *amici curiae* in the proceedings. Advisory opinion was adopted unanimously by 21 judges.

The ITLOS relied on science as a basis for developing the advisory opinion. The most authoritative scientific investigations in the sphere of climate change were done by the International Panel on Climate Change. That is why the ITLOS relied on its reports. According to the reports of the IPCC the ocean plays an important role in the climate system. About a quarter of CO₂ released by human activities is absorbed by the oceans, which serves as natural CO₂ sinks ²⁵⁶. At the same time coastal blue carbon ecosystems help to reduce the impact of climate change ²⁵⁷ and contribute to both adaptation and mitigation at the national level ²⁵⁸. Accumulation of greenhouse gas emissions in the atmosphere has huge effects on the ocean causing sea level rise, increasing marine heat waves, etc. ²⁵⁹ Consequently, we can observe not only an increase in global temperature, but also a warming of the ocean. The amount of oxygen it can hold decreases. As a result, marine ecosystems and ocean biodiversity are at risk. The question of the survival of small island states is also acute.

Thus, scientific studies have simultaneously confirmed that climate change affects the state of marine waters and marine biodiversity. Conversely, protection of marine waters and

²⁵⁵International Tribunal for the Law of the Sea. Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal). Institution of Proceedings (2024). URL: <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>

²⁵⁶ WGI 2021 Report. URL: <https://www.ipcc.ch/report/ar6/wg1/>

²⁵⁷ WGI 2022 Report. URL: <https://www.ipcc.ch/report/ar6/wg2/>

²⁵⁸ WGI 2019 Report. URL: <https://www.ipcc.ch/site/assets/uploads/2019/11/SRCCL-Full-Report-Compiled-191128.pdf>

²⁵⁹ 2023 Syntesis Report. URL: <https://www.ipcc.ch/report/ar6/syr/>. P. 46.

addressing the adverse effects that greenhouse gas emissions have on marine environment is necessary to mitigate climate change. Therefore, defining the responsibilities of states in this area is necessary. According to the ITLOS, establishment of the duties of states should be based on science. The similarity with the decision of the European Court of Human Rights in the Verein KlimaSeniorinnen Schweiz and Others v. Switzerland case should be noted concerning this question. The ECtHR also relied on complex scientific evidence when making a decision²⁶⁰. When evaluating the actions of the Swiss government, the court also took into account scientific results of the IPCC²⁶¹. As we can see, the unification of the approaches of international maritime law and international human rights law in climate change litigation is observed.

One of the most positive provisions of the ITLOS' advisory opinion on climate change is the definition of relation between Part XII of the UNCLOS and sources of international climate change law (the UNFCCC, the Kyoto Protocol, the Paris Agreement, Annex VI to the MARPOL, Montreal Protocol, etc.). The great advantage is that the ITLOS established that the norms of international climate change law are not *lex specialis* in relation to the UNCLOS. According to the Tribunal, the treaties do not operate in isolation but are “*interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation*”²⁶². The Paris agreement just complements the UNCLOS but does not limit or modify the obligation of states²⁶³. Similar approach we can find in the ICJ Advisory Opinion on Obligations of States in Respect of Climate Change.

This means that states cannot invoke the implementation of provisions of, for example, the Paris Agreement as a reason for non-implementation of provisions under the UNCLOS. This statement is of great importance, since, as is known, the provisions of the Paris Agreement are not specific (there is no mandatory timeline or specific levels of reduction of GHG emissions) and the parties to the convention themselves can determine the level of their obligations. The Paris Agreement does not define specific emissions targets for states. Instead,

²⁶⁰ Žatková, S., Paľuchová, P. (2024). ECtHR: Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20, 9 April 2024): Insufficient Measures to Combat Climate Change Resulting in Violation of Human Rights. *Bratislava Law Review*, 8(1), 227–244. P. 238.; SVÁK, J.: Ako klimatické zmeny zmenili prístup k ľudským právam; *Justičná revue*, 76, 2024, č. 5, 600 – 609.

²⁶¹ Svák, J., Mareček, L. a kol.: *Medzinárodné právo verejne a úvod do verejného medzinárodného práva*. 1. vydanie. Bratislava: Wolters Kluwer SR s.r.o., 2024, 972 s. P. 876.

²⁶² ITLOS. Advisory Opinion on Request submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024. Para 136.

²⁶³ *Ibid.* Para 223-224.

it creates a more flexible system in which states determine nationally determined contributions to the global response to climate change.

Providing an answer to the questions asked required the interpretation of the UNCLOS and in doing so the ITLOS considered external norms. It took into account not only Part XII of the UNCLOS, but also other relevant provisions of the Convention.

The ITLOS first addressed whether the obligations under the UNCLOS apply to climate change and ocean acidification. In responding to the first question the first issue that the ITLOS had to address was whether anthropogenic greenhouse gas emissions into the atmosphere fall under the definition of “pollution of the marine environment”. Article 1, paragraph 1 (4) of the UNCLOS which defines pollution of the marine environment does not provide a list of pollutants or forms of pollution of the marine environment. Instead, it sets out three criteria to determine what constitutes such pollution: (1) there must be a substance or energy; (2) this substance or energy must be introduced by humans, directly or indirectly, into the marine environment; and (3) such introduction must result or be likely to result in deleterious effects²⁶⁴. Taking into account the IPCC findings, 2021 draft guidelines on the protection of the atmosphere and provisions of the UNFCCC the ITLOS came to a conclusion that “anthropogenic GHG emissions cause climate change and ocean acidification, which results in the deleterious effects illustrated in the definition of pollution of the marine environment”²⁶⁵.

The UNCLOS, in particular its Part XII set out principles and provide direction and guidance to states in their effort to protect and preserve the marine environment. Article 193 of the UNCLOS recognises the sovereign right of states to exploit their natural resources, but at the same time establishes the obligation to protect and preserve the marine environment. According to the provisions of Part XII (article 194) the states also have an obligation to prevent, reduce and control pollution of the marine environment. In the words of the Seabed Disputes Chamber in the Area Advisory Opinion, this is “an obligation of conduct”, and not “an obligation of result”²⁶⁶. Articles 207-212 address the obligations of states with respect to specific sources of pollution. They include the obligation to adopt necessary national legislation and to establish international standards and rules, the obligation to cooperate and provide technical assistance, obligation of monitoring and environmental impact assessment, the

²⁶⁴ Ibid. Para 161.

²⁶⁵ Ibid. Para 178.

²⁶⁶ Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, at p. 10. Para 41.

obligation of states to harmonise their policy, the obligation not to transform one type of pollution into another.

Analysis of Article 194 of the UNCLOS was essential for responding to the first question. It provides for three main obligations of states: the obligation to take necessary measures to prevent, reduce and control marine pollution; the obligation to take necessary measures to ensure that pollution do not occur; and the obligation to protect and preserve rare or fragile ecosystems, endangers species and other forms of marine life ²⁶⁷. The obligation to reduce marine pollution according to the ITLOS includes the obligation to reduce and control greenhouse gas emissions ²⁶⁸. The term “necessary” measures according to the Tribunal should be understood broadly and include measures in the reduction of anthropogenic greenhouse gas emissions into the atmosphere aimed at limiting average temperature rise to 1.5 °C above preindustrial levels. In assessing necessary measures states must use best available science ²⁶⁹.

While the UNCLOS does not refer to the precautionary approach, according to the ITLOS the obligation to apply it is implicit. Moreover, according to the Seabed Dispute Chamber, there is a trend towards making precautionary approach part of customary international law ²⁷⁰.

According to article 194 (1) of the UNCLOS states have to take individually or jointly as appropriate “*all measures that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection*”. In its advisory opinion the ITLOS while interpreting article 194 (1) of the UNCLOS stated that it imposes a due diligence requirement on all states.

The essence of the concept of due diligence is that the state must show “care”, that is, take all necessary measures to prevent environmental pollution as a result of any activity that is carried out under its jurisdiction or control. The state is not responsible for the illegal activity of physical or legal persons, but is obliged to take organizational and legal measures to ensure proper control of such activity, prevent and stop illegal activities, punish persons who have violated the law, etc. Violation of the duty of due diligence leads to international responsibility and the obligation to compensate for damage. The source of the modern principle of state

²⁶⁷ Ibid. Para 195.

²⁶⁸ Ibid. Para 199.

²⁶⁹ Ibid. Para 208.

²⁷⁰ Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, at p. 47. Para 135.

responsibility for damage to the environment is international custom, according to which states must refrain from actions that can cause damage outside their jurisdiction²⁷¹.

In international judicial practice, the concept of due diligence was formulated for the first time in the decision of the arbitral tribunal in the Trail Smelter Case in 1941 (United States of America against Canada from 1938 to 1941)²⁷². In the decision of the arbitral tribunal, it is noted that “*according to the principles of international law [...] no state has the right to use or allow the use of its territory in such a way that would cause damage to the territory of another state or to property or persons located there, if the case has serious consequences and damage is proven by clear and convincing evidence*”²⁷³.

The concept of due diligence was also confirmed in other decisions of international courts, such as: Corfu Channel Case²⁷⁴, Pulp Mills Case²⁷⁵, Military and Paramilitary Activities in and against Nicaragua Case²⁷⁶, San Juan River Case²⁷⁷, etc.

In its advisory opinion the ITLOS once again emphasized the importance of this concept for the protection of sea waters and stated that this concept is an integral part of the UNCLOS. Thus, states should apply this concept to protect marine environment and its natural resources.

It is worth noting another important point concerning the implementation of the concept of due diligence in practice, on which the ITLOS focused attention. According to the tribunal, scientific aspects must be the basis for decision making and for examining adequacy of actions aimed at prevention of climate change. The ITLOS also gives the answer which science should be taken into account. It must be reports of the IPCC, which the tribunal recognises as “authoritative assessments of the scientific knowledge”²⁷⁸.

The ITLOS for the first time in this decision stated, that the principle of common, but differentiated responsibility must also be applied under the UNCLOS. According to the

²⁷¹Medvedeva, M. (2010). On the question of liability in international environmental laws. In *Actual problems of international relations*. 2010, Issue 93 (Part II). P. 116-127.

²⁷² Trail smelter case (U.S./Canada), Arbitral Award of 16 April 1938 and 11 March 1941, R.I.A.A., vol. III, pp. 1905-1982.

²⁷³ Case RIAA, Trail Smelter Arbitration (United States v. Canada), 3 RIAA 1905 (1938 and 1941). Para 1965.

²⁷⁴Corfu Channel Case (United Kingdom v. Albania), I.C.J. Reports 1949, p. 4.

²⁷⁵ Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14.

²⁷⁶Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392.

²⁷⁷ Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015, p. 665

²⁷⁸ ITLOS. Advisory Opinion on Request submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024. Para 51.

tribunal, this principle must be applied in the connection with the prevention of the marine pollution.

The principle of common but differentiated responsibility means that not all states have the same obligations in the sphere of addressing global environmental deterioration. Economically more developed states have more obligations to protect the environment. This approach was formulated in principle 7 of the Rio Declaration: *“In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command”*²⁷⁹.

As an example of enshrining of the principle of common, but differentiated responsibility in a treaty, we can cite article 3 of the UN Framework Convention on Climate Change: *“The Parties should protect the climate system for the benefit of present and future generations of mankind, on the basis of equity and in accordance with their common purpose differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and its adverse effects thereof”*²⁸⁰. Convention also stresses attention on the fact, that particularly vulnerable, especially developing states cannot bear abnormal disproportionate burden in the sphere of climate change mitigation. Reference to this principle we can also find in Article 5 (1) of the Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer and in the Kyoto Protocol to it.

The principle of common but differentiated responsibility embodies the concept of justice and is based on the fact that not all states have contributed to environmental degradation to the same extent and not all states have the same opportunities to combat such degradation. At the same time, all states are obliged to take certain measures to prevent environmental damage, combat environmental pollution and improve the condition of its components. The principle of common but differentiated responsibility of states provides, firstly, different obligations of the parties to the same environmental convention, secondly, granting developing states postponement of their obligations, and thirdly, providing these countries with additional assistance to fulfil their obligations (transfer of technology, information, exchange of personnel,

²⁷⁹ Rio Declaration (1992). Rio Declaration on Environment and Development, in the Report of the United Nations Conference on Environment and Development. UN Doc. A/CONF.

²⁸⁰ UN General Assembly, United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189.

additional financing, etc.). This principle includes such a component as the obligation to take into account the needs of developing states, as well as their capabilities to combat environmental pollution²⁸¹.

If we analyse the provision of article 207 (4) of the UNCLOS we can state, that it also includes the principle of common, but differentiated responsibilities, because according to it states have to establish regional and global standards, rules and recommended practices aiming at prevention and reduction of marine pollution “*taking into account characteristic regional features, the economic capacity of developing States and their need for economic development*”²⁸².

In its advisory opinion the ITLOS elaborated this provision. First of all, it stated that economically developed states have the obligation of technical assistance to developing states. The tribunal uses the term “vulnerable communities”²⁸³. The UNCLOS uses another term – “developing states”. The ITLOS in the decision also stated, that the principle of common, but differentiated responsibilities also should be applied while interpreting article 194 of the UNCLOS, which establishes an obligation to all states to take all measures that are necessary to prevent and reduce the pollution of the marine environment while using the best practical means “in accordance with their capabilities”. While analysing the obligation of states under article 194, the ITLOS finds some elements common to this principle. According to the Tribunal, all states have to make efforts aimed at the mitigation of pollution, but developed states must take the lead in this sphere.

Of course, applying the principle of common, but differentiated responsibility has a number of advantages. The ITLOS has clearly established that countries have different responsibilities in the field of prevention of marine pollution. At the same time, the application of this principle cannot be used as an excuse for less economically developed states not to develop enough effort. All states have the obligation to prevent pollution and to reduce its level in accordance with their capabilities.

²⁸¹ Medvedeva, M., Zadorozhnyi, O. *International Environmental Law*. 1. Vyd. Kharkiv: Prameni, 2010. P. 63.

²⁸² United Nations Convention on the Law of the Sea. (1982).

URL: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

²⁸³ ITLOS. Advisory Opinion on Request submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024. Para 66.

4.2 The ICJ Advisory Opinion on Obligations of States in Respect of Climate Change: Implications for Environmental Human Rights

In 2021 Pacific Island Nation of Vanuatu launched its call for the application to the ICJ for obtaining this advisory opinion²⁸⁴. Climate change has become a particularly acute problem for small island states, which suffer the most from its effects. And Vanuatu has the highest disaster risk in the world. At the same time, it should be noted that the push to seek an advisory opinion from the world's highest court began in an environmental law class in Fiji in 2019. Cynthia Houniuihi, president of Pacific Islands Students Fighting Climate Change, said she and her peers had been looking for ways to address the climate crisis head-on through various international legal pathways, until they decided on the International Court of Justice²⁸⁵.

On March 29, 2023, at the 77th session the UN General Assembly adopted the resolution 77/276, requesting an advisory opinion from the ICJ on the obligations of States with respect to climate change. The following questions were put to the court:

“(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”²⁸⁶

The resolution was adopted unanimously, indicating that states recognize the importance of taking concrete steps to prevent climate change.

²⁸⁴CNN. Rachel Ramirez. A win of epic proportions’: World’s highest court can set out countries’ climate obligations after Vanuatu secures historic UN vote. (2023). URL: <https://edition.cnn.com/2023/03/29/world/un-advisory-opinion-vanuatu-climate-change/index.html>

²⁸⁵ Ibid.

²⁸⁶ Resolution 77/276 “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”. (2023). URL: <https://docs.un.org/en/A/RES/77/276>

In its advisory opinion, the ICJ recognized the link between climate change and human rights and that without preventing climate change and protecting the environment enjoyment of human rights is impossible. Therefore, it is the duty of the state to take action to protect the climate, which includes the protection of environmental human rights, mitigation and adaptation measures, adoption of relevant legislation and adequate standards in the field of environmental protection. And this is the state's obligation under international law ²⁸⁷.

According to provision 404 of the Advisory opinion, human rights law, climate change treaties, other environmental treaties and customary international law are not separate norms, but they “inform each other”, which means that they must be interpreted and applied hand in hand. The fulfilment of obligations by a state in one branch of international law (for example, the norms of international climate change law) cannot jeopardize the fulfilment of obligations according to another branches (for example, international human rights law). The ICJ determines, that obligations under human rights law, climate change treaties, other environmental treaties and customary international law in this sphere are overlapped. They cannot be implemented separately.

The ICJ identified different norms of international law, which are relevant in connection with climate change: human rights law, climate change treaties, other environmental treaties and customary international law in this sphere. States must fulfil their obligations under all of these norms simultaneously. None of them have priority.

In its analysis of individual climate conventions and other norms of international law relating to the prevention of climate change, the ICJ concluded that they do not contradict each other. According to the court, the climate change treaties were not adopted with the aim of replacing other norms or principles of international law. Of course, climate treaties play a crucial role in the field of climate change prevention, but this does not mean that other norms should not be applied ²⁸⁸.

All climate conventions, according to the court, are “mutually supportive”. In its advisory opinion, the ICJ focused on individual conventions that are aimed at preventing climate change, but at the same time recognized that this sphere of regulation is not limited to these conventions. The UNFCCC, which was adopted at the Earth Summit in Rio de Janeiro in 1992, is a framework convention for international climate policy. This treaty serves as the basis for global efforts to prevent climate change. It does not set binding emission reduction targets

²⁸⁷ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 403.

²⁸⁸ Ibid. Para 171.

but defines general principles and creates an institutional framework for cooperation between countries. The 1997 Kyoto Protocol and the 2015 Paris Agreement, which were adopted under the auspices of the UNFCCC interpret and give substance to obligations in it, and do not amend or repeal any provisions of the Convention ²⁸⁹.

The negotiation process about the climate change regime was very difficult. The majority of developing countries were not willing to accept enormous commitments and argued that the increase in global warming was mainly contributed by developed states as part of their economic development. Economically developed states also feared that significant commitments would have a significant impact on economic development. Small island developing states, which are most affected by climate change, on the other hand, argued for strong and effective commitments. The compromise was to enshrine the principle of common but different responsibilities in Article 3 of the Framework Convention on Climate Change: *“Contracting parties should protect the climate system for the present and future generations of mankind on the basis of equality and in accordance with their common but different responsibilities and respective capabilities. Accordingly, developed countries should take a leading position in the fight against climate change and its adverse effects”* ²⁹⁰. This principle made it possible to establish obligations according to the social and economic status of each state. According to the UN Framework Convention on Climate Change, only developed states, which are parties to the agreement, and states with transforming economies, listed in Annex I, are required to implement policies and measures to mitigate the effects of climate change by limiting their emissions of greenhouse gases so that they reach the levels of 1990 by the year 2000 (Article 4.2). On the other hand, developing states can adopt and implement policies and measures to mitigate climate change. At the same time, the agreement does not establish specific quantitative obligations regarding greenhouse gas emissions ²⁹¹.

The Framework Convention on Climate Change obliges all parties to develop, regularly update, publish and submit to the Conference of the Parties national inventories of anthropogenic emissions from sources and sinks of all gases causing the greenhouse effect, to adopt national and, where appropriate, regional programs that include measures to mitigate climate change (Article 4). The Convention contains reporting obligations: the provision of

²⁸⁹ Ibid. Para 195.

²⁹⁰ UN General Assembly, United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly, 20 January 1994, A/RES/48/189. URL: <https://www.refworld.org/docid/3b00f2770.html>.

²⁹¹ Svák, Ján, Mareček, Lukáš a kol.: Úvod do verejného medzinárodného práva. Bratislava: Wolters Kluwer, 2024. P. 866.

national lists of anthropogenic emissions and national notifications, a general list of steps taken or anticipated by the Contracting Party for the purpose of fulfilling the Convention and all other information that the Contracting Party considers relevant for the purpose of achieving the goals of the Convention and which will be suitable for inclusion in its reports, and if appropriate, including material relevant to the calculation of trends in global emissions (Article 12). The states listed in Annex I have additional reporting obligations (information regarding the provision of financial and technological support to developing countries). The financial mechanism of the agreement, established in Article 11, is designed as the main source of financing. Its role is to provide financial resources for developing countries, as grants or on the basis of authorization, including transfer of technology ²⁹².

According to the ICJ, all mitigation obligations (obligations of result and obligations of conduct) of all parties (Annex I parties and other states) are legally binding. More than that, the distinction between them is not necessarily a strict one. Thus, the violation of both types of obligations leads to the responsibility of states for the violation of norms of international law. Obligations of conduct are violated if the state has not used all possible means at its disposal and didn't use its best effort to achieve the goals of the convention, but the obligations will not be violated if the country has used all available possible means but has not achieved the desired result. In the case of obligations of result (i.e. the obligation to formulate and publish national programmes, the obligation to communicate information to the COP) will be met merely by the adoption of any policies and taking of corresponding measures ²⁹³. Moreover, the ICJ recognized, that failure of a state to take appropriate action to protect the climate system from GHG emissions (including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies) may constitute an internationally wrongful act which is attributable to that state ²⁹⁴. As we can see, in this provision of the decision, the court specifies the obligations of states, emphasizing the need to reduce the use of fossil fuels and this reduction is possible only in the case of a targeted state policy. The specification of the obligations of states in this area is a positive moment, and we can even state the unexpectedness of such a progressive provision. The activities of private fossil fuel companies should be reduced and the court's recognition of the possibility of establishing international legal responsibility of the state for the activities of any state body that

²⁹² Ibid. P. 866.

²⁹³ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 207-208.

²⁹⁴ Ibid. Para 427.

has unlawfully issued a license for such activities or for failing to take the necessary steps necessary to prevent climate change, which are specified in the provision of the decision, should contribute to the protection of the climate system.

The ICJ found that states are not doing enough to prevent climate change. The adaptation measures taken today, the court believes, will be less and less effective due to global warming, especially in developing countries. If the situation does not change, the planet will not be suitable for life ²⁹⁵. Action to prevent climate change should concern not only the limitation of the use of fossil fuels, but absolutely all emissions.

The activities of private individuals who emit into the environment must be regulated with due diligence. If the state does not implement sufficient legal regulation or does not limit the volume of emissions at the legislative level, it violates the norms of international law.

The ICJ also stressed the customary duty of states to cooperate in the sphere of prevention of climate change. Cooperation must take place in good faith with a view to achieving the objectives set out in the climate change agreements. The UNFCCC also specifies the requirements for this cooperation. For example, Article 4 requires developed states listed in Annex II to provide financial and technological assistance and other forms of support to developing countries, particularly those most affected by climate change. Such support is necessary to achieve the objectives of the convention. Good faith cooperation should take into account the recommendations of the COP decisions. States must cooperate constantly and can do so both using conventional mechanisms and directly among themselves.

In assessing the climate change treaties, the ICJ concluded that their provisions were not contradictory. Therefore, the *lex posterior* rule, which is reflected in Article 30 of the Vienna Convention on the Law of Treaties, in the court's opinion, does not apply in this sphere. The fact that treaties regulate the same subject matter does not mean that they replace each other.

The Kyoto Protocol, adopted in December 1997 as an amendment to the United Nations Framework Convention on Climate Change, committed developed countries and countries with economies in transition to reduce their greenhouse gas emissions in accordance with agreed individual targets. Binding emission reduction targets for 36 industrialized countries and the European Union were set out in Annex B to the Protocol. Overall, these targets amounted to an average reduction in emissions of 5 percent compared to 1990 levels over the five-year period 2008–2012 (the first commitment period). The EU committed to reducing emissions by 8 percent, Japan and Canada by 6 percent, and the Eastern European and Baltic countries by an

²⁹⁵ Ibid. Para 87.

average of 8 percent. Under the Kyoto Protocol, if a country in Annex B exceeded its obligations to limit emissions for a certain period and had an unused quota, it could sell this quota or part of it to another country. The second commitment period was agreed in 2012. The Doha Amendment, which established the second commitment period of the Kyoto Protocol for 2013-2020, no longer allowed international trading of emissions allowances and did not allow the use of quotas from the first period²⁹⁶. At the same time according to the court, the absence of a new commitment period does not deprive the Kyoto Protocol of its legal effect and therefore its provisions can serve to assist in the interpretation of other climate change agreements and in assessing the implementation by countries listed in Annex B of their commitments in the sphere of prevention of climate change²⁹⁷.

The temperature goal determined by the Paris Agreement aims to stabilize emissions into the atmosphere in such a way as to prevent anthropogenic changes in the climate system. At the same time, the Paris Agreement must be implemented in a way that reflects equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances²⁹⁸. Again, when implementing the Agreement, the parties must act with due diligence and must employ best efforts.

The Paris Agreement does not define specific emission targets for the states. Instead, it creates a more flexible system in which the parties determine nationally defined contributions to the global response to climate change (Article 3). Countries have undertaken to take measures to mitigate climate change in order to achieve the goals of such contributions. Nationally defined contributions are determined by the state voluntarily for 5 years, after which they must be revised and remit new obligations. Each subsequent nationally defined contribution of the party must represent progress compared to the current contribution of the party and reflect its highest possible ambition, taking into account its common but different responsibilities and respective capabilities, considering the different circumstances in individual states (Article 4 (3)). When submitting their nationally defined contributions, states must provide the necessary information for clarity, transparency and understanding (Article 4 (8)). At the same time, each state can at any time adjust its current nationally defined contribution in order to increase its ambition in accordance with the guidelines adopted by the conference of the parties serving as

²⁹⁶ Svák, Ján, Mareček, Lukáš a kol.: Úvod do verejného medzinárodného práva. Bratislava: Wolters Kluwer, 2024. P. 867.

²⁹⁷ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 221.

²⁹⁸ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

a Conference of the Parties to the Paris Agreement (Article 4 (11)). The Conference of Parties serving as a Conference of the Parties to the Paris Agreement periodically evaluates the implementation of this agreement to assess collective progress towards achieving the purpose of this agreement and its long-term goals. The Conference of the Parties performs a global evaluation every five years, and it serves as a Conference of the Parties of the Paris Agreement. The results of the global assessment help states to update and expand their nationally defined activities, as well as expand international cooperation in the sphere of climate-related measures (Article 14) ²⁹⁹.

According to the ICJ, the obligation of the states to determine NDCs is the obligation of result which is procedural in nature. At the same time, it is not enough to simply formally fulfil this obligation; it must be fulfilled with due diligence ³⁰⁰ and reflect its highest possible ambition. Although the highest possible ambition is not defined in the Paris Agreement, as the court explains, it has not been left entirely to the discretion of the parties ³⁰¹, they must be such as to achieve the purpose of the convention. That is, states should do everything possible. Of course, the possibilities are different and depend on the economic development of the country, the level of its emissions, and national characteristics. Economically developed countries must determine absolute emission reduction targets and developing states are expected to continue enhancing their mitigation efforts ³⁰².

It is also established the obligation to constantly carry out mitigation measures in order to achieve the objectives of the convention. And these measures also apply to private individuals. And this is important because emissions are mainly caused by private actors. It was also confirmed by the ITLOS in its Advisory opinion ³⁰³.

In addition to setting NDCs, it is necessary to be proactive and make efforts towards their implementation. This may require changes to legislation, administrative procedures and enforcement procedures.

The Advisory opinion also highlights the need to implement adaptation measures, including the need to develop necessary plans and policies that should take into account the needs of vulnerable groups of people and vulnerable ecosystems. At the same time, the available

²⁹⁹ Svák, Ján, Mareček, Lukáš a kol.: Úvod do verejného medzinárodného práva. Bratislava: Wolters Kluwer, 2024. P. 868.

³⁰⁰ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 235 – 236.

³⁰¹ Ibid. Para 242.

³⁰² Ibid. Para 248.

³⁰³ Ibid. Para. 236.

scientific data should be taken into account. The restoration of ecosystems, the creation of warning mechanisms, the construction of appropriate infrastructure, etc. should be foreseen.³⁰⁴

The Paris Agreement emphasizes that developed countries must play a leading role in mobilizing financial resources to help developing parties mitigate climate change and adapt while implementing their existing obligations under the agreement. At the same time, other states are called upon to provide adequate financial assistance (Article 9). Besides, the ICJ draws attention to the fact that this is precisely a duty, not a good will. The Paris Agreement does not mention the amount of assistance required, but, in the court's opinion, this obligation must be interpreted in such a way as to achieve the goal set by the agreement, and its level must be assessed taking into account the capabilities of economically developed countries and the needs of developing countries³⁰⁵.

The ICJ acknowledged the possibility of establishing a state's total contribution to global emissions on the basis of scientific data, taking into account the emissions that a state has made in the past and that it is making in the present. In doing so, the court recalled the need to report on its emissions under the UNFCCC. In climate change litigation, the most difficult thing is to establish a link between the state's activities and the damage caused to the climate system. The ICJ's Advisory opinion states that such a link can be established, since the 2023 IPCC report³⁰⁶, for example, includes data on cumulative net emissions by region. Similar data are contained in other studies. Of course, establishing international legal responsibility is more difficult when we are talking about a multitude of subjects that violate the norms of international law. But, as the court notes, customary international law is capable of addressing this task³⁰⁷. Thus, the court stated that international legal liability for violating one's climate obligations is possible. And this is an important statement. The recognition of this fact, we hope, will have an impact on states and they will begin to fulfil their international legal obligations in the sphere of prevention of climate change more responsibly. Also, the number of cases that will be considered by international courts in this area may potentially increase.

According to paragraph 74, the basis for the advisory opinion was the IPCC reports, which provide the best available scientific conclusions on climate change and its consequences.

³⁰⁴ Ibid. Para 257-258.

³⁰⁵ Ibid. Para 265.

³⁰⁶ IPCC, Climate Change 2023: Synthesis Report. URL: <https://www.ipcc.ch/report/ar6/syr/>. P. 45.

³⁰⁷ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 429-430.

The detrimental effects of climate change on the climate system have been confirmed by the UNEP, the WHO, the WMO and the IMO ³⁰⁸.

The ICJ recognized that states must act based on scientific evidence and explained what should be met by the scientific evidence (reports of the IPCC). In this regard, paragraph 438 of the advisory opinion is interesting, which confirms that it is difficult to establish a causal link between emissions into the environment carried out by the state and the damage resulting from these emissions. However, in the court's view, establishing this causal link is possible through a concrete assessment. And this is crucial because in many climate change litigations states resisted accountability arguing that causal link cannot be shown in environmental cases because of the diffuse nature of the emissions. This ICJ's advisory opinion may put an end to this issue. From now on, we hope, cases like *Saúl Luciano Lliuya v RWE* will have a chance of success in the future. The ICJ proposes to assess each case separately, paying attention to the specific facts of each individual case. This may include the type of activity, the size of emissions, foreseeability, etc. Since a causal link can be established, the ICJ thus recognizes the international responsibility of states for contributing to climate change. Of course, scientific data, primarily reports of the IPCC, must be used to prove a causal link. Countries will no longer be able to use the argument that a significant number of entities contribute to climate change through their activities and that their emissions are not significant on a global scale. This position of the court is very important, especially for small island states. Undoubtedly, paragraph 438 of the Advisory opinion will often be referred to by applicants in climate cases.

The adoption of the Advisory opinion of the ICJ on the obligations of states in respect of climate change prevention was necessary for several important reasons. Firstly, legal clarity on states' climate obligations is necessary. Many multilateral environmental agreements (e.g., the Paris Agreement, the UN Convention on the Law of the Sea) contain general obligations to protect the environment. But they do not always clearly define what actions are obligatory, what consequences arise for states for violations of their norms, how these obligations relate to human rights, etc. The ICJ's advisory opinion provides an authoritative interpretation of these norms.

The court's advisory opinion can increase pressure on individual governments. This is especially true for the states that emit the most, since they often do not bear responsibility for their emissions. Small island states are the most affected by climate change, but their emissions

³⁰⁸ Ibid. Para 74.

are minimal. It is also a signal to the international community that the climate crisis is a leading topic of modern international law.

In general, the ICJ's advisory opinion is based on scientific evidence. The court relies on it when recognizes that climate change is real, widespread and rapid, and can be measured. Of course, natural processes also affect climate change, but the ICJ recognized that climate change is caused mainly by human activity (because of CO₂ emissions, deforestation and pollution of the seas, which are sinks for emissions) ³⁰⁹. Climate change raises many other issues, such as the protection of affected individuals and the sovereignty of states. Since climate change is human made, it is a subject of international law. Since the court has recognized climate change as an existential problem for humanity, it concerns all countries.

According to the ICJ, preventing climate change is an *erga omnes* obligation. States must act with due diligence, in good faith, based on scientific data. Preventive measures must be reasonable, timely and effective.

Given the large number of environmental treaties that have been adopted and that are in one way or another aimed at protection of individual components of the environment, the ICJ did not set itself the goal of examining them all. The court highlighted the most important treaties in the field of climate change mitigation as follows: the Ozone Layer Convention, the Montreal Protocol, the Biodiversity Convention and the Desertification Convention.

The 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substance that Deplete the Ozone layer form a key part of the international legal framework addressing atmospheric protection. While originally adopted to protect the ozone layer, their provisions directly contribute to the broader goal of protection of the climate system, as was recognized by the IPCC. The ICJ also focused its attention on this. It stressed the importance of the work of the Conference of the Parties to the Montreal Protocol in implementing the obligations of countries defined by these two international documents. A serious approach to the implementation of these obligations and, as a result, the recovery of the ozone layer clearly contributes to the prevention of climate change. Therefore, according to the court, the states parties to the Montreal Protocol have an obligation to phase out, according to a fixed schedule, the production and consumption of all the main ozone-depleting substances, including certain GHGs, through control measures ³¹⁰. Taking into account that many ozone-

³⁰⁹ Ibid. Para 72.

³¹⁰ Ibid. Para 323.

depleting substances are also greenhouse gases, reducing their emissions will help to mitigate climate change.

Under Article 2 of the Ozone Layer Convention, states have a general obligation to protect human health and the environment from adverse effects caused by human activities that modify or are likely to modify the ozone layer, to cooperate and adopt appropriate legislative and administrative measures within their capabilities to prevent and mitigate such harm³¹¹. The Montreal Protocol operationalizes these obligations through concrete control measures. States are obliged to phase out the production and consumption of listed ozone-depleting substances according to an agreed schedule. States also must participate in periodic reviews and amendments to the protocol. For example, the Kigali Amendment to the Montreal protocol of 2016, which added hydrofluorocarbons (HFCs) to the list of controlled substances is expected to reduce the production and consumption of HFCs by more than 80 per cent over the next 30 years. If fully implemented, the amendment can avoid up to 0.4°C of global warming by the end of this century³¹². According to scholars, reduction of HFCs can reduce the global warming rate, diminish health burdens and maintain agricultural productivity³¹³.

The ICJ stressed the importance of international cooperation between the parties within the framework of the Montreal Protocol. Obligations under the Ozone Layer Convention and Montreal Protocol complement and reinforce obligations under the UNFCCC. Both frameworks (ozone layer treaties and climate change treaties) are aimed at the protection of the atmosphere as one of the components of climate system and as a consequence of the entire climate system as a whole³¹⁴. As the ICJ notes, this is reflected in Article 4, paragraph (1) (a) of the UNFCCC, which obliges states periodically update national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the

³¹¹ Vienna Convention for the Protection of the Ozone Layer. (1985). URL: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-2&chapter=27&clang=_en

³¹² Kigali Amendment. (2016). URL: <https://www.undp.org/chemicals-waste/conventions/kigali-amendment>

³¹³ Ziqi, Wu, Xin, Su, Weina, Zhu, Tianpeng, Wang. (2025). Climate benefits from China's adherence to the Kigali Amendment. *Cell Reports Sustainability*, Volume 2, Issue 8. URL: <https://www.sciencedirect.com/science/article/pii/S2949790625001272>; Liu, H., Duan, H., Zhang, N. et al. (2024). Rethinking time-lagged emissions and abatement potential of fluorocarbons in the post-Kigali Amendment era. *Nature Communications*, 15. URL: <https://www.nature.com/articles/s41467-024-51113-2>; Heath, E.A. (2017). Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (Kigali Amendment). *International Legal Materials*, 56(1), 193-205; Young Park, Won, Shah, Nihar, Vine, Edward, Blake, Patrick, Holuj, Brian, Hyungkwan Kim, James, Hoon Kim, Dae. (2021). Ensuring the climate benefits of the Montreal Protocol: Global governance architecture for cooling efficiency and alternative refrigerants. *Energy Research & Social Science*, Volume 76. URL: <https://www.sciencedirect.com/science/article/pii/S2214629621001614>.

³¹⁴ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 324.

Montreal Protocol ³¹⁵, as well as in article III of the Kigali Amendment, which obliges states to replace HFCs with more planet friendly alternatives by phasing down the production and usage of HFCs ³¹⁶. All these provisions complement each other.

The obligation to prevent climate change also arises for states from customary law. That is, even those states that are not parties to climate change conventions must actively act to prevent climate change. The obligation of states not to cause serious harm in the territory of other states (no harm principle) has been recognized by the ICJ as an obligation arising from customary law in its previous decisions ³¹⁷. But in the Advisory opinion on obligations of states in respect of climate change the ICJ expanded this duty on the duty to prevent significant harm to the environment in the context of climate change ³¹⁸. This is an important position of the court, as many scholars believed that this obligation of states only applies to cross-border harm and does not apply to obligations in the sphere of climate change prevention, and emphasized the need to expand the scope of application of this principle ³¹⁹. But these were only proposals. The ICJ made the duty to prevent significant harm to the environment in the context of climate change an obligation. Moreover, an obligation that has a customary character, that is, an obligation that absolutely all states must fulfil. According to the ICJ, this duty is part of an obligation of state to act with due diligence. This obligation is the obligation of conduct, not of result, but states must take all possible and available measures to fulfil this obligation.

Moreover, the ICJ identified individual elements of this obligation: action to the best of the state's ability, appropriateness of measures, applying of precautionary measures, taking into account scientific and technological information and relevant rules of international standards, undertaking risk assessment, notification and consultation of other states, adoption of

³¹⁵ UN Convention on Climate Change. (1992).
URL: https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

³¹⁶ Kigali Amendment. (2016).
URL: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-2-f&chapter=27&clang=en

³¹⁷ see *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment, I.C.J. Reports 1949, p. 22, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010 (I), p. 56. Para. 101.

³¹⁸ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 133.

³¹⁹ Cheigh, E. (2025). Liability for transboundary environmental harm under international environmental law: a robust response to climate change.
URL: https://aura.american.edu/articles/thesis/LIABILITY_FOR_TRANSBOUNDARY_ENVIRONMENTAL_HARM_UNDER_INTERNATIONAL_ENVIRONMENTAL_LAW_A_ROBUST_RESPONSE_TO_CLIMATE_CHANGE/28934168; Brus, Marcel,

De Hoogh, André, Merkouris, Panos. (2023). The Normative Status of Climate Change Obligations under International Law.
URL: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_STU\(2023\)749395_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_STU(2023)749395_EN.pdf)

appropriate legislation and vigilance in its enforcement, exercise of administrative control³²⁰. The higher the probability and the seriousness of possible harm is, the more demanding is the required standard of conduct³²¹. At the same time, according to the ICJ, when determining the level of states' obligations in the sphere of prevention of climate change, it is necessary to take into account available scientific and technological information. According to the court, reports of the IPCC should be used by states as the source of comprehensive and authoritative information³²².

Environmental impact assessment should be applied to all activity, which may have a significant adverse impact in a transboundary context, not only to industrial activity³²³. The ICJ did not specify how the environmental impact assessment should be carried out but referred to the duty of due diligence.

Taking into account all of the above, of course, the level of responsibilities in the field of climate change prevention will be different for individual states. But what is important is that absolutely all countries, according to their capabilities, should actively act in this sphere.

The next important principle of international environmental law, which has a customary character, and which, in the opinion of the ICJ, should be applied in the sphere of prevention of climate change, is the duty to cooperate for the protection of the environment. The customary character of this principle was confirmed by the court in its previous decisions. The court also drew attention to the need for cooperation as a duty, which was stated in the UN Charter and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, as well as in the decisions of international and national courts³²⁴, but in the Advisory opinion on obligations of states in respect of climate change the ICJ also expanded this duty on climate change prevention sphere. While analysing the UNFCCC the ICJ emphasized the need for cooperation in the field of technology transfers, providing financial support to developing countries, especially those most exposed to the risks of climate change and capacity-building. UNFCCC's guidelines,

³²⁰ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 135-138.

³²¹ Ibid. Para 275.

³²² Ibid. Para 284.

³²³ Ibid. Para 296.

³²⁴ Climate Change, Advisory Opinion, ITLOS Reports 2024, p. 110, para. 296; MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 110. Para. 82.

frameworks and mechanisms adopted by COP decisions must be taken into account when implementing cooperation³²⁵.

The duty to cooperate is also provided in the provisions of the Paris Agreement. The ICJ notes that the Paris Agreement establishes obligations of co-operation with respect to specific issue areas, such as adaptation, loss and damage (Article 7, paragraphs 6 and 7; Article 8, paragraph 4). Additionally, Article 12 establishes an obligation to “*cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information*”³²⁶. The ICJ determined that the obligation of cooperation enshrined in the Paris Agreement is an obligation not only of its state parties, but of all states based on the customary nature of this obligation. According to the ICJ the obligations according to the Paris Agreement and obligations according to the customary law inform each other. Countries may choose the ways and methods of cooperation themselves but must carry it out in good faith and by implementing the obligation of due diligence³²⁷.

The obligation of economically developed countries to provide financial assistance to help less economically developed countries to meet their climate change commitments was once again emphasised. Since the Paris Agreement does not specify the level of this financial support, the ICJ found it necessary to answer this question. According to the court, this obligation must be interpreted comprehensively, taking into account all the other provisions of the Paris Agreement in such a way as to achieve the objective set out in Article 2 of the Agreement. This level can be evaluated on the basis of several factors, including the capacity of developed states and the needs of developing states³²⁸.

The ICJ’s articulation of the specific elements of the obligation of due diligence including precautionary measures, scientific assessment, legislative enforcement, and international cooperation provides a concrete framework for states’ action. Climate protection according to the ICJ is not optional, it is a legal duty shared by all states.

The Ozone Layer Convention and Montreal Protocol are aimed at the protection of the atmosphere as one of the components of climate system and as a result contribute to the protection of the global climate system. Ozone layer treaties and climate change treaties

³²⁵ ICJ. Advisory Opinion of 23 July 2025 Obligations of states in respect of climate change. URL: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Para 214-218.

³²⁶ Ibid. Para 260.

³²⁷ Ibid. Para 261-262.

³²⁸ Ibid. Para 265.

complement each other regarding this issue. The ICJ stressed the importance of the work of the Conference of the Parties to the Montreal Protocol in implementing the obligations of countries defined by the ozone layer treaties. A serious approach to the implementation of these obligations and, as a result, the recovery of the ozone layer clearly contributes to the prevention of climate change.

A number of scholars devoted their attention to the principle of *lex specialis*. Raphaël van Steenberghe acknowledges that the *lex specialis* principle is used as a mechanism to resolve conflicts between individual legal acts but emphasizes that it can also be used as an interpretative tool, when the terms of one treaty can be used for the interpretation of the provisions and terms of another. For example, the provisions of international environmental law can be used to interpret the provisions of international humanitarian law³²⁹. Thorp T. draws attention to the inconsistency in applying *lex specialis* principles in climate change litigation and proposes to unify *lex specialis* principles under a broader constitutional framework³³⁰. According to Alan Boyle, human rights and climate change protection in international law is far from simple or straightforward³³¹. ICJ's advisory opinion gives concrete answer concerning the lack of *lex specialis* in the sphere of prevention of climate change.

The principle of prevention of serious transboundary environmental harm and the need to fulfil a duty of due diligence are applied to climate change activities (primarily to activities related to the production and use of fossil fuels such as coal, oil and natural gas). Previously, it was widely believed that this principle was only applied to situations where there was a specific source of pollution. A classic example of such a situation is the arbitration dispute between the United States and Canada over the activities of a smelter in Trail (Canada). In the case of the climate system, there are a large number of sources of greenhouse gas emissions, a large number of sinks, and the cumulative effect of these emissions on the climate³³². The ICJ was not convinced by this statement. It was therefore concluded by the court that the principle of prevention also extends to damage to the climate system and its components.

³²⁹ van Steenberghe, Raphaël. (2023). International environmental law as a means for enhancing the protection of the environment in warfare: A critical assessment of scholarly theoretical frameworks. IRRC, No. 924. URL: <https://international-review.icrc.org/articles/international-environmental-law-protection-of-the-environment-924>

³³⁰ Thorp, Teresa. (2012). Climate Justice: A Constitutional Approach to Unify the *Lex Specialis* Principles of International Climate Law. *Utrecht Law Review*, Volume 8, Issue 3. URL: <https://utrechtlawreview.org/articles/10.18352/ulr.203>

³³¹ Boyle, Alan. (2012). Human Rights and the Environment: Where Next? *European Journal of International Law*, Volume 23, Issue 3, 613-642. URL: <https://academic.oup.com/ejil/article/23/3/613/399894>

³³² Badanova, E. (2023). The International Court of Justice and Climate Change: Conclusions for Ukraine. URL: <https://epravda.com.ua/svit/mizhnarodniy-sud-oon-ta-zmina-klimatu-visnovki-dlya-ukrajini-809817/>

Some scholars (e.g., E. Badanova) argue that this advisory opinion could help shape approaches to attributing responsibility to the Russian Federation for breaches of due diligence obligations. These activities include not only financing armed conflict, which has a direct negative impact on the climate, but also large-scale natural gas production for export, large-scale infrastructure projects for gas transportation, etc.³³³

For some countries, it is difficult to reconcile the simultaneous achievement of the climate goals set out in the Paris Agreement and the Sustainable Development Goals set out in the Agenda 2030. This reconciliation requires institutional changes and changes in approaches, but coherence is clearly needed.³³⁴ Some scholars propose using the level of greenhouse gas emissions per capita as a scientifically sound indicator to determine the level of responsibility for climate change and the appropriateness of a country's economic growth³³⁵. The scope of states' obligations to reduce their greenhouse emissions should also take into account cumulative historic emissions of states³³⁶.

A. K. Armstrong, M. E. Krasny and J. P. Schuldt draw attention to the importance of environmental education, as it has a real impact on changing the actions of individuals, both at the local level and in the form of advocacy at the national level.³³⁷ Coordination of global, national and subnational efforts is also necessary³³⁸. Without a doubt Sustainable Development Goals cannot be successfully implemented without strong action on climate change³³⁹.

The Paris Agreement does not contain a specific list of obligations of states. It provides for an obligation for states to establish nationally determined contributions, which must be ambitious, should be reviewed every 5 years and should represent progress compared to previous nationally determined contributions.

³³³ Ibid.

³³⁴ Shawoo, Z., Dzebo, A., Hägele, R., Iacobuta, G., Chan, S., Muhoza, C., Osano, P., Francisco, M., Persson, Å., Linner, B.-O., & Vijge, M. J. (2020). Increasing policy coherence between NDCs and SDGs: a national perspective. Stockholm Environment Institute. URL: <http://www.jstor.org/stable/resrep25056>

³³⁵ Rosales, J. (2008). Economic Growth, Climate Change, Biodiversity Loss: Distributive Justice for the Global North and South. *Conservation Biology*, 22(6), 1409–1417. URL: <http://www.jstor.org/stable/20183552>. P. 1417

³³⁶ Centre for Science and Environment. (2022). Mitigation ambition and justice. In COP27: Agenda and expectations (pp. 19–48). Centre for Science and Environment. URL: <http://www.jstor.org/stable/resrep44701.5> Centre for Science and Environment. (2022). P. 19.

³³⁷ Armstrong, A. K., Krasny, M. E., & Schuldt, J. P. (2018). CLIMATE CHANGE SCIENCE: The Facts. In *Communicating Climate Change: A Guide for Educators* (pp. 7–20). Cornell University Press. URL: <http://www.jstor.org/stable/10.7591/j.ctv941wjn.5>

³³⁸ Mehling, M., Sagar, A. D. (2018). Achieving 1.5 degrees in the real world: Opportunities, barriers and trade-offs. *Climate Strategies*. URL: <http://www.jstor.org/stable/resrep21726>

³³⁹ Dzebo, A., Iacobuță, G. I., Beaussart, R. (2023). The Paris Agreement and the Sustainable Development Goals: evolving connections. Stockholm Environment Institute. URL: <http://www.jstor.org/stable/resrep51239>

International treaties lack a number of very important definitions. For example, what do we understand by due diligence. We find the definition of what we understand by this concept only in educational and scientific literature. Most environmental treaties have too general provisions that define the purpose and objectives in a particular sphere and the principles that states must apply. More detailed obligations are established either in the protocols to them or are not established at all. States must reach a consensus and do not want to take on too large obligations, although from them would benefit absolutely all states. In the field of climate change prevention, the situation is the same. The UN Convention on Climate Change and the Paris Agreement, which are key international treaties in this field, are no exception. Therefore, the interpretation of the obligations of states in this field by such an authoritative body as the ICJ is very important. And not only the obligations of states according to aforementioned treaties require interpretation, but also individual terms used in them and environmental principles that must be implemented by states, as well as customary norms and obligations of states according to other environmental treaties. That is why it is really helpful that the ICJ was not conservative, as in most of its previous decisions which concerned environmental protection and really provided detailed explanation of the obligations of states in the sphere of prevention of climate change.

An important issue that requires explanation is how to determine the extent of the impact of individual states on climate change. Of course, many entities emit carbon dioxide and therefore the extent of obligations of different states is different. Related to this is the issue of compensation for damage caused by the polluter as a result of violation of international obligations in the field of climate change prevention. In our opinion, the largest polluters in the event of violation of their climate obligations should bear responsibility and compensate for the damage. Moreover, it should be noted that the population of those island countries that contribute the least to climate change suffer the most from it. And this is the greatest injustice.

A vivid example of considering this issue is the case of Luciano Lliuya v. RWE AG. In November 2015, Saúl Luciano Lliuya, a Peruvian farmer who lives in Huaraz, Peru, filed claims in the District Court Essen, Germany against RWE, Germany's largest electricity producer. Luciano Lliuya's, supported by NGO German watch, alleged that RWE, having knowingly contributed to climate change by emitting substantial volumes of greenhouse gases (GHGs), and that is why bears some amount of responsibility for the melting of mountain glaciers near

his town of Huaraz³⁴⁰. Due to climate change, glaciers are melting, which is increasing the water level in the plaintiff's town and as a result it is under threat of flooding. Luciano Lliuya, with the help of human rights organizations, decided to apply to a German court with a demand to compensate for part of the costs necessary for building a dam to avoid flooding.

In order for the case to have the potential for success the share which was demanded to be compensated by the RWE was calculated amounted to 0.47% of the total cost - the same percentage as RWE's estimated contribution to global industrial greenhouse gas emissions since the beginning of industrialization³⁴¹. Of course, the argument of the German corporation was that it is not the only entity that pollutes the environment and contributes to climate change. But the amount of compensation that the plaintiff demanded was a percentage of its share of pollution among all entities. Therefore, we agree with the plaintiff and believe that it would be fair for large corporations, which are the largest emitters of carbon dioxide and undoubtedly have significant profits, to compensate for the costs of necessary preventive measures for the population of countries that do not have financial resources for protective measures and, as a result, for the protection of their settlements. A vivid example is the above-mentioned town Huaraz.

The court of first instance in this case dismissed the claim and declared it inadmissible arguing that it is difficult to prove a causal link between emissions of the RWE and melting glaciers in Peru. But the court of second instance declared the claim admissible and began consideration of the case. The case has been considered longer than expected. One of the officially announced reasons was the restrictions on flights related to the Covid pandemic and, as a result, the possibility of the review of evidence. As a result, the case was considered for almost 10 years. Despite the huge expectations of a positive court decision, unfortunately, in May 2025, the German court denied the plaintiff's request.

The arguments of the court are as follows. In the oral reasoning behind the judgment, presiding Judge Dr. Rolf Meyer stated that the plaintiff might have a claim against the defendant under Section 1004 of the German Civil Code (BGB). If there is a threat of adverse effects, the polluter of CO₂ emissions may be obligated to take preventive measures. If the polluter definitively refuses to comply, it may be determined (even before actual costs are incurred) that it must bear those costs in proportion to its share of emissions, as the plaintiff requests. The vast distance between the defendant's power plants and the plaintiff's place of residence in Peru

³⁴⁰ Luciano Lliuya v. RWE AG. 5 U 15/17 OLG Hamm / Case No. 2 O 285/15 Essen Regional Court. URL: <https://climatecasechart.com/non-us-case/liuya-v-rwe-ag/>

³⁴¹ Ibid

alone was not sufficient reason to declare the lawsuit unfounded. The presiding judge particularly emphasized the inaccuracy of one of the defendant's arguments: the court's legal opinion did not mean that every individual citizen could be prosecuted in the future. This was contradicted by the fact that the causal contributions of a single individual were so minor that they could not give rise to responsibility. Likewise, the defendant could not rely on its obligations under German law to justify interfering with the property of the plaintiff, who resides in Peru ³⁴².

Nevertheless, the plaintiff's appeal was dismissed because the evidence showed that there was no concrete danger to his property. The probability that any water from the glacial lake would reach the plaintiff's house within the next 30 years was only about one percent – a figure that was considered too low. Furthermore, in such case, the consequences for the plaintiff's house would be negligible, because a flood wave would reach the house only at a height of a few centimetres and at a flow rate that would not be capable of endangering the structure of the house. The court rejected the plaintiff's objections to the expert's method of risk assessment. The court followed the expert's assessment, which considered a specific risk analysis based on local conditions. However, the plaintiff's general statistical assessment, particularly the inclusion of a “climate factor” to the method of risk assessment, was rejected by the court. For example, the shallow water area in front of the lake was not taken into account, the height of the downstream barrier was underestimated. Therefore, according to the court, the actual risk was still well below the one percent probability ³⁴³.

Unfortunately, the court's decision did not turn out to be what the residents of Huaraz and representatives of public organizations expected. But it raised very important issues. First of all, the issue of the interdependence of emissions of individual large emitters and the damage caused to a particular community. If successful, the case would establish the first precedent for holding major emitters liable for future climate-related harm. The plaintiff failed to prove in court that the threat of flooding of his city is so significant that damage could occur in the near future. If this could be proven, the case would most likely be successful. Therefore, such cases (and they are also being considered before national courts in other countries) may be successful in the future and the courts may issue decisions that would oblige large emitters to pay compensation to individuals.

³⁴² Zurückweisung der Berufung in dem Verfahren des peruanischen Bergführers Lliuya gegen RWE. URL: https://www.olg-hamm.nrw.de/behoerde/presse/Pressemitteilungen/14_26_PE_OLG_VT-Lliuya_RWE/index.php

³⁴³ Ibid.

The German court's decision has been widely criticized. The court based its decision solely on the evidence of its appointed experts and did not consider the evidence of the plaintiff's experts. For example, it did not consider threats from rockfalls³⁴⁴. Other authors point out that tragic events in Blatten, Switzerland have shown us, that the impact of climate change is difficult to predict and that it can surprise even experts. What happened in Blatten was the very risk that Mr. Lliuya is trying to avoid³⁴⁵. According to Denise Eastlake, in Mr Lliuya's case, there may have been a mismatch in the legal test required to establish causation and the unpredictable impacts of a rapidly changing climate³⁴⁶.

In any case, it is good that the ICJ in its advisory opinion provided clarification on the relationship between the emissions of individual large emitters and the damage caused in other states and the possibility of establishing compensation. This would significantly help to consider such cases before national courts, especially since the likelihood of an increase of the number of such cases is significant.

Luciano Lliuya v. RWE AG case proved the importance of expert evidence. A similar situation of almost successful decision was in the case of Ioane Teitiota v. New Zealand. In this case the UN Human Rights Committee for the first time considered the case of an asylum seeker for climate reasons. The Human Rights Committee accepted the argument of the author of the communication that rising sea levels would likely make Republic of Kiribati (country of residence of the author of the communication) uninhabitable. It noted, however, that the timeframe of 10 to 15 years suggested by the author of the communication as a period during which there will be an immediate threat to the lives of the population could allow the Republic of Kiribati take the necessary actions with the assistance of the international community in order to protect and, if necessary, relocate its population³⁴⁷. According to the UN Human Rights Committee, no evidence was presented to demonstrate such an imminent risk to the author of

³⁴⁴ Bönnemann, Maxim, Tigre, Maria Antonia. (2025). What Lliuya v. RWE Means for Climate Change Loss and Damage Claims. URL: <https://blogs.law.columbia.edu/climatechange/2025/06/19/what-lliuya-v-rwe-means-for-climate-change-loss-and-damage-claims/>

³⁴⁵ Williams, Hannah, Webster, Amy B. (2025). Climate justice and corporate liability: responsibility for climate-related risks after Luciano Lliuya v. RWE AG. URL: <https://kennedyslaw.com/en/thought-leadership/article/2025/climate-justice-and-corporate-liability-responsibility-for-climate-related-risks-after-luciano-lliuya-v-rwe-ag/>

³⁴⁶ Eastlake, Denise. (2025). Blog Post: Judgment in the case of Saúl Luciano Lliuya v RWE – a decision of tragically ironic timing. URL: <https://indemnity.law/news-insights/blog-post-judgment-in-the-case-of-saul-luciano-lliuya-v-rwe-a-decision-of-tragically-ironic-timing/>

³⁴⁷ Human Rights Committee. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016. URL: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200107_CCPRC127D27282016_opinion.pdf. Para 2.8.

the communication and his family, and that the risk still significantly does not reach the threshold necessary for it to be possible to claim that their lives were endangered³⁴⁸. Ioani Teitiota lost his case because his evidence did not convince the Human Rights Committee of an imminent threat to his life. According to the Committee, 10 to 15 years period is sufficiently long period for the necessary preventive steps to be taken. However, the UN Committee on Human Rights has also recognized that climate change can cause extreme risks incompatible with the right to a dignified life, and under such conditions states will not be able to repatriate people whose lives are at risk due to climate change. Such a conclusion may be of great importance in the future, because it opens the possibility of asylum seekers in connection with global warming, and after some time states may have an obligation to accept environmental refugees³⁴⁹.

Ioane Teitiota v. New Zealand case highlights the need for the ICJ to address the obligations of states towards environmental refugees. It is obvious that their numbers will increase in the future, and this raises many important questions about their future and the necessity of regulation of their status. This case illustrates the urgent human rights consequences of climate change, while the ICJ advisory opinion explained the framework of states' obligations. Together, they highlight the need for international law to evolve toward recognition and protection of environmental human rights, including the human rights of environmental refugees.

In conclusion we can state that the ICJ's Advisory opinion on obligations of states in respect of climate change contributes to the strengthening of international climate change law. By affirming that the duty to prevent significant environmental harm applies to climate change obligations and that it is customary international law, it confirmed the obligations of all states, not just states parties to climate conventions. The principle of not causing significant environmental harm is not limited to direct, cross-border environmental damage, but to state's climate change obligations as well. States must act with due diligence to actively prevent climate-related harm. This obligation is obligation of conduct, not obligation of result, but it nevertheless requires states to take all necessary and appropriate measures to fulfil it.

³⁴⁸ Ibid. Par. 2.9.

³⁴⁹ Svák, Ján – Mareček, Lukáš a kol.: *Medzinárodné právo verejne a úvod do verejného medzinárodného práva*. 1. vydanie. Bratislava: Wolters Kluwer SR s.r.o., 2024, 972 s. P. 871.

4.3 The Right to a Safe Climate According to the Advisory Opinion of Inter-American Court of Human Rights

The second decision issued by the international court concerning obligations of states in the sphere of counteracting with climate change was an Advisory Opinion of Inter-American Court of Human Rights issued in May 2025. This Advisory Opinion confirmed obligations of states to protect the human right to a healthy environment, including the right to a safe climate. The Inter-American Court of Human Rights interpreted the scope of the general obligations of states derived from the American Convention on Human Rights and the Protocol of San Salvador in relation to the substantive and procedural rights in the context of the climate emergency.

As in the case of European Convention on Human Rights, American Convention on Human Rights does not have a provision aimed at protection of environmental human rights. But similar to the European Court of Human Rights the Inter-American Court of Human Rights through extensive interpretation has indicated that the right to a healthy environment is one of the rights protected by Article 26 of the American Convention on Human Rights, which guarantees progressive development³⁵⁰. Inter-American Court of Human Rights while interpreting this article also referred to the Article 11 of the Protocol of San Salvador to the American Convention on Human Rights, according to which “*everyone shall have the right to live in a healthy environment and to have access to basic public services*” and that State Parties “*shall promote the protection, preservation, and improvement of the environment*”³⁵¹.

The Inter-American Court of Human Rights recognized that the human right to a healthy environment should be understood as a fundamental right necessary for the existence of humanity. This right embodies a universal value, which must be guaranteed not only to present, but also to future generations³⁵². As we can see, the court justifies the need to ensure inter-generational equality. Infringement of environmental human rights, according to the court,

³⁵⁰ American Convention on Human Rights. (1969). URL: https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf

³⁵¹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights: “Protocol of San Salvador”: Signed at San Salvador, El Salvador, on November 17, 1988, at the Eighteenth Regular Session of the General Assembly. URL: <https://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf>

³⁵² Inter-American Court of Human Rights. Advisory opinion ao-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia climate emergency and human rights. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf. Para 272.

influences all human rights³⁵³ and that is why states should protect them within their state boundaries and outside them³⁵⁴.

The Inter-American Court of Human Rights agreed with the advisory opinion of the International Tribunal for the Law of the Sea concerning the statement that the breach of an obligation must be assessed individually in each particular situation³⁵⁵. At the same time the strong side of the advisory opinion of the Inter-American Court of Human Rights is that it explains in more detail the concept of due diligence of states in the sphere of prevention of climate change. According to the court, this concept requires: identification and detailed assessment of the risks; adoption of proactive and ambitious preventive measures to avoid the worst climate scenarios; utilization of the best available science in the design and implementation of climate actions; integration of the human rights perspective into the formulation, implementation and monitoring of all policies and measures related to climate change; permanent monitoring of the effects and impacts of the adopted measures; strict guarantee of procedural environmental rights; transparency and accountability in relation to state's climate action; appropriate regulation and supervision of corporate due diligence, and enhanced international cooperation³⁵⁶. These obligations have all states irrespective of the level of their economic development.

The principle of common but differentiated responsibilities also applies in this sphere. Cooperation between states must consider differences among them and take into account their capabilities and responsibilities³⁵⁷.

As a separate obligation of states, the Inter-American Court of Human Rights distinguished the obligation to conduct environmental impact assessment. "Environmental impact assessment" means a governmental process for evaluation of the likely impact of a proposed activity on the environment. Environmental impact assessment has been included in a number of international and regional treaties, as well as soft law instruments. The Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention), adopted in Espoo, Finland, on 25 February 1991, is one of the most important treaties on the obligation to carry out environmental impact assessment. The Convention aims to introduce the

³⁵³ Ibid. Para 274.

³⁵⁴ Ibid. Para 277.

³⁵⁵ ITLOS. Advisory Opinion on Request submitted by the Commission of Small Island States on Climate Change and International Law, Advisory Opinion, 21 May 2024 . Para 239.

³⁵⁶ Inter-American Court of Human Rights. Advisory opinion ao-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia. Climate emergency and human rights. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf. Para 236.

³⁵⁷ Ibid. Para 253.

principle of environmental impact assessment into the domestic legislation of individual states and to enable other states to intervene in a precisely defined manner in the preparation of activities carried out outside their territory which are likely to have a significant adverse effect on their environment. At the same time, it should be noted that the ESPOO Convention does not have universal nature. That is why the customary nature of environmental impact assessment is very important, because this principle should be implemented not only by states which are parties to the ESPOO Convention, but by all states³⁵⁸.

The customary nature of this principle was confirmed by the International Court of Justice in the Pulp Mills case between Argentina and Uruguay. In the River San Juan case (Kostarika v. Nikaragua) the ICJ concluded the obligation to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource³⁵⁹. In the Pulp Mills case (Argentina v. Uruguay), the ICJ indicated that an environmental impact assessment must be carried out before the project is implemented. In addition, once the project starts, continuous monitoring of environmental impacts is required, if necessary, throughout the life of the project³⁶⁰. A key shortcoming is that international environmental law does not specify the manner in which environmental impact assessments should be conducted. We do not find an answer to this question in the decisions of international courts including the Advisory Opinion of Inter-American Court of Human Rights.

The Inter-American Court of Human Rights recognized the obligation of states to avoid any actions that would block or slow down the implementation of measures in the field of climate change prevention. At the same time, special attention is paid in the Advisory Opinion to procedural environmental law, primarily the right to access environmental information, which must be ensured in order the population to be able to assess the risks, causes and consequences arising from hazardous situations. In the event of emergencies, the entire population must be protected. There is no doubt, and there is scientific evidence, that climate change affects certain categories of the population more. First of all, we are talking about children, the elderly, people with disabilities. And in the event of emergencies, their rights must also be ensured, although, of course, this requires additional efforts on the part of

³⁵⁸ Svák, Ján – Mareček, Lukáš a kol.: *Medzinárodné právo verejne a úvod do verejného medzinárodného práva*. 1. vydanie. Bratislava: Wolters Kluwer SR s.r.o., 2024, 972 s. P. 861.

³⁵⁹ Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgment, I.C.J. Reports 2015, p. 665. Para 104.

³⁶⁰ Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgement, I.C.J. Reports 2010, p. 14. Para 204-205.

governments³⁶¹. Environmental rights must be ensured for everyone without discrimination³⁶². It means, for example, that they must be ensured to people with disabilities and Indigenous people as well.

It is interesting that the advisory opinion singles out Indigenous peoples as a separate vulnerable category of population. It should be noted that Indigenous peoples enjoy the right to a healthy environment collectively. This right is enshrined in several international treaties, including Article 11 of the Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights (Protocol of San Salvador). This is explained by the fact that the rights of Indigenous peoples are closely related to the right to a healthy environment³⁶³.

The actions of all state bodies should be coordinated both at the national and international levels in order to protect the rights of people affected by climate change. The state should take measures to protect all categories of people at risk, as well as to prevent the emergence of risks associated with climate change and reduce their consequences³⁶⁴. In this case, the state is responsible not only for the activities of state bodies, but also of third parties.

The precautionary principle is part of national laws and is reflected in the decisions of all the highest courts of OAS member states, but the Inter-American Court of Human Rights again emphasized the importance of complying with this principle, as well as the duty of due diligence, environmental impact assessment and the development of emergency plans³⁶⁵. When developing preventive and other measures, it is necessary to take into account the experience and listen to the advice of Indigenous peoples³⁶⁶.

As a separate obligation, the advisory opinion highlights the obligation, in particular, to guarantee environmental human rights, as well as rights related to environmental risks³⁶⁷, which would establish obligations including for individuals and enterprises which activities

³⁶¹ Inter-American Court of Human Rights. Advisory opinion ao-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia climate emergency and human rights. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf. Para 221.

³⁶² Ibid. Para 223.

³⁶³ Svák, Ján – Mareček, Lukáš a kol.: *Medzinárodné právo verejne a úvod do verejného medzinárodného práva*. 1. vydanie. Bratislava: Wolters Kluwer SR s.r.o., 2024, 972 s. P. 838.

³⁶⁴ Inter-American Court of Human Rights. Advisory opinion ao-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia climate emergency and human rights. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf. Para 226.

³⁶⁵ Ibid. Para 228-230.

³⁶⁶ Ibid. Para 284.

³⁶⁷ Ibid. Para 244-246.

significantly affect the environment. This legislation should also contain sanctions for its violation, as well as measures to be taken in the event of a climate emergency.

The duty of states to cooperate, which is part of customary law and enshrined in a number of international instruments, including the UN Charter, applies not only to the prevention of transboundary pollution, but also, in the case of disasters related to climate change and migratory flows in case of life-threatening. The duty to cooperate also includes prevention measures. The duty to accept environmental refugees is particularly important, since, as it is known, they are not protected under the Refugee Convention ³⁶⁸.

As we can see the list of obligations of states is long enough and is much more specific than the ECtHR identified in the case of Verein Klimaseniorinnen Schweiz and others v. Switzerland, which was issued in 2024. This is one of the positive sides of the advisory opinion. At the same time, it contains some shortcomings, for example, it does not specify the obligations of states in the field of protection of persons with disabilities. We paid attention to this issue in the second chapter of this monograph.

The Inter-American Court of Human Rights chose the approach of the protection of nature as a subject of rights ³⁶⁹ and this approach is innovative. According to the court, nature should be treated as a subject of law, which will contribute to sustainable development and ensure the right to a healthy environment for future generations. And here we observe a change in the legal concept. The natural environment has always been considered as an object of protection, not a subject. Therefore, let us dwell on the court's reasoning in more detail. The court explains the granting of legal personality to the environment by the need to focus on the protection of environmental conditions necessary for the life of local communities and indigenous peoples ³⁷⁰. According to the court, this is also required by the principle of progressive development of international human rights law. The natural environment, as a collective object of general interest, is the basis not only for the existence of the state, but also for life on our planet in general ³⁷¹.

³⁶⁸ Convention relating to the Status of Refugees. (1951).
URL: <https://www.refworld.org/legal/agreements/unga/1951/en/39821>

³⁶⁹ Inter-American Court of Human Rights. Advisory opinion ao-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia. Climate emergency and human rights.
URL: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf. Para 279.

³⁷⁰ Ibid. Para 280.

³⁷¹ Ibid. Para 281.

The court also refers to the Pact for the Future of 2024, which in paragraph 29 requires radical changes to environmental protection ³⁷², as well as to the decisions of national courts, for example, in Canada, Ecuador, Bolivia, Brazil, Mexico, Peru.

More and more scientists (e.g., J. Gilbert, S.V. Galárraga) are starting to talk about the need to change the paradigm in protection of the natural environment through defining the rights of the nature and looking at it as the subject of international law ³⁷³. According to them, it will help to improve the protection of the natural environment. Another argument is that not only humans have the right to life, but all species in nature ³⁷⁴.

The importance of the Inter-American Court's approach to the legal subjectivity of nature lies in the fact that, to date, no international agreement has adopted or confirmed such a position. There are only several partial exceptions. As an example we can mention: the World Charter of Nature, which, while listing general principles, requires that the use of natural resources be carried out in such a way that there is no threat to the existence of all forms of life ³⁷⁵; the Universal declaration of animal rights of 1978 adopted by the UNESCO, which in its preamble says that all animals have rights ³⁷⁶. Earth Charter of 2000 in Principle I. recognizes the value of all forms of life irrespective of its usefulness to humanity ³⁷⁷.

States of Latin America are pioneers in recognizing nature as a subject, not an object, of law. Ecuador even recognized such subjectivity of nature in its constitution. Article 10 of its Constitution says that nature shall be the subject of the rights that the Constitution recognizes for it ³⁷⁸. These rights are specified in Chapter 7, which is entitled “Rights of Nature”. First of all, it contains provision about the right to existence, to preserve functions and to ensure evolutionary development. Absolutely all individuals, both natural and legal, as well as nations, have the opportunity to apply to state authorities in order to ensure compliance with the rights

³⁷² Pact for the Future. (2024). URL: <https://www.un.org/en/summit-of-the-future/pact-for-the-future>

³⁷³ Gilbert, J. (2023). Creating Synergies between International Law and Rights of Nature. *Transnational Environmental Law*, 12(3), 671-692. URL: <https://www.cambridge.org/core/journals/transnational-environmental-law/article/creating-synergies-between-international-law-and-rights-of-nature/36512F1AC7CD1160B035E8B12C6838D4>; Galárraga, S.V. (2018). Recognition of Rights of Nature, as a Subject of Law, in the International Environmental Law Framework. In: Jendroska, J, Bar, M, eds. *Procedural Environmental Rights: Principle X in Theory and Practice*. European Environmental Law Forum. Intersentia, 341-362.

³⁷⁴ Feria-Tinta, Monica. (2025). “Rights of Nature” in Human Rights Courts or a Parallel Protection System? URL: <https://www.ejiltalk.org/rights-of-nature-in-human-rights-courts-or-a-parallel-protection-system/>

³⁷⁵ World Charter of Nature. (1982). URL: <https://digitallibrary.un.org/record/39295?v=pdf>

³⁷⁶ Universal declaration of animal rights. (1978). URL: <https://constitutii.wordpress.com/wp-content/uploads/2016/06/file-id-607.pdf>

³⁷⁷ The Earth Charter. (2000). URL: https://earthcharter.org/wp-content/uploads/2020/03/echarter_english.pdf

³⁷⁸ Constitution of Ecuador. (2008). URL: https://www.constituteproject.org/constitution/Ecuador_2021

of nature. The state has a duty to respect all elements of the ecosystem and encourage all individuals to protect them. The next right of nature guaranteed by the Constitution of Ecuador is the right to restoration, and the Constitution also directly requires the state to establish the most effective mechanisms to ensure the implementation of this right. The state's duties also include the duty to implement preventive and restrictive measures to prevent activities that may cause species extinction, ecosystem destruction, or change genetic types. Article 74 of the Constitution contains a provision, which states that environmental services cannot be appropriated ³⁷⁹.

The Brazilian Constitution also has its own separate sixth chapter dedicated to the environment (although it consists of one article – article 225). The article guarantees the human right to an ecologically balanced environment ³⁸⁰. Its novelty is the approval at the level of Constitution of the state's obligation to promote environmental education at all levels of schools and the state's obligation to raise public awareness of the need to preserve the environment. Paragraph 2 of the article is also important – it establishes the obligation of entities that use natural resources to restore them. Given the frequent violation of environmental standards by resource-extracting companies, we consider such constitutionalization of the requirement of environmental management of natural resources as a practice worth following. It is also worth highlighting paragraph 7 of Article 225, which, in addition to prohibiting practices that may endanger the ecological functions of fauna and flora, prohibits cruelty to animals at the constitutional level ³⁸¹, which can also serve as one of the many steps towards recognizing animals as subjects of law at the international level.

The consolidation of environmental human rights at the constitutional level is also observed at the European level. Here it is worth mentioning that the new constitution of Luxembourg, which was adopted in 2023, in its article 41 establishes the duty of the state to guarantee the protection of the human and natural environment, to ensure the establishment of a balance between the preservation of nature, in particular its capacity for regeneration, as well as the protection of biodiversity and meeting the needs of present and future generations ³⁸². Paragraph 2 of this article proclaims the desire to achieve climate neutrality ³⁸³, which is also

³⁷⁹ Ibid.

³⁸⁰ Constitution of the Federative Republic of Brazil. 3rd Edition. (2010). URL: <https://www.globalhealthrights.org/wp-content/uploads/2013/09/Brazil-constitution-English.pdf>

³⁸¹ Ibid.

³⁸² Constitution of the Grand Duchy of Luxembourg. Consolidated version applicable as of July 1, 2023. URL: <https://legilux.public.lu/eli/etat/leg/constitution/1868/10/17/n1/consolide/20230701>

³⁸³ Ibid.

not found in the constitutions of other countries. But the most interesting is paragraph 3 of the article, which defines the status of animals as non-human intelligent beings and ensures the protection of their well-being³⁸⁴.

Taking into account abovementioned, we can conclude that there is a trend of consolidation of environmental human rights at the constitutional level, as well as expanding the content of constitutions from the point of view of increasing the level of environmental protection and even recognizing nature or its individual components as a subject of law. These changes in the state's approach to environmental protection are positive and we hope that they will be not only declarative, but also really implemented in practice.

Therefore, as we can see, the court's advisory opinion did not arise out of the air. The rights of nature have already been enshrined in international soft law, and we even have an example of its constitutional guaranteeing. However, their recognition by the international court and the establishment of the obligation of states to view nature as a subject of law contributes to the expansion of this trend. Given the environmental crisis in which humanity currently is and the rapid pace of destruction of biological diversity, approaches to environmental protection require changes. And, perhaps, effective changes will be borrowed from Latin America. Recognition of nature as a subject of law can raise the standards of environmental protection to another level and, as a result, the standards of protection of environmental human rights will improve.

Some scholars (e.g., Cat Haas, Laura Burgers and Alex Putzer) think, that this initiative can be spread to Europe³⁸⁵ and point to some initiatives in Netherlands, Danmark and Sweden. Today European initiatives concerning the recognition of nature as subject of law have not yet had any practical results but maybe they will be successful in the future. While changing approaches, some authors (e.g., J. Gilbert, E. Macpherson, E. Jones, J. Dehm) suggest taking into account Indigenous peoples' relationships with nature³⁸⁶.

³⁸⁴ Ibid.

³⁸⁵ Haas, Cat, Burgers, Laura, Putzer, Alex. (2025). Introducing Rights of Nature in Europe. URL: <https://www.boell.de/en/2025/02/03/introducing-rights-nature-europe>

³⁸⁶ Gilbert, J., Macpherson, E., Jones, E., Dehm, J. (2023). The Rights of Nature as a Legal Response to the Global Environmental Crisis? A Critical Review of International Law's "Greening" Agenda. In: Dam-de Jong, D., Amtenbrink, F. (eds) Netherlands Yearbook of International Law, vol. 52. T.M.C. Asser Press, The Hague. URL: https://link.springer.com/chapter/10.1007/978-94-6265-587-4_3

Moreover, the Inter-American Court of Human Rights states that the obligation not to cause irreversible damage to the climate and the environment belongs to *jus cogens*³⁸⁷, that is, the state cannot deviate from this obligation. It's one of the provisions of the advisory opinion, to which strong attention should be paid. We hope that this provision will be acknowledged as a peremptory norm in international law, prompting states to act in accordance with it.

³⁸⁷ Inter-American Court of Human Rights. Advisory opinion ao-32/25 of May 29, 2025 requested by the Republic of Chile and the Republic of Colombia. Climate emergency and human rights. URL: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf. Para 287.

Conclusions

One of the global problems of humanity, which threatens the human right to food, is desertification. It also leads to increased poverty (particularly in rural areas) along with declining biodiversity and reduced access to water resources. The population needs productive land capable of restoration. Therefore, high-quality legal regulation of land protection from desertification is needed at the international and national levels, as well as the development of international standards in the field of adaptation of agriculture to climate change and monitoring of soil quality.

As we can see, the content of national plans and strategies for combating desertification in different states is different. For example, Spain's National strategy to combat desertification of 2022 is well-developed in terms of scope, detail and operational depth. At the same time in a significant number of states, national strategies and plans no longer meet modern needs. Among the shortcomings are often weak monitoring mechanisms, or their absence altogether, failure to regulate the issue of liability for violations of legislation in the field of land use and reproduction, lack of provisions on financing, lack of reporting obligations, measures in the threatened areas also vary and often contain too general recommendations. Therefore, in our opinion, it is necessary to strengthen international cooperation and exchange of experience in this area, as well as the development of international standards. FAO Voluntary Guidelines for Sustainable Soil Management of 2017 provide principles of soil protection, encourage states to integrate soil protection into policy, but does not contain implementation mechanisms or operational plan. Therefore, provisions of the guidelines should be supplemented. They should include detailed technical indicators for monitoring soil-quality, foresee the implementation of control over the activities of agricultural producers, holding agricultural producers accountable for violations of legislation in the field of land use, reproduction and protection.

Nowadays, there is a trend towards recognizing the right to a safe environment as a customary norm of international law. This right is recognized by the national legislation of more than 150 countries around the world. In 2021, the UN Human Rights Council also recognized this right in resolution 48/13. It was the first document adopted within the UN aimed at the protection of the right to a safe environment, but it is not the only international document which guarantees this right. Resolution adopted by the General Assembly on 28 July 2022 recognizes the right to a clean, healthy and sustainable environment as a human right. The Rio Declaration on Environment and Development adopted by the United Nations Conference on Environment

and Development in Rio de Janeiro in 1992 in Principle 1 emphasizes the human right to a healthy and productive life in harmony with nature. IUCN World Declaration on the Environmental Rule of Law draws attention to the need to create environmental rule of law. It emphasizes close relationship between human rights and protection of the environment and proves the impacts of climate change on enjoyment of the right to health.

International organizations also play important role in the protection of the human right to safe environment. For example, GA Human Rights Council in its Report of 2016 concentrates its attention on the obligations of states in the sphere of environmental human rights. In 2023 the Council of Europe adopted the Reykjavik Declaration in which recognized the impact of environmental pollution and negative effects of climate change on human rights. In Appendix V to this Declaration the Council of Europe proposes to establish Development Bank, which task should be to address the social impacts of climate change and environmental degradation by financing projects aimed at fair and inclusive transition. The issue of protection of environmental human rights is also being addressed by the WHO. All of the above indicates the recognition of the right to a healthy environment by the international community, and one should indeed agree with the scholars who consider this right to be a customary norm.

APFSD protects environmental human rights by serving as a regional platform that recognizes the right to a clean and healthy environment, draws attention to the rights and safety of environmental defenders (especially women), addresses the human rights impacts of climate change, biodiversity loss, and environmental degradation. It promotes a rights-based approach to sustainable development across the Asia-Pacific region.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 2003 imposes an obligation on states not only to ensure a healthy and sustainable environment for women but also to empower them as active participants in environmental governance. By requiring women's involvement, access to technology, and protection of indigenous knowledge, the Protocol establishes a forward-looking framework where women's participation is a necessary precondition for ensuring a healthy and sustainable environment.

For effective and speedy hearing of cases, the establishment of specialized environmental courts is justified. Speedy trial allows for a rapid response to environmental pollution. This is especially important when activities that cause environmental damage are ongoing and need to be stopped. Preventing damage is always the best option, as there are often cases where the environment cannot be restored to its previous state. As in the case of the environmental court of Vermont, cases can be heard via videoconference.

Climate change has inherently discriminatory character. It affects persons with disabilities, older women and children the most. In the case of persons with disabilities, the situation is complicated by the fact that in many countries health services are not provided at the proper level. The provision of health services is also significantly complicated by climate change. The number of applications is increasing, and health institutions are unable to cope.

There are several international instruments that generally outline the need to provide persons with disabilities with an adequate standard of living and health care on an equal basis with others. International standards for the protection of the rights of persons with disabilities should be understood as a dynamic instrument of protection that should be expanded and specified in national legislation and national action plans. The rights of persons with disabilities must be expanded to include the right to protection from climate change. Climate change undoubtedly affects the health of the entire population. However, there are groups of the population that are more vulnerable and therefore need a higher level of protection. These include persons with disabilities.

The rights of persons with disabilities are not adequately included in the adoption of national action plans aimed at combating climate change. Their rights in the designated area are also not adequately protected at the international level. When assessing the impact of climate change on the health of various categories of the population, much greater attention is paid to the protection of women, children and Indigenous peoples. It is important that more attention is paid to people with disabilities who are affected by climate change.

According to the Status Report on Disability Inclusion in National Climate Commitments and Policies developed by the International Disability Alliance in 2022, the list of state parties to the UNFCCC that refer to persons with disabilities in their NDC or INDC includes only 35 states and no state parties to the Paris Agreement currently refer to people with disabilities in their climate mitigation policies. This situation must be changed. That is why we propose to add to the Paris Agreement and to the UNFCCC provisions requiring from states detailed consideration of specific needs of persons with disabilities while developing climate mitigation policies. And references to persons with disabilities in them cannot be general but must contain detailed provisions. As a result, states will be forced to take into account rights of persons with disabilities at least because of the reporting mechanisms.

Evacuation of citizens due to climate disasters is somewhat similar to the evacuation of citizens during military conflicts, where persons with disabilities should be provided with special attention because of their limited capabilities. In Ukraine in 2022 the Methodological recommendations for the evacuation of people with disabilities were prepared within the

framework of the project “Ensuring gender-sensitive inclusion of persons with disabilities in humanitarian response” with the support of the United Nations Partnership on the Rights of Persons with Disabilities, implemented by the Joint Programme of the UNDP, the UN Women, the UN Children's Fund, and UN Population Fund. These methodological recommendations can be used in the development of national action plans aimed at combating climate change and their consequences as well as international standards in this sphere.

The necessity to integrate gender equality issues into international, regional and national policies is widely recognized at the international level. We can find this approach in different conclusions, resolutions and recommendations adopted within the UN. UN Commission on the Status of Women plays active role in this sphere. It is a very positive trend, because involvement of women in decision-making processes would undoubtedly help improve national policies on climate change prevention. Nevertheless, practical realization of women’s environmental rights is insufficient. Legal gaps in national legislation, discriminatory customary practices, and unequal access to land and resources continue to undermine women’s ability to fully exercise their rights.

Indigenous peoples enjoy international legal personality in the field of environmental protection in which they live. Indigenous peoples enjoy the right to a healthy environment collectively. This right is enshrined in several international treaties (Article 24 of the African Charter on Human and Peoples' Rights, Article 11 of the Additional Protocol to the American Convention on Human Rights in the Field of Economic, Social and Cultural Rights (Protocol of San Salvador) and others). The rights of Indigenous peoples are closely related to the right to a healthy environment.

The climate agenda is increasingly intertwined with human rights. We can see it from the documents adopted at the international conferences (for example COP 30) and advisory opinions adopted by international courts. At the same time there is the need to strengthen international legally binding mechanisms that would allow for more effective enforcement of climate commitments.

We also observe the recognition of the right to a healthy environment in the decisions of international courts including the European Court of Human Rights and Inter-American Court of Human Rights. The European Court of Human Rights has, in its case-law, extended the interpretation of certain human rights, in particular the right to private and family life, the right to life, and the right to property to an environmental dimension. As a result, individuals have the right to seek protection of their environmental human rights at the international level.

The number of ECtHR cases aimed at protecting environmental human rights indicate that the court recognizes the right to a healthy environment. Given the obligation of states to implement ECtHR decisions, such environmentally focused ECtHR's jurisprudence has contributed to improvements of environmental human rights protection in the member countries of the Council of Europe.

The ECtHR's decision in the case of *Cannavacciuolo and Others v. Italy* of 2025 demonstrates a shift in the practice of the ECtHR towards strengthening the precautionary principle and the need for active state action in the field of environmental damage prevention and protection of environmental human rights. People living in high-risk environment do not need to prove direct casual link between environmental pollution and illness anymore. This will make it easier to prove environmental human rights violations in the court.

In the *Greenpeace Nordic and Others v. Norway* case of 28 October 2025 the ECtHR defined minimum requirements for environmental impact assessments in the case of projects that may have an impact on climate change: the environmental impact assessment must be comprehensive, taking into account the best available science, must include a determination of the size of the GHG emissions, must assess compatibility with international and national legislation. Informed public consultations must take place at a stage where environmental damage can be avoided.

The Aarhus Convention Compliance Committee interpretation of the Aarhus Convention is aimed at ensuring that access to information, public participation, and access to justice are genuinely effective. The Committee rejects restrictive national practices that undermine these rights, affirms broad standing for NGOs and members of the public, and requires states to align their domestic procedures with the Aarhus Convention's objectives. Overall, the Committee's jurisprudence reinforces the Convention as an instrument of environmental democracy and obliges states to remove procedural barriers that hinder public oversight of environmentally significant decisions.

The protection of environmental and climate human rights is also facilitated by advisory opinions of international courts concerning climate change. The state of the environment and environmental human rights are interconnected. The quality of the environment influences the quality of life of individuals. That is why the advisory opinion of international courts which define the obligations of states in the sphere of prevention of climate change help to protect the right to a safe climate as well as environmental human rights.

In general, in the field of protection of the right to a safe environment, the Inter-American legal system is one of the most progressive. Article 11 of the 1988 Additional

Protocol to the American Convention on Human Rights of 1969 on Economic, Social and Cultural Rights recognized the human right to a healthy environment and this right must be ensured by states. By analogy with the European Court of Human Rights, the Inter-American Court of Human Rights recognized the right of individuals to apply to it in the event of a violation of the right to a safe environment. Although, as in the case of the European Convention on Human Rights, this right is not enshrined in the American Convention on Human Rights, this right follows from the Advisory opinion on the environment and human rights, which was adopted by the Inter-American Court of Human Rights in 2017. The positive side of the advisory opinion is the change in approach to the subjectivity of nature. According to the court, nature is a subject, not an object of protection. Given the systemic crisis in the field of environmental protection and the alarming disappearance of certain species, a change in approaches to nature protection is necessary. So far, a paradigm shift regarding the subjectivity of nature has been observed only in Latin American countries. Ecuador has even enshrined a provision regarding nature as a subject of law in its constitution. Similar initiatives in Europe have not been successful. However, the recognition of such an approach by the international court may expand this initiative to other continents.

The ITLOS in its Advisory opinion on climate change and international law concluded that anthropogenic greenhouse gas emissions constitute “pollution of the marine environment” under the UNCLOS. As a result, states have positive obligations in the sphere of prevention of climate change, including a duty to prevent, reduce and control both land- and sea-based anthropogenic greenhouse gas emissions. The ITLOS by its advisory opinion also contributed to the development of principles of international environmental law. It recognized that the principle of common but differentiated responsibility must also be applied under the UNCLOS. All states have the obligation to prevent pollution and to reduce its level in accordance with their capabilities. It also emphasized the importance of the concept of due diligence and confirmed its enshrinement in the UNCLOS. The ITLOS recognized obligations of states in the field of prevention of marine pollution. The big achievement is recognition that international climate law, in particular the Paris Agreement, is not *lex specialis* in relation to the law of the sea or other branches of international law. This means that too soft provisions of the Paris Agreement do not allow states to not fulfil other obligations in the field of climate change prevention established by the norms of other branches of international law. And the UNCLOS also determined obligation of states in this sphere.

ICJ’s Advisory opinion on obligations of states in respect of climate change contributes to the strengthening of international climate change law. By affirming that the duty to prevent

significant environmental harm applies to climate change obligations and that it is customary international law, it confirmed the obligations of all states, not just states parties to climate conventions. The principle of not causing significant environmental harm is not limited to direct, cross-border environmental damage, but to state's climate change obligations as well. States have to act with due diligence to actively prevent climate-related harm. This obligation is obligation of conduct, not obligation of result, but it nevertheless requires states to take all necessary and appropriate measures to fulfil it.

The advisory opinion of the Inter-American Court of Human Rights defined the obligations of states in the field of ensuring the right to a safe climate much more broadly compared to the decision of the European Court of Human Rights. We can distinguish the following positive aspects of this advisory opinion: it contains a significant list of responsibilities of states, explains in more detail the duty of due diligence in the sphere of prevention of climate change, obliges states to cooperate and accept environmental refugees if the circumstances of the case so require. The duty to accept environmental refugees is particularly important, since, as is known, they are not protected under the Refugee Convention.

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