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## *The Growing Importance of Human Rights Treaty Bodies in Environmental Dispute Resolution*

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### 16.1 Introduction

This chapter evaluates the strengths and weaknesses of UN human rights treaty bodies (HRTB) in ensuring compliance with States' international environmental legal obligations and in resolving environmental disputes. The chapter begins with a discussion of the evolution of the "environmentalization" of international human rights law and goes on to analyze the standard functions of the HRTB as human rights treaty compliance mechanisms. Against this backdrop, the chapter considers HRTBs' contribution to ensuring compliance with States' climate-related human rights obligations, as a new trend in the greening of international human rights law and an area in which HRTB are now at the forefront of international compliance procedures. The chapter analyses HRTBs' concluding observations, general comments, and statements and specific cases dealt with by the Human Rights Committee<sup>1</sup> and the Committee on the Rights of the Child.<sup>2</sup> HRTBs' contribution to helping bring about States' compliance with international environmental legal obligations is then compared with other means of dispute resolution and compliance procedures, primarily non-compliance procedures under Multilateral Environmental Agreement (MEAs), demonstrating the positive aspects of the HRTB (the presence of a follow-up procedure, the coverage of a large number of States parties, the absence of the need to approve the decision by the Conference of the Parties), and the negative ones (the lack of legal force for the decisions).

<sup>1</sup> *Ioane Teitiota v New Zealand*, CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), January 7, 2020, available at [www.refworld.org/cases,HRC,5e26f7134.html](http://www.refworld.org/cases,HRC,5e26f7134.html), accessed 27 January 2022.

<sup>2</sup> *Sacchi et al. v Argentina et al.*, CRC/C/88/D/104/2019 (Argentina), CRC/C/88/D/105/2019 (Brazil), CRC/C/88/D/106/2019 (France), CRC/C/88/D/107/2019 (Germany), CRC/C/88/D/108/2019 (Turkey).

## 16.2 The Greening of Human Rights

Looking at the HRTB is important for a number of reasons. These include the absence of an International Environmental Court.<sup>3</sup> International courts' practice in environmental disputes is still in a state of evolution (for example, the unreasonably low level of compensation for environmental damage in *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v Nicaragua)*);<sup>4</sup> the procedural limitations of courts (for example, individuals cannot file a claim with the International Court of Justice (ICJ) or the International Tribunal for the Law of the Sea (ITLOS)); the lack of effective enforcement mechanisms (Japan did not comply with the ICJ's decision on Whaling in the Antarctic<sup>5</sup> and subsequently withdrew from the International Convention for the Regulation of Whaling);<sup>6</sup> and the limited practice of regional human rights courts (including in Asia, where more than 4.5 billion people do not have a regional court or human rights commission that would accept complaints from individuals or NGOs).<sup>7</sup> It should be clarified that, in general, regional human rights courts (the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights) contribute to the

<sup>3</sup> A Solntsev, "The International Environmental Court: A Necessary Institution for Sustainable Planetary Governance in the Anthropocene" in M Lim (ed), *Charting Environmental Law Futures in the Anthropocene* (Springer Nature Singapore 2019) 129–38; OW Pedersen, "An International Environmental Court and International Legalism" (2012) 24.3 *Journal of Environmental Law* 547–58.

<sup>4</sup> ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, compensation owed by the Republic of Nicaragua to the Republic of Costa Rica, Judgment of 2 February 2018. See more: D Desierto, 'Environmental Damages, Environmental Reparations, and the Right to a Healthy Environment: The ICJ Compensation Judgment in Costa Rica v. Nicaragua and the IACtHR Advisory Opinion on Marine Protection for the Greater Caribbean' (*EJIL:Talk! Blog of the European Journal of International Law*, February 14, 2018), available at [www.ejiltalk.org/environmental-damages-environmental-reparations-and-the-right-to-a-healthy-environment-the-icj-compensation-judgment-in-costa-rica-v-nicaragua-and-the-iacthr-advisory-opinion-on-marine-protection](http://www.ejiltalk.org/environmental-damages-environmental-reparations-and-the-right-to-a-healthy-environment-the-icj-compensation-judgment-in-costa-rica-v-nicaragua-and-the-iacthr-advisory-opinion-on-marine-protection); J Rudall, "Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)" (2018) 112.2 *American Journal of International Law* 288–94.

<sup>5</sup> *Whaling in the Antarctic (Australia/Japan, New Zealand intervening)*, Judgment [2014] ICJ Reports 226.

<sup>6</sup> J McCurry, 'Japan to Resume Commercial Whaling One Day after Leaving the IWC' (*The Guardian*, January 25, 2019), available at [www.theguardian.com/world/2019/jan/25/japan-to-resume-commercial-whaling-one-day-after-leaving-the-iwc](http://www.theguardian.com/world/2019/jan/25/japan-to-resume-commercial-whaling-one-day-after-leaving-the-iwc).

<sup>7</sup> D Shelton and PG Carozza, *Regional Protection of Human Rights* (Vol 1, Oxford University Press 2013).

resolution of environmental disputes. For the purposes of this chapter, I mention their practices (especially since there are currently several cases pending before the European Court of Human Rights (ECtHR)), but I do not analyze them in detail, as they do not relate to HRTB and require separate in-depth scientific research. For all these reasons, it may be helpful to evaluate the extent to which HRTB can help address compliance with international environmental law. Human rights treaty bodies offer certain mechanisms for monitoring the implementation of the main international human rights treaties, which are widely ratified.<sup>8</sup>

Increasingly, human rights are linked to environmental protection and the issue of combating climate change.<sup>9</sup> Historically, this evolved in the following way. At the 1992 Conference on Environment and Development in Rio de Janeiro,<sup>10</sup> the world community recognized the problems of environmental harm. The following year, the Vienna Conference on Human Rights was held, following which the UN General Assembly established the Office of the UN High Commissioner for Human Rights. However, to the great regret of environmental lawyers, the Vienna Declaration and Plan of Action<sup>11</sup> had only one paragraph devoted to the protection of human rights in the context of environmental protection, and only in the narrow sense in relation to dumping of toxic and dangerous products and waste: “The right to development should be fulfilled so as to meet equitably the

<sup>8</sup> Status of ratification available at <https://indicators.ohchr.org/>: International Convention on the Elimination of All Forms of Racial Discrimination – 182; International Covenant on Civil and Political Rights – 173; International Covenant on Economic, Social and Cultural Rights – 171; Convention on the Elimination of All Forms of Discrimination against Women – 189; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – 173; Convention on the Rights of the Child – 196; Convention on the Rights of Persons with Disabilities – 184; and two less popular: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families – 56; International Convention for the Protection of all Persons from Enforced Disappearance – 65.

<sup>9</sup> A Boyle, “Human Rights or Environmental Rights? A Reassessment” (2007) 18(3) *Fordham Environmental Law Review* 471–511; C Voigt, “The Climate Change Dimension of Human Rights: Due Diligence and States’ Positive Obligations” in N Kobylarz and E Grant (eds), *Human Rights and the Planet* (Edward Elgar 2022) 152–71.

<sup>10</sup> M Grubb, M Koch, K Thomson, F Sullivan, and A Munson, “The ‘Earth Summit’ Agreements, A Guide and Assessment: An Analysis of the Rio ’92 UN Conference on Environment and Development (Vol 9, Routledge 2019).

<sup>11</sup> Vienna Declaration and Plan of Action adopted by the World Conference on Human Rights in Vienna, 25 June 1993, available at [www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf](http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf).

developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone . . . .”<sup>12</sup>

In the almost thirty years since, a great deal has changed in this area, both at the universal and regional level of human rights protection. In recent years, a number of events have taken place in the field of environmental protection through the human rights system: two important HRC resolutions<sup>13</sup> and a draft additional protocol to the European Convention on Human Rights (ECHR) on the right to a healthy environment<sup>14</sup> were adopted, the 2018 Regional Agreement on Access to Information, Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement)<sup>15</sup> was adopted and entered into force in 2021; the UN Committee on the Rights of the Child in June 2021 launched discussion on the preparation of the General Comment on Children’s Rights and the Environment with Special Focus on Climate Change;<sup>16</sup> and in September 2019 the HRTBs issued a joint

<sup>12</sup> *Ibid.*, para 11.

<sup>13</sup> On October 8, 2021, the UN Human Rights Council adopted Resolution 48/13 of October 8, 2021, recognizing that the right to a clean, healthy, and sustainable environment is a human right. This decision is a major step forward. Although not legally binding, its near-unanimous adoption shows consensus on the formulation, content, and importance of this human right. On the same day, the HRC adopted Resolution 48/14, establishing a Special Rapporteur on the promotion and protection of human rights in the context of climate change.

<sup>14</sup> Recommendation 2211 (2021), “Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe.” Appendix – Text of the Proposal for an Additional Protocol to the European Convention on Human Rights, Concerning the Right to a Safe, Clean, Healthy and Sustainable Environment, available at <https://pace.coe.int/en/news/8419/pace-committee-proposes-draft-of-a-new-protocol-to-the-european-convention-on-human-rights-on-the-right-to-a-healthy-environment?s=03>.

<sup>15</sup> Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean 2018 (Escazú Agreement), entered into force 22 April 2021.

<sup>16</sup> The UN Committee on the Rights of the Child commits to a new General Comment on Children’s Rights and the Environment with a Special Focus on Climate Change, available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27139&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27139&LangID=E) (accessed on November 28, 2022). The concept note of the general comment is now available at [www.ohchr.org/en/treaty-bodies/crc/concept-note-general-comment-childrens-rights-and-environment-special-focus-climate-change](http://www.ohchr.org/en/treaty-bodies/crc/concept-note-general-comment-childrens-rights-and-environment-special-focus-climate-change), accessed on November 28, 2022.

statement on human rights and climate change.<sup>17</sup> And finally, for the first time in the history of the UN, the UN General Assembly in its Resolution 76/300 of 28 July 2022, recognized the human right to a clean, healthy, and sustainable environment.<sup>18</sup> The General Assembly affirmed that the promotion of the human right to a clean, healthy, and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law. It also recognized that the exercise of human rights, including the rights to seek, receive, and impart information, to participate effectively in the conduct of government and public affairs, and to an effective remedy, is vital to the protection of a clean, healthy, and sustainable environment.

On the one hand, international human rights law provides a limited approach to protecting the environment. By and large, the purpose of this branch of international law is to protect a particular person (or group of persons), whereas in international environmental law the goal is to protect the environment as a common good.<sup>19</sup> On the other hand, the cumulative effect in synergy with other international mechanisms may help to protect the environment as a whole. The environmental developments in international human rights law addressed earlier will greatly enhance this cumulative effect. These developments will mean that HRTBs play an increasingly important role in helping bring about compliance with international environmental law.

### 16.3 Human Rights Treaty Bodies as Compliance Bodies

Human rights treaty bodies, as examples of compliance procedures, are an opportunity to issue policy-relevant recommendations addressing specifically the shortcomings of governments' environmental or climate policies from a human rights perspective.

It is important to keep in mind that human rights law at the international level has a wide range of protection and enforcement instruments that can be used to protect environmental human rights: HRTB,

<sup>17</sup> See Joint Statement on "Human Rights and Climate Change," available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E), accessed on January 28, 2022.

<sup>18</sup> Resolution 76/300, adopted by the General Assembly 28 July 2022. The human right to a clean, healthy, and sustainable environment.

<sup>19</sup> B Mayer, "Climate Change Mitigation as an Obligation under Human Rights Treaties?" (2021) 115.3 *American Journal of International Law* 409–51.

Universal Periodic Reports (UPR), Human Rights Council, Special Procedures. In this chapter, I will study the role of HRTB. When I talk about HRTB as compliance mechanisms, I should think systematically and understand that there are various forms of their activity.

Human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. As of now, ten treaty bodies have been established: the Committee on the Elimination of Racial Discrimination (CERD);<sup>20</sup> the Committee on Economic, Social and Cultural Rights (CESCR);<sup>21</sup> the Human Rights Committee (CCPR);<sup>22</sup> the Committee on the Elimination of Discrimination against Women (CEDAW);<sup>23</sup> the Committee against Torture (CAT);<sup>24</sup> the Committee on the Rights of the Child (CRC);<sup>25</sup> the Committee on Migrant Workers (CMW);<sup>26</sup> the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT);<sup>27</sup> the Committee on the Rights of Persons with Disabilities (CRPD);<sup>28</sup> and the Committee on Enforced Disappearances (CED).<sup>29</sup>

It is important to emphasize that the uniqueness lies in the fact that not a single international treaty under which HRTB were established contains provisions aimed at protecting the environment. Therefore, all environmental issues are derived through a broad interpretation of the

<sup>20</sup> CERD monitors the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, 4 January 1969.

<sup>21</sup> CESCR monitors the implementation of the International Covenant on Economic, Social and Cultural Rights, 3 January 1976.

<sup>22</sup> CCPR monitors the implementation of the International Covenant on Civil and Political Rights, 23 March 1976, and its optional protocols.

<sup>23</sup> CEDAW monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, 1979, and its optional protocol, 3 September 1981.

<sup>24</sup> CAT monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, 26 June 1987.

<sup>25</sup> CRC monitors the implementation of the Convention on the Rights of the Child, 2 September 1990, and its optional protocols.

<sup>26</sup> CMW monitors the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1 July 2003.

<sup>27</sup> Established pursuant to the Optional Protocol of the Convention against Torture (OPCAT), 22 June 2006.

<sup>28</sup> CRPD monitors the implementation of the International Convention on the Rights of Persons with Disabilities, 3 May 2008.

<sup>29</sup> CED monitors the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, 23 December 2010.

texts of international treaties. The only exception is the 1980 Convention on the Rights of the Child, where Article 24(2(c)) states that:

States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: . . . To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution . . . .<sup>30</sup>

The treaty bodies perform a number of functions aimed at monitoring how the treaties are being implemented by their State parties. All treaty bodies, with the exception of the Subcommittee on Prevention of Torture, are mandated to receive and consider *periodic reports* submitted by State parties detailing how they are applying the treaty provisions nationally. The examination of a report culminates in the adoption of “concluding observations” intended to give the reporting State practical advice and encouragement on further steps to implement the rights contained in the treaty. In its concluding observations, a treaty body will acknowledge the positive steps taken by the State, but also identify areas of concern, where more needs to be done to give full effect to the treaty’s provisions. The treaty bodies seek to make their recommendations as concrete and practicable as possible. In addition, each of the treaty bodies publishes its interpretation of the provisions of its respective human rights treaty in the form of “general comments” or “general recommendations.” These cover a wide range of subjects, from the comprehensive interpretation of substantive provisions (the right to water or the right to adequate food), to general guidance on the information that should be submitted in State reports relating to specific articles of the treaties. Most treaty bodies may consider *complaints or communications* from individuals (or group of individuals, or entity) alleging that their rights have been violated by a State party, provided that State has opted into this procedure. Human rights treaty bodies may also consider *interstate complaints* and their views or decisions. Although these procedures are “quasi-judicial,” the decisions cannot be enforced directly by the committees. In many cases, however, State parties have implemented the committees’ recommendations and granted a remedy to the

<sup>30</sup> Convention on the Rights of the Child 1989, available at [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx).

complainants. Some HRTB may also conduct *inquiries* if they receive reliable information containing well-founded indications of serious, grave, or systematic violations of the conventions in a State party.<sup>31</sup>

Moreover, if the State does not comply with the recommendations, it will be reminded of this as part of the *follow-up*. It is worth emphasizing separately that the follow-up procedure is extremely important for compliance in the field of international environmental law. Environmental disputes are predominantly of a continuing nature, and it is important to monitor the extent to which the measures taken by the State helped to correct the situation and establish the possibility of taking more precise appropriate measures to resolve the environmental dispute. Thus, follow-up makes it possible to resolve environmental disputes in a continuous process of dialogue. This is something that is often lacking in international courts and is also missing under MEA non-compliance procedures. All HRTB request State parties to provide information in their periodic reports on the implementation of the recommendations contained in previous concluding observations. It is important to note that all available sources of information (other HRTB, Special Procedures, the Universal Periodic Review, the United Nations system, regional human rights mechanisms, national human rights institutions (NHRIs), and NGOs) are considered for the follow-up assessment of a State party. It is a very open and transparent procedure. It should be noted that the details and timing of the follow-up procedure vary from committee to committee.<sup>32</sup> Follow-up covers individual communications: (1) compliance (measures taken are satisfactory or largely satisfactory); (2) partial compliance (measures taken are partially satisfactory, but additional information or action is required); (3) non-compliance (reply received but measures taken are not satisfactory or do not implement the views or are irrelevant to the views); (4) no reply (no cooperation or no reply received). Moreover, as previously noted, the UN has a whole system of human rights bodies, and the implementation of concluding observations and HRTB opinions can also be called upon

<sup>31</sup> See the United Nations Human Rights Treaty System Fact Sheet No 30/Rev.1., United Nations, New York and Geneva, 2012, 32–33, available at [www.ohchr.org/sites/default/files/Documents/Publications/FactSheet30Rev1.pdf](http://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet30Rev1.pdf).

<sup>32</sup> OHCHR, “Follow-Up to Concluding Observations, Treaty Bodies,” available at [www.ohchr.org/en/hrbodies/pages/followupprocedure.aspx#:~:text=What%20is%20the%20follow%20Dup,contained%20in%20previous%20concluding%20observations.&text=These%20recommendations%20are%20clearly%20identified,end%20of%20the%20concluding%20observations.](http://www.ohchr.org/en/hrbodies/pages/followupprocedure.aspx#:~:text=What%20is%20the%20follow%20Dup,contained%20in%20previous%20concluding%20observations.&text=These%20recommendations%20are%20clearly%20identified,end%20of%20the%20concluding%20observations.)

through the UPR procedure, which is an additional compliance control mechanism.

There are many examples of environmental issues under the national reports/concluding observations procedure. For example, CESCR recommended that Argentina

reconsider the large-scale exploitation of non-conventional fossil fuels through hydraulic fracturing in the Vaca Muerta region, in order to ensure compliance with its obligations under the Covenant, in the light of the Paris Agreement commitments. It also encourages the State party to promote alternative and renewable energy sources, reduce greenhouse gas emissions and set national targets with time-bound benchmarks.<sup>33</sup>

Or in 2020 the Committee recommended Norway

intensify its efforts to achieve its nationally determined contribution under the Paris Agreement to reduce emissions by at least 50 per cent and towards 55 per cent compared to 1990 levels by 2030, and to promote alternative and renewable energy sources. It also recommends that the State party reconsider its decision to increase oil and natural gas exploitation and take its human rights obligations as a primary consideration in its natural resource exploitation and export policies.<sup>34</sup>

For example, in its concluding observations, the Human Rights Committee recommended Cabo Verde

(a) strengthen its public policies and strategies aimed at mitigating the impact of natural disasters and climate change on the population and reducing the vulnerability of communities, including for those whose livelihood is dependent on climatic conditions, such as farmers; (b) improve the structural safety of houses and infrastructure; and (c) regularly update its contingency and relocation plans, in consultation with the communities concerned.<sup>35</sup>

Quasi-judicial functions are manifested at the time of consideration of complaints (individual, collective, interstate). If earlier HRTB considered complaints in the format of an individual/group of individuals against the State, recently there has been an increase in interstate complaints. In the fifty-year history of the treaty bodies, only three interstate or

<sup>33</sup> E/C.12/ARG/CO/4, para 13–15: “Concluding Observations on the Fourth Periodic Report of Argentina” (2018).

<sup>34</sup> E/C.12/NOR/CO/6, para 11: “Concluding Observations on the Sixth Periodic Report of Norway” (2020).

<sup>35</sup> E/C.12/CPV/CO/1, para 9: “Concluding Observations on the Initial Report of Cabo Verde” (2018).

State-to-State complaints have been registered (admissibility accepted on its merits) by the treaty bodies, all of them in 2018 by the CERD.<sup>36</sup> As a comparison, interstate complaints under MEA non-compliance procedures are also rare. But it is important to understand that this is generally possible in conditions where the jurisdiction of international courts is very limited.

There were several decisions on environmental complaints in HRTB. Unfortunately, few studies are available on the analysis of these decisions.<sup>37</sup> For example, in 2013, the UN Independent Expert on Human Rights and the Environment, John Knox, prepared reports on the protection of environmental rights in five HRTB: CESCER, HRC, CERD, CEDAW, and CRC.<sup>38</sup> This chapter will highlight four recent HRTB decisions: three on climate (very interesting legal provisions were presented that might be cited by other international courts in the future<sup>39</sup>), and one on pesticides – a positive outcome with a wide range of measures.

The Human Rights Committee in 2019 issued an opinion in the case of the use of agrochemicals and pesticides (*Portillo Cáceres et al. v Paraguay, 2019*).<sup>40</sup> A farming family in Paraguay petitioned the HRC claiming the mass use of agrotoxins by nearby large agrobusinesses had poisoned many local residents and led to the death of their relative, Ruben Portillo Cáceres. The HRC found violations of the family members' rights to life; to privacy, family, and home; and to an effective remedy, noting that the State had failed to adequately enforce environmental regulations and did not properly redress the resulting harms. In connection with this decision, important strategic questions arise in

<sup>36</sup> See the CERD webpage on inter-state complaints, available at [www.ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx](http://www.ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx). See also D Tamada, "Inter-State Communication under ICERD: From ad hoc Conciliation to Collective Enforcement?" (2021) 12.3 *Journal of International Dispute Settlement* 405–26; G Ulfstein, "Qatar v. United Arab Emirates" (2022) 116.2 *American Journal of International Law* 397–403.

<sup>37</sup> S Atapattu, *UN Human Rights Institutions and the Environment: Synergies, Challenges, Trajectories* (Routledge 2023).

<sup>38</sup> Mapping Report, available at [www.ohchr.org/en/issues/environment/srenvironment/pages/mappingreport.aspx](http://www.ohchr.org/en/issues/environment/srenvironment/pages/mappingreport.aspx).

<sup>39</sup> For example, the ITLOS will likely do it soon. See "Press Release. The International Tribunal for the Law of the Sea Receives a Request for an Advisory Opinion from the Commission of Small Island States on Climate Change and International Law", available at [https://itlos.org/fileadmin/itlos/documents/press\\_releases\\_english/PR\\_327\\_EN.pdf](https://itlos.org/fileadmin/itlos/documents/press_releases_english/PR_327_EN.pdf), accessed on December 14, 2022.

<sup>40</sup> *Portillo Cáceres and Others v. Paraguay* (2021) 193 *International Law Reports* 332–60.

the context of comparison with other international legal compliance procedures: (1) in what other international body can the collective environmental rights of people be protected; (2) what other international body can deal with banned pesticides (non-compliance procedures under Article 17 of the Stockholm Convention concerned only interstate cases); and (3) in what other international body can such an effective remedy be obtained systemically?<sup>41</sup>

It should also be emphasized here that HRTB are more independent than non-compliance procedures under MEAs, since there is no need to wait for the final approval of all decisions by the Meetings of State Parties of the human rights treaty (while decisions adopted by the non-compliance committees under some MEAs should be approved within the CoP/MoP, for example under the Aarhus Convention).<sup>42</sup>

It should be noted that sometimes HRTB are at the forefront of developing environmental human rights among various international courts and compliance procedures. It may be noted that the CESCR recognized the right to water (under the International Covenant on Economic, Social and Cultural Rights) in 2002 (General Comment No 15).<sup>43</sup> And since that time, the Committee has had the opportunity to ask States about the protection of the right to water in the framework of periodic reports. Only in 2010, after eight years, did the United Nations General Assembly (UNGA) vote to adopt Resolution A/64/292, formally recognizing “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” As human rights have expanded in scope and

<sup>41</sup> (a) undertake an effective, thorough investigation into the events in question; (b) impose criminal and administrative penalties on all the parties responsible for the events in the present case; (c) make full reparation, including adequate compensation, to the authors for the harm they have suffered. The State party is also under an obligation to take steps to prevent similar violations in the future; (d) receive information from the State party within 180 days about the measures taken to give effect to the Committee’s Views; (e) the State party is also requested to publish the present views and to disseminate them widely, particularly in a daily newspaper with a large circulation in the Department of Canindeyü: *Portillo Cáceres and Others v. Paraguay*, paras 9–10.

<sup>42</sup> R Churchill and G Ulfstein, “Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law” (2000) 94.4 *American Journal of International Law* 623–59.

<sup>43</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 15: The Right to Water (Articles 11 and 12 of the Covenant), 20 January 2003, E/C.12/2002/11, available at [www.refworld.org/docid/4538838d11.html](http://www.refworld.org/docid/4538838d11.html), accessed 27 January 2022.

influence, the UNGA's 2010 Resolution has proclaimed international political recognition of this distinct right.

HRTB have become active in the field of combating climate change. They request relevant information from States when considering periodic reports (for example, information related to what measures States are taking to protect rights affected by climate change), and if they are not satisfied with the information provided, they make relevant concluding observations (some examples have already been mentioned). In addition, HRTB approve special statements: (1) In October 2018, the CESCR adopted a statement on "Climate Change and the International Covenant on Economic, Social and Cultural Rights";<sup>44</sup> (2) In September 2019, the five HRTB (CEDAW, CESCR, CMW, CRC, and CRPD) issued a joint statement on human rights and climate change.<sup>45</sup>

The field of action against climate change is also expanded by interpreting the legal content of human rights in general comments. Regarding the last point, it should be noted that four HRTB have already done this:

- the CESCR: General Comment No 15 (2002) on the Right to Water (Articles 11 and 12 of the International Covenant on Civil and Political Rights (hereinafter referred to as the ICCPR, Covenant));<sup>46</sup>
- the CRC: General Comment No 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Article 24 of the Covenant),<sup>47</sup> and in June 2021 work was launched on a

<sup>44</sup> See United Nations Committee on Economic, Social and Cultural Rights. "Climate Change and the International Covenant on Economic, Social and Cultural Rights: Statement by the Committee on Economic, Social and Cultural Rights." UN Document E/C.12/2018/1, October 31, 2018, 3. Available at <https://digitallibrary.un.org/record/1651395?ln=en>, accessed on January 28, 2022.

<sup>45</sup> See Joint Statement on "Human Rights and Climate Change". Available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E), accessed on January 28, 2022.

<sup>46</sup> See United Nations Committee on Economic, Social and Cultural Rights, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 15." UN Document E/C.12/2020/11, 20 January 2003, available at [www2.ohchr.org/english/issues/water/docs/CESCR\\_GC\\_15.pdf](http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf), accessed on January 28, 2022.

<sup>47</sup> See Committee on the Rights of the Child, "General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (Article 24)." UN Doc. CRC/C/GC/15, April 17, 2013, available at <https://undocs.org/ru/CRC/C/GC/15>, accessed on November 28, 2021.

General Comment on Children's Rights and the Environment with Special Focus on Climate Change;<sup>48</sup>

- CEDAW: General Recommendation No 37 (2018) on Gender-related Dimensions of Disaster Risk Reduction in the Context of Climate Change;<sup>49</sup>
- HRC: General Comment No 36 (2018) on Article 6 of the ICCPR on the right to life.<sup>50</sup>

In this way, the treaty bodies have paved the way for concrete decisions on complaints of human rights violations due to State action/omission. Particularly relevant is the HRC General Comment No 36 on Article 6 of the ICCPR on the right to life. Attention should be paid to paragraph 62 of the document ("Relationship of Article 6 with Other Articles of the Covenant and Other Legal Regimes"), which directly links "obligations to respect and ensure the right to life" and "measures taken by States parties to preserve the environment and protect it against climate change."<sup>51</sup>

As a comparison with other international compliance procedures, it should be noted that the creation of such documents as general comments is very effective and useful, since it allows the generalization of extensive practice and the acceptance of a legitimate document with official interpretation. Such documents could be accepted as part of the non-compliance procedure under MEAs.

<sup>48</sup> UN, "The UN Committee on the Rights of the Child Commits to a New General Comment on Children's Rights and the Environment with a Special Focus on Climate Change", available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27139&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27139&LangID=E), accessed on November 28, 2022. The concept note of the General Comment is now available at [www.ohchr.org/en/treaty-bodies/crc/concept-note-general-comment-childrens-rights-and-environment-special-focus-climate-change](http://www.ohchr.org/en/treaty-bodies/crc/concept-note-general-comment-childrens-rights-and-environment-special-focus-climate-change), accessed on November 28, 2022.

<sup>49</sup> See Committee on the Elimination of Discrimination against Women, "General Recommendation No. 37 on Gender-Related Dimensions of Disaster Risk Reduction in the Context of Climate Change." UN Doc. CEDAW/C/GC/37, March 13, 2018, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/37&Lang=e](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/37&Lang=e), accessed on November 28, 2021.

<sup>50</sup> See Human Rights Committee, "General Comment No. 36. Article 6: The Right to Life." UN Doc. CCPR/C/GC/36, September 3, 2019, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en), accessed on November 28, 2021.

<sup>51</sup> Committee on the Rights of the Child, "General Comment No. 36. Article 6: The Right to Life." UN Doc. CCPR/C/GC/36, September 3, 2019, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en), accessed on November 28, 2021.

## 16.4 Climate Complaints in HRTB

Recently, the number of “climate” claims around the world has been growing and HRTB are no exception. It is important to note three very high-profile cases in this section. The ECtHR is also considering complaints, but has not yet ruled on climate complaints,<sup>52</sup> the Inter-American Commission on Human Rights has rejected a climate case,<sup>53</sup> but the Inter-American Court on Human Rights (IACtHR) mentions this problem in their Advisory Opinion OC-23/17.<sup>54</sup> On 12 December 2022, the ITLOS received a request from the Commission of Small Island States on Climate Change and International Law to render an advisory opinion.<sup>55</sup> Therefore, legal judgments and arguments are extremely valuable.

Important to note is the world’s first international decision on climate refugees (*Ioane Teitiota v New Zealand*, 2020) by the Human Rights Committee.<sup>56</sup> The UN Human Rights Committee considered the “climate” claim and, refusing a specific applicant, generally recognized that, based on the non-refoulement principles and subject to a number of criteria, “climate” refugees have the right not to be sent to a country where climate change leads to such disastrous consequences that a violation of the right to life can be claimed. In this case, in the opinion of the Committee, there was no life-threatening situation for the Teitiota; also because the relevant protective measures had already been taken in the Republic of Kiribati (2007 National Adaptation Programme of Action under the United Nations Framework Convention on Climate Change

<sup>52</sup> *Duarte Agostinho et Autres v. Portugal et 32 Autres États etc.*, 39371/20, November 13, 2020.

<sup>53</sup> Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada, available at <https://climatecasechart.com/non-us-case/petition-inter-american-commission-human-rights-seeking-relief-violations-rights-arctic-athabaskan-peoples-resulting-rapid-arctic-warming-melting-caused-emissions/>, accessed on November 28, 2021.

<sup>54</sup> Inter-American Court of Human Rights, “Advisory Opinion OC-23/17 of November 15, 2017, Requested by the Republic of Colombia: 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),” available at [www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

<sup>55</sup> ITLOS, “Press Release. The International Tribunal for the Law of the Sea Receives a Request for an Advisory Opinion from the Commission of Small Island States on Climate Change and International Law.” Available at [https://itlos.org/fileadmin/itlos/documents/press\\_releases\\_english/PR\\_327\\_EN.pdf](https://itlos.org/fileadmin/itlos/documents/press_releases_english/PR_327_EN.pdf), accessed on December 14, 2022.

<sup>56</sup> *Ioane Teitiota v New Zealand* (n 1).

(UNFCCC)). It turns out that the fight against climate change is a State problem and carries a threat to the entire population. However, it is extremely difficult to prove an individual threat, so most of the “climate” claims are of a collective nature. However, the HRC did not rule out that such a situation might arise in the future. The case of *Ioane Teitiota v New Zealand* has become a milestone in the development of the practice of the HRC. Thus, a new interpretation of the “real risk of irreparable harm” was given; the connection between civil rights and economic and social rights was shown within the framework of a broad interpretation of the right to life; and the “climate” component of the right to life was demonstrated in practice. Now new standards have been set that may, in the future, contribute to the favorable outcome of other climate change refugee claims. Moreover, the Committee emphasized the need for the support of countries suffering from the effects of climate change by the international community. Thus, it was recorded that the obligations for cooperation in the field of counteracting the negative effects of climate change are *erga omnes*. If decisive action is not taken at both the international and national levels, entire States may disappear under water. In this case, the threat to life will become obvious, and the host States will no longer be able to deport those who request refugee status.<sup>57</sup>

An important difference between HRTB and many non-compliance procedures is the fact that the decisions are not always adopted by consensus, and it is possible to find separate opinions. In *Ioane Teitiota v New Zealand*, two experts were against (Duncan Laki Muhumuza and Vasilka Sancin) and added their individual opinions by Committee members.

A second case concerns Children’s Rights and Climate Change at the UN CRC. I note the Communication to the CRC concerning climate change (*16 children (including G Thunberg) v Argentina, Brazil, France, Germany, Turkey, 2019*). On 11 October 2021, the CRC published its decisions on the admissibility of complaints brought against five States – Argentina, Brazil, France, Germany, and Turkey – by the 16 child complainants under the Optional Protocol to the Convention on the Rights of the Child on a Complaints Procedure (OPIC). The Committee ultimately

<sup>57</sup> A Solntsev, “Priotkryvaya yashchik Pandory: analiz mneniya Komiteta po pravam che-loveka o ‘klimaticheskikh’ bezhentsakh 2020 goda [Half-opening Pandora’s Box: Review of the Human Rights Committee’s 2020 View on Climate Refugees]” (2020) 10.3 *Mezhdunarodnoe pravosudie* 41–44 (in Russian). DOI: 10.21128/2226-2059-2020-3-41-54.

declared the complaints inadmissible due to non-exhaustion of domestic remedies. However, in doing so, the Committee found that a State party can be held responsible for the negative impact of its greenhouse gas emissions on the rights of children both within and outside its territory. With regard to extraterritorial jurisdiction, the CRC endorsed the above-mentioned IACtHR Advisory Opinion OC-23/17, which clarified in paragraph 101 the scope of extraterritorial jurisdiction concerning environmental protection. As stated by I Gubbay and C Wenzler, to establish extraterritorial jurisdiction, the CRC had to consider (i) the interpretation of “control,” and (ii) the significance of directness and foreseeability.<sup>58</sup> Under the effective control test, the State in whose territory or under whose jurisdiction the activities are carried out has effective control over them, as well as the ability to prevent transboundary harm. Potential victims of the adverse effects of a State’s actions are under the jurisdiction of that State regarding its potential responsibility for failing to avoid transboundary damage. Further, under the causal nexus test, when a State’s act or omission is sufficiently connected to the violation, the person suffering the violation is considered to be within the State’s jurisdiction. Following the IACtHR’s reasoning, then, the CRC found that every State must address climate harm outside its territory and is liable for the negative impact of its emissions on the rights of children located both within and outside its territory.<sup>59</sup>

The decision significantly advances international human rights law understanding of the scope of State obligations in the context of climate change – both in terms of the content of such duties and their jurisdictional application. Although greeted with understandable dismay by some climate activists, the decision is a convincingly reasoned rejection – and one that leaves the door firmly open to future child rights climate justice complaints, while according appropriate respect to domestic processes.<sup>60</sup> In June 2021, the CRC decided to draft a General Comment on

<sup>58</sup> I Gubbay and C Wenzler, ‘Intergenerational Climate Change Litigation: The First Climate Communication to the UN Committee on the Rights of the Child’ in I Alogna, C Bakker and J Gauci (eds), *Climate Change Litigation: Global Perspectives* (Brill Nijhoff 2021) 357–60.

<sup>59</sup> MA Tigre and V Lichet, ‘The CRC Decision in *Sacchi v. Argentina*’ (2021) 26.25 *ASIL Insights*, available at [www.asil.org/insights/volume/25/issue/26](http://www.asil.org/insights/volume/25/issue/26).

<sup>60</sup> A Nolan, ‘Children’s Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in *Sacchi v Argentina*’ (*EJIL:Talk! Blog of the European Journal of International Law*, October 20, 2021), available at [www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-](http://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-)

children's rights and the environment with a particular focus on climate change, thus signaling the potential of human rights litigation to contribute to normative development beyond a specific case.

The third climate case, *Daniel Billy and others v Australia (Torres Strait Islanders Petition, 2022)*<sup>61</sup> is the latest in HRTB practice. The Communication was brought by eight indigenous residents of the Torres Strait Islands and some of their children to the HRC. This is so far the only decision where an international human rights body has found that a State's failure to protect people from the effects of climate change can amount to a violation of international human rights law.

In the decision, the HRC has found that Australia's failure to adequately protect indigenous Torres Islanders against the adverse effects of climate change violated their rights to enjoy their culture (Article 27 of the Covenant) and be free from arbitrary interferences with their private life, family, and home (Article 17 of the Covenant). Australia failed to adapt to climate change by, *inter alia*, upgrading seawalls on the islands and reducing greenhouse gas emissions.

However, in this case, it cannot be argued that Australia has been inactive in the fight against climate change. The HRC indicated that despite Australia's series of actions, such as the construction of new seawalls on the four islands that are expected to be completed by 2023, additional timely and appropriate measures were required to avert a risk to the Islanders' lives, since without robust national and international efforts, the effects of climate change may expose individuals to a violation of their right to life under the Covenant. This is an important conclusion-warning of the Committee for States that believe that it is possible to limit themselves to minimal actions in order to combat climate change.

As remedies, the HRC asked Australia to compensate the Indigenous Islanders for the harm suffered, engage in meaningful consultations with their communities to assess their needs, and take measures to continue to secure the communities' safe existence on their respective islands. This is

[child-pragmatism-and-principle-in-sacchi-v-argentina](#); C Bakker, "Baptism of Fire? The First Climate Case before the UN Committee on the Rights of the Child" (2021) 77 *QIL*, Zoom-in 5–25, available at [www.qil-qdi.org/wp-content/uploads/2021/01/02\\_HR-in-Climate-Litigation\\_BAKKER\\_FIN.pdf](http://www.qil-qdi.org/wp-content/uploads/2021/01/02_HR-in-Climate-Litigation_BAKKER_FIN.pdf).

<sup>61</sup> *Daniel Billy and others v Australia (Torres Strait Islanders Petition)*, HRC, UN Doc CCPR/C/135/D/3624/2019, September 22, 2022.

one of the interesting points of the decision: how to calculate and make “adequate compensation, to the authors for the harm that they have suffered?”<sup>62</sup> How that harm will be calculated is yet unknown, not only in this decision, but in general in international climate law. The Committee left this up to Australia who has to report to the Committee on the implementation within 180 days, so there will be opportunity to analyze the further actions of the Committee at a later date.

It may also be noted that in this decision, as in the previous *Ioane Teitiota v New Zealand* the Committee ultimately dismissed the plaintiffs’ claim of a violation of their right to a decent life, finding that they “did not indicate that they have experienced or are currently experiencing adverse health outcomes or a real and reasonably foreseeable risk of being physically threatened” or extreme danger likely to threaten their right to life, including their right to a life in dignity and that strong national and international efforts<sup>63</sup> can prevent harm that would constitute a violation of Article 6 of the Covenant. Although it was a loss for the plaintiffs in this case, it has become a roadmap for future climate cases.

Moreover, as per Voigt, “there is, however, one major shortcoming of the decision: The Committee remained silent on the need for timely and adequate mitigation measures as the ‘backside of the coin’ to fulfill its positive obligation towards the applicants. This is a lost opportunity.”<sup>64</sup>

Overall, the HRC has created a pathway for individuals to assert claims where national systems have failed to take appropriate measures to protect those most vulnerable to the negative impact of climate change on the enjoyment of their human rights.

Thus, based on the method of legal forecasting, it can be said that the number of climate complaints to the HRC will grow in the near future, especially considering that 117 States of the world have recognized its jurisdiction to consider individual complaints.<sup>65</sup>

<sup>62</sup> Ibid., para 11.

<sup>63</sup> Ibid., para 8.6.

<sup>64</sup> C Voigt, “UNHRC is Turning up the Heat: Human Rights Violations Due to Inadequate Adaptation Action to Climate Change” (*EJIL:Talk! Blog of the European Journal of International Law*, September 26, 2022), available at [www.ejiltalk.org/unhrc-is-turning-up-the-heat-human-rights-violations-due-to-inadequate-adaptation-action-to-climate-change/](http://www.ejiltalk.org/unhrc-is-turning-up-the-heat-human-rights-violations-due-to-inadequate-adaptation-action-to-climate-change/).

<sup>65</sup> Optional Protocol to the International Covenant on Civil and Political Rights, New York, December 16, 1966 (status as at April 12, 2022), available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-5&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-5&chapter=4&clang=_en).

### 16.5 Legitimacy and Citation of Decisions

All documents adopted by HRTB are soft law and are not legally binding. This has its pros and cons. However, the general comments and decisions of the HRTB are actively used in national legal systems.<sup>66</sup> Of course, not in all States and not in all cases, but this practice is quite common.

An important issue is that of the unification of common approaches among international courts, regional courts of human rights, and quasi-judicial bodies (mainly non-compliance procedures based on MEAs and HRTB) in terms of protecting environmental human rights. The analysis shows that HRTB in their environmental decisions repeatedly cited the decisions of the ECtHR, the African Commission on Human and Peoples' Rights and the Inter-American Court of Human Rights. For example, in *Ioane Teitiota v New Zealand*, HRC noted "that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life"<sup>67</sup> and cited in support the practice of European, inter-American and African human rights systems.<sup>68</sup>

In *Portillo Cáceres*, HRC stated that "severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely"

<sup>66</sup> KF Principi, "Implementation of UN Treaty Body Decisions: A Brief Insight for Practitioners" (2020) 12.1 *Journal of Human Rights Practice* 185–92; V Carraro, "Promoting Compliance with Human Rights: The Performance of the United Nations Universal Periodic Review and Treaty Bodies" (2019) 63.4 *International Studies Quarterly* 1079–93.

<sup>67</sup> *Ioane Teitiota v New Zealand* (n 1) para 9.5.

<sup>68</sup> *Ibid.*, n 23–24; *Inter-American Court of Human Rights*, Advisory Opinion OC-23/17, 15 November 2017 on the Environment and Human Rights, Series A, No 23, para 47; *Kawas Fernández v Honduras*, judgment of 3 April 2009, Series C, No 196, para 148; African Commission on Human and Peoples' Rights, General Comment No 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), para 3 (States' Responsibilities to Protect Life "extend to preventive steps to preserve and protect the natural environment, and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies."); European Court of Human Rights, Application Nos 54414/13 and 54264/15, *Cordella and Others v Italy*, judgment of 24 January 2019, para 157 (serious environmental harm may affect individuals' well-being and deprive them of the enjoyment of their domicile, so as to compromise their right to private life); European Court of Human Rights, *M. Özel and others v Turkey*, judgment of 17 November 2015, paras 170, 171, and 200; *Budayeva and others v Russia*, judgment of 20 March 2008, paras 128–130, 133, and 159; *Öneryıldız v Turkey*, judgment of 30 November 2004, paras 71, 89, 90, and 118.

(paragraph 3.7) and relying upon the practice of the ECHR.<sup>69</sup> Also, as in the previous case, in substantiating the fact that severe environmental degradation has given rise to findings of a violation of the right to life (paragraph 7.4), HRC referred to the relevant practice of regional human rights courts. Also in evidence is that “adverse consequences of . . . pollution are serious because of its intensity or duration and the physical or mental harm that it does, then the degradation of the environment may adversely affect the well-being of individuals and constitute violations of private and family life and the home” (paragraph 7.8). In this, the HRC referred to the practice of the ECHR.<sup>70</sup>

Additionally, the ICJ has on occasion directly considered treaty body practice (Wall opinion in 2004, the *Diallo* case, the *Belgium v Senegal* (or Hissene Habre) case, *Georgia v Russia*, and the *IFAD* case).<sup>71</sup> Moreover, the ICJ directly stated:

Since it was created, the Human Rights Committee has built up a considerable body of interpretative case law, in particular through its findings in response to the individual communications which may be submitted to it in respect of States parties to the first Optional Protocol, and in the form of its “General Comments.” Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was

<sup>69</sup> See n 21: “paragraph 51 of *López Ostra v. Spain*, judgment of 9 December 1994; paragraphs 68 and 69 of *Fadeyeva v. Russia*, final judgment of 30 November 2005; and paragraph 105 of *Dubetska and Others v. Ukraine*, judgment of 10 February 2011”.

<sup>70</sup> See n 51–52: “European Court of Human Rights, *Cordella and Others v. Italy*, judgment of 24 January 2019, para. 158; European Court of Human Rights, *López Ostra v. Spain*, judgment of 9 December 1994, paras. 51, 55 and 58; *Fadeyeva v. Russia*, paras. 68–70, 89, 92 and 134 and *Cordella and Others v. Italy*, paras. 173–174.

<sup>71</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004, ICJ Reports 136; *Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Preliminary Objections, 2007, ICJ Reports 582; Ahmadou Sadio Diallo (*Republic of Guinea v Democratic Republic of the Congo*), Merits, Judgment, 2010, ICJ Reports 639; Ahmadou Sadio Diallo (*Republic of Guinea v Democratic Republic of the Congo*), Compensation, Judgment, 2012, ICJ Reports 324; Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (*Georgia v Russian Federation*), Judgment, 2011; Judgment No 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint Filed against the International Fund for Agricultural Development, Advisory Opinion, 2012, ICJ Reports 10. See N Rodley, “The International Court of Justice and Human Rights Treaty Bodies” in M Andenas and E Bjorge (eds), *A Farewell to Fragmentation: Reassertion and Convergence in International Law* (Cambridge University Press 2015), 87–108.

established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled<sup>72</sup>.

The Inter-American Court of Human Rights, in its Advisory Opinion on Environmental Human Rights,<sup>73</sup> referred to CESCER documents, but not to decisions – only to general comments and concluding observations<sup>74</sup> – as well as to HRC decisions in the context of proving the existence of extraterritorial human rights obligations.<sup>75</sup>

Based on the method of legal forecasting, one can fairly confidently assume that the ECHR will soon quote HRTB. The HRC and CRC are the first international bodies in the world to recognize jurisdiction and adjudicate climate claims (*Ioane Teitiota v New Zealand* and five CRC claims, respectively). As noted above, HRTB denied the plaintiffs, but the rulings contained extremely important legal positions that will be useful to the ECHR, where five cases are already pending.<sup>76</sup> And rather than reinventing the wheel, one can rely on these legal positions of HRTB and thereby confirm their legitimacy in resolving climate disputes.

<sup>72</sup> Ahmadou Sadio Diallo (*Republic of Guinea v Democratic Republic of the Congo*), Merits, Judgment, 2010, ICJ Reports 664.

<sup>73</sup> Inter-American Court of Human Rights, “Advisory Opinion OC-23/17 of November 15, 2017, Requested by the Republic of Colombia: 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),” available at [www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

<sup>74</sup> *Ibid.*, fns 109–113, 185, 194, 210, 213–16, 226, 232, 234, 239, 298, 299, 344, 353. Namely: General Comment No 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2000/4, August 11, 2000; General Comment No 15: The Right to Water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), UN Doc E/C.12/2002/11, January 20, 2003; Concluding Observations: Russian Federation, UN Doc. E/C.12/Add.13, May 20, 1997; General Comment No 4: The Right to Adequate Housing (Article 11.1); Concluding Observations: Madagascar, UN Doc E/C.12/MDG/CO/2, December 16, 2009, para 33; and ESCR Committee, General Comment No 21: Right of Everyone to Take Part in Cultural Life (Article 15(1)(a)), UN Doc. E/C.12/GC/21/Rev.1)

<sup>75</sup> *Ibid.*, fn 140: HRC, Communication No 56/1979, *Lilian Celiberti de Casariego v Uruguay*, CCPR/C/13/D/56/1979, July 29, 1981; HRC, Communication No 106/1981, *Mabel Pereira Montero v Uruguay*, CCPR/C/18/D/106/1981, March 31, 1983.

<sup>76</sup> Full list of cases available at <https://climatecasechart.com/non-us-jurisdiction/european-court-of-human-rights>, accessed 26 August 2023.

## 16.6 Conclusion

In general, over the years of their existence, HRTB have established themselves as an important legitimate and effective link in the resolution of international environmental disputes and as compliance “guardians.” However, it should be underlined that HRTB do not actually ensure compliance with environmental obligations, but with human rights treaties, which are increasingly interpreted in the light of environmental obligations. What advantages do HRTB have in comparison with international courts? Human rights treaty bodies have developed a large regulatory framework for the consideration of environmental disputes (including special statements, general comments, and previous opinions). An analysis of decisions shows that HRTB has a wide range of remedies. It is important that the committees themselves monitor the execution of decisions based on the follow-up procedure and the request for information from States during the dialogue process when considering periodic reports; moreover, within the framework of the UPR procedure, the State may be asked about non-compliance with the decision. As quasi-judicial bodies under the UN system, HRTB are not divorced from general legal practice and refer to environmental decisions of other international courts (unlike, for example, the DSB WTO), IPCC documents, and international environmental conventions. Moreover, legal positions from their decisions are used and cited by both universal and regional human rights courts. The UN system, unlike regional human rights bodies, allows developing universal approaches to resolving environmental disputes, and a high level of ratification by States of international human rights treaties allows for the avoidance of jurisdictional restrictions (unlike, say, the Aarhus Committee or the Espoo Committee). Therefore, the world in the form of HRTB has universal legitimate mechanisms to protect the environment (and especially climate) through a link with human rights. All of this should contribute to an enhancement of the ability to protect the environment.