

Introductory Reflections on the Protection of the Environment in Regional Jurisprudences

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ABSTRACT

This piece offers an introductory overview of the environmental jurisprudence of regional adjudicatory bodies, as elaborated in the forthcoming chapters of the present book. It positions the growing body of case law from the European Court of Human Rights (ECtHR), the European Committee of Social Rights (ECSR), the Court of Justice of the European Union (CJEU), the Inter-American Court of Human Rights (IACtHR), the Inter-American Commission on Human Rights (IACHR), the African Court of Human and Peoples' Rights (ACtHPR), and the African Commission on Human and Peoples' Rights (ACHPR) within the broader development of the protection of the environment in international human rights law. The study further examines the recognition of the right to a healthy environment across the different regional systems, as one of the key points of normative divergences. Rather than offering an exhaustive analysis, these introductory reflections lay the conceptual framework and identify key issues that will be examined in greater depth in the subsequent chapters.

KEYWORDS

environment, human rights, jurisprudence, regional courts

1. Introduction

Environmental protection has increasingly become a central concern for human rights adjudication, as courts across regional systems are called upon to address environmental harms threatening the rights of individuals and communities. While international environmental law provides an overarching normative framework, it often lacks direct enforcement mechanisms for individuals. Regional human rights adjudicatory bodies – courts and related commissions, where prevalent – have stepped into this space, integrating substantive and procedural environmental standards into human rights guarantees while providing an avenue for individual complaints.

This chapter aims to provide a conceptual overview for understanding the environmental jurisprudence of regional human rights courts addressed in the

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forthcoming chapters. It begins by examining the role of regional human rights courts and adjudicatory bodies in addressing environmental issues (Section 2). It is followed by a comparison of the recognition of the right to a healthy environment across regional human rights regimes, which constitutes a primary analytical focal point in these jurisprudences (Section 3). The chapter concludes by identifying key divergences and convergences, setting the stage for a deeper thematic and analytical examination of environmental human rights jurisprudence in the chapters that follow (Section 4).

2. The Role of Regional Courts in Developing Human Rights-Based Environmental Jurisprudence

International environmental law is a dynamic field, incorporating concepts non-traditional to public international law, such as the blurring distinction between legally binding and non-binding norms, public and private standards, and international and domestic law.¹ In addition, international environmental law is strongly fragmented, as it has not been codified by a comprehensive treaty or set of treaties, and there is no dedicated international dispute settlement body to establish coherence in the system.² The International Court of Justice (ICJ) has occasionally adjudicated disputes with an environmental dimension, such as in the *Gabčíkovo–Nagymaros Project* (Hungary/Slovakia),³ *Pulp Mills* (Argentina/Uruguay),⁴ *Whaling in the Arctic* (Australia/Japan),⁵ or *Certain Activities* (Costa Rica/Nicaragua),⁶ or offered advisory opinions relevant to the protection of the environment, for instance, the *Legality of the Threat or Use of Nuclear Weapons*⁷ and the *Obligations of States in Respect of Climate Change*.⁸ Specialised bodies, such as the International Tribunal for the Law of the Sea (ITLOS), handled environmental aspects in the context of maritime disputes,⁹ and the World Trade

1 Bodansky et al., 2012, p. 24.

2 Shelton, 2004, pp. 2–4; Sands et al., 2018, p. 14. For a detailed overview of the environmental jurisprudence of international courts and tribunals, see: Sobenes et al., 2022.

3 *Gabčíkovo–Nagymaros Project* (Hungary/Slovakia) [1997] ICJ Rep 7.

4 *Pulp Mills on the River Uruguay* (Argentina v Uruguay) [2010] ICJ Rep 14.

5 *Whaling in the Antarctic* (Australia v Japan: New Zealand intervening) [2014] ICJ Rep 226.

6 *Certain Activities carried out by Nicaragua in the Border Area* (Costa Rica v Nicaragua) [2015] ICJ Rep 665.

7 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion [1996] ICJ Rep 226.

8 *Obligations of States in respect of Climate Change*, Advisory Opinion [2025] ICJ Rep (forthcoming).

9 See, for instance, *Southern Bluefin Tuna Cases* (New Zealand v Japan; Australia v Japan) (Request for Provisional Measures) [1999] ITLOS Rep 280; *The MOX Plant Case* (Ireland v United Kingdom) (Request for Provisional Measures) [2001] ITLOS Rep 89; *Land Reclamation by Singapore in and around the Straits of Johor* (Malaysia v Singapore) (Request for Provisional Measures) [2003] ITLOS Rep 10; *Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area* (Advisory Opinion) [2011] ITLOS Rep 10; *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) [2024] ITLOS Rep (forthcoming).

Organization's Dispute Settlement Body has addressed environmental regulations that intersect with international trade rules.¹⁰

At the regional level, courts have also increasingly been called upon to adjudicate cases with an environmental dimension. Here, environmental claims are interpreted through the lens of human rights, thus demonstrating how international environmental law is strongly interlinked with other regimes. Yet international human rights law itself is also fragmented: different regional systems recognise varying rights, apply distinct procedural rules, and develop divergent standards for protection. In Europe, the situation is further complicated by the existence of two courts dealing with human rights issues, the European Court of Human Rights (ECtHR), a court entirely dedicated to the interpretation of the European Convention on Human Rights (ECHR),¹¹ and the Court of Justice of the European Union (CJEU), which primarily interprets the law of the European Union (EU), *inter alia*, the Charter of Fundamental Rights of the EU.¹²

Human rights jurisdictions may also be differentiated according to the binding nature of their decisions. United Nations (UN) treaty bodies' decisions in individual complaint procedures are non-binding, similar to the decisions of regional human rights committees and commissions, such as the European Committee for Social Rights (ECSR), the Inter-American Commission on Human Rights (IACHR), and the Commission on Human and Peoples' Rights (ACHPR). On the other hand, courts, namely, the aforementioned ECtHR and CJEU, as well as the Inter-American Court of Human Rights (IACtHR) and the African Court of Human and Peoples' Rights (ACtHPR). The latter two may also adopt advisory opinions, which are non-binding by nature, even if they may have a significant impact on the development of the given courts' further jurisprudence and even outside their scope.

Regional forums, including human rights courts and commissions, play a particular role in shaping international standards regarding the protection of the environment. Unlike other international tribunals, such as the ICJ, human rights adjudicatory bodies are directly accessible to individuals and groups of individuals, thus giving voice to those most directly affected by environmental degradation. The interrelation of human rights and the environment has been on the agenda of international policy-makers since at least 1972, the Stockholm Conference on the Human Environment, which produced the so-called Stockholm Declaration, the first international document explicitly recognising the human rights dimension of the environment by providing that

10 See, for instance, *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (DS58) [1998 / 2001] WTO DSR 3; *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products* (DS135) [2001] WTO DSR 25; *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (DS381) [2008] WTO DSR 98.

11 Council of Europe, *European Convention on Human Rights*, 4 November 1950, ETS 5.

12 European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, OJ C 326/391.

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.¹³

The further development of international environmental law, marked by the Rio Conference on Environment and Development in 1992, reinforced the interrelation of the two regimes. The Rio Declaration, for instance, significantly built on human rights, when declaring in Principle 3 that ‘[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations’, and in Principle 10 that

‘[...] each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. [...] Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.’¹⁴

In parallel, the doctrinal framework for the interrelation of human rights and the environment was developed. Dinah Shelton identified four principal and complementary approaches to characterise the relationship between the two fields, namely: (I) international environmental law incorporates and utilises human rights guarantees necessary to ensure effective environmental protection, (II) human rights law interprets internationally guaranteed human rights including an environmental dimension, (III) international environmental law and international human rights law elaborate a new right to a healthy environment, and (IV) international environmental law articulates ethical and legal duties of individuals that include environmental and human rights considerations.¹⁵

The first two approaches highlight the viability of using human rights law to address the protection of the environment, primarily through the procedures offered by UN human rights treaty bodies and regional human rights courts. However, human rights adjudicatory bodies are bound by the respective human rights treaty and may not directly interpret other sources, i.e., those of international environmental law. Nonetheless, the development of the environmental jurisprudence of human rights adjudicatory bodies can be observed in parallel with the development of international environmental law. The ECtHR adopted its first environment-related judgments in the 1990s, marked by *López Ostra v. Spain* (1994), establishing that severe environmental

13 United Nations, *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)*, UN Doc A/CONF.48/14/Rev.1 (1973), Principle 1.

14 United Nations, *Rio Declaration on Environment and Development*, UN Doc A/CONF.151/26 (Vol. I) (1992), Principle 10.

15 Shelton, 2006, p. 130.

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, without, however, seriously endangering their health,¹⁶ thus recognising the negative impact of environmental degradation on the right to private and family life (Article 8 of the ECHR), which has been confirmed since then on many occasions,¹⁷ and extended this approach to other substantive rights, in particular, the right to life (Article 2).¹⁸ The ECtHR developed its environmental jurisprudence by applying the evolutive interpretative approach, allowing the Court to interpret the Convention in light of changing societal conditions and present-day circumstances, rather than being strictly limited to the text of the Convention and its intended meaning at the time of its drafting in 1950. As noted above, the interrelation of human rights and the protection of the environment had not yet been recognised at that time; therefore, reference to the environment cannot be found in the major human rights treaties adopted in the 1950s and 1960s, such as the ECHR at the regional level, or in the Universal Declaration of Human Rights (UDHR),¹⁹ the International Covenant on Civil and Political Rights (ICCPR),²⁰ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)²¹ at the universal level. Nonetheless, as elaborated in the forthcoming chapters, the ECtHR has continued to keep pace with the developments in international environmental law by considering the Convention as a 'living instrument'. The ECtHR's responsiveness to current challenges of international environmental law, marked by the triple planetary crisis,²² culminated in the adoption of the judgement in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* in April 2024, recognising the link between the negative effects of climate change and the violation of the right to respect for private and family life for the first time and as the first regional human rights court to do so.²³

Compared with the ECHR, the Charter of Fundamental Rights of the EU was drafted and adopted in the 2000s, by the time the interrelation of human rights and the environment was already recognised at the international and regional levels, as noted below. The impact of the international legal framework and jurisprudence clearly had an impact on the drafters of the Charter, as Article 37 provides that a high

16 *López Ostra v. Spain*, 1994, para. 51.

17 See, for instance, *Taskin and Others v. Turkey*, 2004; *Fadeyeva v. Russia*, 2005; *Tătar v. Romania*, 2009.

18 See, for instance, *Öneryildiz v. Turkey*, 2004; *Budayeva and Others v. Russia*, 2000; *Özel and Others v. Turkey*, 2015.

19 United Nations, *Universal Declaration of Human Rights*, 10 December 1948, UN Doc A/RES/217(III).

20 United Nations, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

21 United Nations, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

22 United Nations Framework Convention on Climate Change (UNFCCC), *What is the Triple Planetary Crisis?*.

23 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, para. 519.

level of environmental protection shall be integrated in the policies of the Union,²⁴ although it does not imply the recognition of environmental rights either.²⁵

The Inter-American Court of Human Rights has also progressively developed its environmental jurisprudence in parallel with the evolution of international environmental standards, culminating in the judgements of *Lhaka Honhat v. Argentina*²⁶ and *La Oroya v. Peru*,²⁷ both establishing the violation of the right to a healthy environment under Article 26 of the American Convention on Human Rights (ACHR).²⁸ The Convention, adopted in 1969, integrated economic, social and cultural rights into Article 26 ('progressive development'), which was further elaborated in the Protocol of San Salvador, adopted in 1988.²⁹ In line with the strengthened international legal framework of the protection of the environment, the Protocol recognised the right to a healthy environment in Article 11. Similarly, the African Charter of Human and Peoples' Rights (ACHPR), adopted in 1981, enshrines the right of all peoples to a general satisfactory environment favourable to their development, and thus opened the door for environmental claims before the African Commission and the ACtHPR.

In light of the above, the following conclusions can be drawn. First, the development of international environmental law has profoundly shaped the evolution of human rights jurisprudence. Early instruments, such as the Stockholm Declaration of 1972, established the first conceptual link between environmental protection and human well-being, which was reflected in the human rights treaties adopted afterwards, namely the African Charter and the Protocol of San Salvador. By the 1990s, the consolidation of key principles in the Rio Declaration provided a normative framework that resonated strongly with the mandates of regional human rights courts, which began to develop their environmental jurisprudence during this decade. More recently, climate litigation³⁰ has further deepened this cross-fertilisation, with courts drawing upon the Paris Agreement of 2015³¹ and related climate norms to ground obligations under human rights treaties.

Furthermore, regional human rights instruments have become pivotal in bridging the gap between international environmental law and enforceable rights. By providing accessible fora for individual petitions, courts have transformed abstract

24 Charter of Fundamental Rights of the European Union, *ibid.*, Article 37.

25 Quirico, 2021, p. 41.

26 *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, 2020.

27 *La Oroya Population v. Peru*, 2023.

28 Organization of American States (OAS), 1969, American Convention on Human Rights (Pact of San José, Costa Rica).

29 Organization of American States (OAS), 1988, Protocol of San Salvador: Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights.

30 Climate change litigation is defined as cases brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law. A sub-category of climate change litigation is human rights-based litigation, comprising cases argued on human rights grounds before human rights adjudicatory bodies. See: Setzer and Higham, 2025, p. 8; Savaresi and Auz, 2019, p. 246.

31 United Nations, 2015, Paris Agreement. Adopted 12 December 2015, entered into force 4 November 2016. United Nations Treaty Series, vol. 3156, p. 3.

environmental principles into tangible standards of States' obligations. The jurisprudence, as elaborated in the forthcoming chapters, demonstrates how classic human rights guarantees – such as the rights to life, private and family life, property, culture – can be interpreted in light of environmental challenges, thereby reinforcing the normative force of international environmental law. Although fragmentation remains a challenge, the jurisprudence of regional human rights bodies has consolidated environmental protection within the international human rights framework.

3. The Right to a Healthy Environment in a Comparative Perspective

The recognition of the right to a healthy environment significantly varies across regional human rights systems, reflecting both historical and socio-cultural differences. While some systems explicitly enshrine this right within their treaties or charters, others rely on an implicit understanding, interpreting civil and political rights in light of the developing international environmental standards. Examining these differences is crucial not only for understanding the current landscape of environmental human rights protection but also for identifying trends toward convergence and cross-fertilisation among regional jurisdictions. In this section, the focus will be on the European, Inter-American, and African systems, with an outlook towards other regional frameworks, highlighting how each has approached the right to a healthy environment and the implications for both normative and practical adjudication.

3.1. Right to a Healthy Environment in European Frameworks

As noted above, the principal human rights treaty in Europe, the ECHR, was adopted in 1950, prior to the emergence of a coherent international environmental legal framework. Consequently, the Convention does not contain an explicit reference to the protection of the environment or the right to a healthy environment itself. Nevertheless, as analysed in the forthcoming chapters, the ECtHR has gradually addressed environmental issues by interpreting existing rights, such as the right to life (Article 2), the right to respect for private and family life (Article 8), the right to property (Article 1 of Protocol 1), the right to a fair trial (Article 6), or the right to an effective remedy (Article 13).³²

In parallel with the development of the ECtHR's environmental jurisprudence, proposals for the recognition of the right to a healthy environment have been on the agenda in the Parliamentary Assembly of the Council of Europe since the end of the 1990s. Remarkably, in its Recommendation 1431 (1999), titled 'Future action to be taken by the Council of Europe in the field of environment protection', the Parliamentary Assembly recommended that the Committee of Ministers instruct the appropriate bodies within the Council of Europe to examine the feasibility of

32 Raisz and Krajnyák, 2022, pp. 79–114.

- a. developing, possibly through a European charter for the environment, general obligations of states to apply the precautionary principle and promote sustainable development, protect the environment and prevent transfrontier pollution;
- b. drafting an amendment or an additional protocol to the European Convention on Human Rights concerning the right of individuals to a healthy and viable environment;

and to examine the possibilities of developing a European charter for the environment.³³

Furthermore, in Recommendation 1614 (2003), titled ‘Environment and human rights’, the Assembly explicitly called the Committee to draw up an additional protocol to the ECHR recognising individual procedural rights intended to enhance environmental protection based on the Aarhus Convention.³⁴ In addition, the Assembly also addressed the governments of member states, calling for the recognition of the ‘human right to a healthy, viable and decent environment’, including States’ obligation to protect the environment in national laws, preferably at the constitutional level.³⁵ Although the two recommendations were adopted a few years apart, a slightly different approach can be observed in the latter. Namely, it emphasised the procedural aspect of the right to a healthy environment, while also calling on member states to recognise the right in their domestic laws. In addition, the concept of an additional protocol on the right was integrated in the title of the recommendation, which certainly holds symbolic importance as a potential avenue for incorporating the right into the ECHR. On the other hand, it seemingly set aside the idea of developing a European charter for the environment and dedicated more attention to the procedural aspects, which could be explained by the entry into force of the Aarhus Convention in 2001.³⁶

Recommendation 1885 (2009), titled ‘Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment’ recalled the previous two recommendations, and embraced the significant development of the ECtHR’s environmental case law in the recent period. Furthermore, the Assembly explicitly reaffirmed its commitment to the recognition of the right to a healthy environment, not only as a fundamental right but also as a duty of society as a whole and each individual in particular to pass on a healthy and viable environment to future generations. In light of this, it recommended the Committee of Ministers draw up an additional protocol to the ECHR, recognising the right to a healthy and viable environment.³⁷ Although Recommendation 1885 (2009) did not bring a novel

33 Parliamentary Assembly of the Council of Europe, Recommendation 1431 (1999), para. 11.2.

34 UNECE, 1998, Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

35 Parliamentary Assembly of the Council of Europe, Recommendation 1614 (2003), para. 9.2.

36 The Aarhus Convention entered into force on 30 October 2001.

37 Parliamentary Assembly of the Council of Europe, Recommendation 1885 (2009), para. 10.1.

approach, as its recommendations have already been proposed in 1999, it demonstrates the Assembly's strong commitment to keep the issue on the agenda.

The current stage in the progress of the recognition of the right to a healthy environment in the Council of Europe is marked by Resolution 2396 (2021) and Recommendation 2211 (2021). The former document, titled 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe', is noteworthy in proposing a comprehensive approach to integrate environmental rights into the treaty system. First, the Assembly proposed to build and consolidate a legal framework to anchor the right to a safe, clean, healthy and sustainable environment, based on the UN guidance regarding the issue. This proposal was implicitly based on United Nations' studies and resolutions, principally on the Framework Principles on Human Rights and the Environment, elaborated by the UN Special Rapporteur John H. Knox and embraced by the Human Rights Council in 2018, which addressed the human right to a safe, clean, healthy and sustainable environment.³⁸ Furthermore, it is significant that the Human Rights Council adopted Resolution 48/13 on the human rights to a clean, healthy and sustainable environment on 8 October 2021, a few weeks after the Parliamentary Assembly's Resolution 2396 (2021), adopted on 29 September 2021, thus, the latter resolution was certainly timely and reflected the tendencies of its time.

Second, the Assembly proposed that the member states support multilateral efforts concerning the explicit recognition and protection of the right to a safe, clean, healthy and sustainable environment through international and European law. This proposal is strongly intertwined with the third recommendation, namely to participate in a political process under the aegis of the Council of Europe, aiming to prepare legally binding and enforceable instruments, an additional protocol to the ECHR, and an additional protocol to the European Social Charter (ESC).³⁹ In addition to the ECHR, the Charter is a major human rights treaty in the Council of Europe, in the field of economic, social and cultural rights.⁴⁰ Adopted in 1961 and revised in 1996, the Charter also enshrines rights related to the protection of the environment, such as Article 11 (right to protection of health), but not explicit environmental rights. The novel proposal of the Assembly to adopt an additional protocol to the ESC as well, would primarily complement the complaint mechanisms available in the Council of Europe, as it would enable non-governmental organizations to lodge collective complaints on environmental issues, which is relatively limited in the ECtHR's mechanism

38 United Nations Human Rights Council, A/HRC/37/59.

39 Parliamentary Assembly of the Council of Europe, Resolution 2396 (2021), para. 14.3.

40 Council of Europe, 1961, European Social Charter. See also: Council of Europe, 1996, European Social Charter (Revised).

that is open for individuals, groups of individuals or non-governmental organizations claiming to be the victim of a violation.⁴¹

The idea of the adoption of two separate protocols was also embraced in Recommendation 2211 (2021), holding the same title as Resolution 2396 (2021). Recommendation 2211 (2021) went one step further by providing the proposed text for an additional protocol to the ECHR on the right to a safe, clean, healthy and sustainable environment.⁴² Considering that the draft additional protocol has not been adopted at the time of the conclusion of the present chapter, the next paragraphs will be dedicated to a brief analysis of the proposal as the only source of the recognition of environmental rights in the Council of Europe.

The Preamble builds on Principle 1 of the Stockholm Declaration recognising the interrelation between human rights and the environment; embraces the ecocentric aspect of environmental rights by taking into account the intrinsic value of nature; and integrates intergenerational equity, referring to the duties and obligations of present and future generations. Article 1 provides the definition for the right to a safe, clean, healthy and sustainable environment, which relates to ‘the right of present and future generations to live in a non-degraded, viable and decent environment that is conducive to their health, development and well-being.’⁴³ The definition is remarkable, as the right is not explicitly defined in the major instruments enshrining it, such as the United Nations General Assembly (UNGA) Resolution 76/300,⁴⁴ the ACtHPR, or the Protocol of San Salvador.

Furthermore, the draft protocol sets out the key principles in Articles 2–4, such as the principle of transgenerational responsibility, equity and solidarity; the principle of environmental non-discrimination on account of belonging to a particular generation, also with a view on the vulnerable people; and the principles of prevention, precaution, non-regression and *in dubio pro natura*.⁴⁵

The draft protocol further distinguishes between the substantive right to a safe, clean, healthy and sustainable environment (Article 5), and procedural rights, such as access to information, participation in the decision-making process, the right of access to justice, and the right to an effective remedy (Article 6) – essentially the procedural rights established in Principle 10 of the Rio Declaration and the Aarhus Convention. The draft protocol also provides the inherent limitations of the rights set forth therein, such as legality, necessity, national security, territorial integrity, public

41 See: Article 34 of the ECHR: ‘The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.’

42 Parliamentary Assembly of the Council of Europe, Recommendation 2211 (2021), Appendix – The proposed text for an additional protocol to the European Convention on Human Rights, concerning the right to a safe, clean, healthy and sustainable environment.

43 Recommendation 2211 (2021), *ibid.*, Art. 1.

44 United Nations General Assembly, 2022, A/RES/76/300.

45 Recommendation 2211 (2021), *ibid.*, Arts. 2–4.

safety, the prevention of disorder or crime, the protection of health, or the protection of the rights and freedoms of others (Article 7). In addition, the text provides no possibility for derogation from the provisions under Article 15 of the ECHR (Article 8), and reservation under Article 57 of the ECHR (Article 9), both with the exception of Article 6.b (the right to be consulted in advance in order to be heard by the decision-making bodies regarding the authorisation and development of a specific project, programme or policy). Thus, the draft protocol clearly sets high standards of environmental protection through the guarantees of non-derogability and non-reservability, as well as through the environmental standards integrated therein, such as intergenerationality and ecocentrism.

The legal status of the recommendation is currently non-binding, as it has not been adopted in the form of an additional protocol.⁴⁶ Nonetheless, it may serve as a source of inspiration for the Court when considering the relevant sources of international or European law. For instance, in the recent *Verein KlimaSeniorinnen* judgement referred to above, the Court undertook an extensive examination of the legal framework concerning climate change and human rights, noting in particular Recommendation 2211 (2021) and Resolution 2396 (2021), as evidence of the growing consensus within the Council of Europe on the need to integrate human rights obligations into states' responses to climate change.⁴⁷ In addition, in the concurring opinion to *Pavlov and Others v. Russia*, Judge Serghides addressed the ongoing discussion on the recognition of the right in the ECHR, arguing for the need to adopt an additional protocol on a substantive right to a healthy, clean, safe and sustainable environment, which, according to the Judge, would provide broader and more complete Convention protection of the potential right secured by the Court. The Judge also noted that the lack of a formal legal basis had led the Court to reject several applications seeking a general protection of the environment.⁴⁸

Thus, it can be argued that the adoption of an additional protocol to the ECHR would be a crucial step in consolidating the emerging consensus and providing a stronger normative foundation for addressing the protection of the environment through human rights law in Europe, particularly given that the European human rights regime remains the only regional human rights system without a formal legal basis for environmental rights. In this regard, EU law is no exception, as it does not enshrine environmental rights either, as elaborated above. Nevertheless, the adoption of an additional protocol would certainly impact adjudication before the CJEU, as the Charter itself recognises that the rights enshrined therein result from the constitutional traditions and international obligations common to the Member States, and the ECHR, as well as the case law of the CJEU and the ECtHR.⁴⁹ Furthermore, the Treaty on European Union, which recognises that the Charter has the same legal

46 For a detailed analysis on the adoption of the additional protocol on the right to environmental rights and the current guarantees of the ECtHR, see: Kobylarz, 2023; Alasgarova, 2024.

47 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 2024, paras. 189–191.

48 *Pavlov and Others v. Russia*, 2022, Concurring opinion of Judge Serghides, paras. 18–22.

49 Charter of Fundamental Rights of the European Union, *ibid.*, Preamble.

force as the EU treaties, provides that the Union shall accede to the ECHR (Article 6.2), and that fundamental rights, as guaranteed by the ECHR, shall constitute general principles of the Union's law (Article 6.3).⁵⁰ While the EU accession to the ECHR was halted by Opinion 2/13 of the CJEU, and is further complicated by diverging jurisdictions in the field of environmental protection as well,⁵¹ the adoption of an additional protocol would nonetheless exert an indirect impact on EU law, as it would shape the interpretative framework applied by the ECtHR and thereby influence the development of fundamental rights standards within the EU.

3.2. *The Right to a Healthy Environment in the Inter-American and African Human Rights Frameworks*

As noted above, the Inter-American and the African human rights frameworks both recognise the right to a healthy environment, although in a different form. The Inter-American system did not provide for the right in the first human rights treaty, the ACHR, but it was included in the treaty system in 1988 with the adoption of an additional protocol to the Convention, the Protocol of San Salvador. The Protocol enshrines economic, social and cultural rights, such as the right to work and related rights (Articles 6–9), the right to health (Article 10), the right to a healthy environment (Article 11), the right to food (Article 12), the right to education (Article 13), the right to the benefits of culture (Article 14), the right to the formation and the protection of families (Article 15), the rights of vulnerable groups, such as children (Article 16), the elderly (Article 17), and the handicapped (Article 18).⁵²

The structure of human rights treaties within the Organization of American States (OAS) is comparable to that of the Council of Europe, as both systems codify civil and political rights and economic, social and cultural rights in separate, although related treaties. However, certain differences can be drawn between the two systems in this regard. First, the form of the two treaties is different, as economic, social and cultural rights are enshrined in a protocol to the ACHR in the OAS, thus they are integrated into the Convention, whereas the European Social Charter is not a protocol or other instrument supplementing the ECHR. Consequently, there are two separate complaint mechanisms in the European framework, that of the ECtHR and that of the ESCR. On the other hand, given that the Protocol of San Salvador amends the ACHR, it may be interpreted by the Inter-American Court, thanks to the progressive interpretation of Article 26 of the ACHR. Namely, Article 19(6) of the Protocol provides the justiciability of two rights established therein, the right to education and the right

50 European Union, Treaty on European Union, 7 February 1992, OJ C 191/1 (as amended by the Treaty of Lisbon 13 December 2007, OJ C 306/1), Art. 6.

51 See, for instance, the diverging standards on the locus standi of non-governmental organizations in the *Carvalho* (CJEU) and *Verein KlimaSeniorinnen* (ECtHR) cases. Krajnyák, 2024. See also: *Armando Carvalho and Others v. European Parliament and Council of the European Union*, 2021; *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, *ibid.*

52 Protocol of San Salvador: Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights, *ibid.*

of workers to organise trade unions and join the union of their choice.⁵³ However, given that it does not explicitly exclude the justiciability of the other rights, the Court established the justiciability of economic, social and cultural rights through Article 26 of the Convention in *Lagos del Campo v. Peru*, building on the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights.⁵⁴ This approach was extended to the right to a healthy environment as well, and confirmed in the abovementioned *Lhaka Honhat* and *La Oroya* judgements.⁵⁵

The right to a healthy environment was extensively interpreted by the IACtHR in *Advisory Opinion OC-23/17*. In the opinion, the Court pronounced that the right, as enshrined in Article 11 of the Protocol, is included among the economic, social and cultural rights protected by Article 26 of the ACHR.⁵⁶ Furthermore, the Court recognised that the right to a healthy environment has both individual and collective aspects, and it embraces a universal value that is owed to both present and future generations.⁵⁷ Furthermore, the Court summarised States' obligations under the right, namely: (a) guaranteeing everyone, without any discrimination, a healthy environment in which to live; (b) guaranteeing everyone, without any discrimination, basic public services; (c) promoting environmental protection; (d) promoting environmental conservation, and (e) promoting improvement of the environment.⁵⁸ The Court also noted that the right to a healthy environment as an autonomous right differs from the environmental content of other rights, such as the rights to life, personal integrity, private life, health, water, food, housing, participation in cultural life, property, and the right not to be forcibly displaced.⁵⁹ In addition, the Court considered the vulnerability aspect of the right to a healthy environment, thus that the effect of environmental degradation may be felt with greater intensity by certain groups in vulnerable situations, such as indigenous peoples, children, people living in extreme poverty, minorities, and people with disabilities.⁶⁰

Consequently, in light of the above, it can be concluded that, in comparison with the European framework, where the Court has never provided a comprehensive understanding of the protection of the environment in the European human rights regime, the Inter-American Court has developed a coherent doctrine on integrating environmental protection into the human rights framework. However, once adopted,

53 Article 19(6) reads as follows: 'Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Art. 44 through 51 and 61 through 69 of the American Convention on Human Rights.'

54 *Lagos del Campo v. Peru*, 2017, paras. 141–154.

55 Estrada Vargas, 2024.

56 *Advisory Opinion OC-23/17, The Environment and Human Rights*, 2017, para. 57.

57 *Advisory Opinion OC-23/17*, *ibid.*, para. 59.

58 *Advisory Opinion OC-23/17*, *ibid.*, para. 60.

59 *Advisory Opinion OC-23/17*, *ibid.*, paras. 63–66.

60 *Advisory Opinion OC-23/17*, *ibid.*, para. 67.

the additional protocol to the ECHR will be comparable with the Inter-American standards, as the draft protocol also embraces a complex approach to the right to a healthy environment, by emphasising the individual and collective dimension of the right, intergenerational equity, and vulnerability.

The African human rights system also recognises the right to a healthy environment in Article 24 of the ACHPR, as the first and so far, only binding and enforceable regional human rights treaty that explicitly enshrines this right. The specificity of the ACHPR (also known as the Banjul Charter) is that it guarantees human rights in a comprehensive way, equally providing individual rights (Articles 1–14), as well as group rights (Articles 15–24) in the treaty text.⁶¹ Furthermore, one of the protocols to the Banjul Charter, the so-called Maputo Protocol on the Rights of Women in Africa, adopted in 2003, also protects the right to a healthy and sustainable environment, providing that States Parties shall take appropriate measures to ensure greater participation of women in the protection of the environment and the sustainable use of natural resources; promote research and investment in new and renewable energy sources and appropriate technologies, and facilitate women's access to, and participation in their control; protect and enable the development of women's indigenous knowledge systems; regulate the management of domestic waste; and ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.⁶²

The African Court had a limited opportunity to provide a comprehensive interpretation of the right to a healthy environment; nevertheless, the request for an advisory opinion submitted in May 2025 will certainly allow the Court to elaborate on its understanding of the environmental standards of the African human rights regime.⁶³ Based on the above, one can conclude that the African human rights regime provides a solid normative framework for the protection of the environment in human rights law, which explicitly recognises the collective dimension of the right to a healthy environment, as well as the vulnerability aspect of women, as enshrined in the Maputo Protocol.

3.3. *The Right to a Healthy Environment in Other Regional Human Rights Systems*

In addition to the ECHR, the ACHR, and the ACHPR, human rights instruments have also been adopted in other regions of the world. However, a key difference between the above analysed three systems and the ones presented in this subchapter is that in the latter case, these instruments may not be binding or may not be enforceable in procedures before human rights adjudicatory bodies. Nonetheless, given that they guarantee the rights of millions of people throughout the Middle East and Southeast Asia, these human rights instruments are also worth a brief summary.

61 See: Evans and Murray, 2008, pp. 171–288.

62 African Union, 2003, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. XVIII.

63 See: Request for an advisory opinion on the human rights obligations of African states in addressing the climate crisis. See also: Suedi, 2025.

The Arab Charter on Human Rights, adopted in 2004 under the aegis of the League of Arab States, is the major human rights treaty for Arab states. The Charter includes provisions for civil and political rights, as well as economic, social and cultural rights. Among the rights belonging to the second group, Article 38 provides the right of every person to an adequate standard of living for himself and his family, which ensures well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The provision further sets out that States Parties shall take the necessary measures commensurate with their resources to guarantee these rights.⁶⁴ This provision demonstrates the progressive approach of the treaty drafters, as they included the right to a healthy environment, as well as other related guarantees, building on the then-recent general comments of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to an adequate standard of living, including adequate food and water, and the right to the enjoyment of the highest attainable standard of physical and mental health.⁶⁵ On the other hand, the provision also embraces certain values of the Islam, as referred to in the Preamble,⁶⁶ such as the collective obligation for public welfare and the responsibility for future generations.⁶⁷ However, despite the high standards guaranteed in the Charter, the treaty does not provide for an enforcement mechanism of individual petitions; thus, its provisions are not interpreted in detail either.

Furthermore, the ASEAN Human Rights Declaration, adopted as a soft law document in 2012 within the framework of the Association of Southeast Asian Nations (ASEAN), also integrates the right of every person to a safe, clean and sustainable environment under the right to an adequate standard of living for himself or herself and his or her family, along with the right to adequate and affordable food, freedom from hunger and access to safe and nutritious food; the right to clothing; the right to adequate and affordable housing; the right to medical care and necessary social services; the right to safe drinking water and sanitation (Article 28). In addition, Article 35 enshrines the right to development, which integrates the concept of sustainable development by providing that '[t]he right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.'⁶⁸

This definition clearly drew inspiration from the Brundtland Commission's report titled 'Our Common Future', which established the definition of sustainable development, as provided above.⁶⁹ The ASEAN Human Rights Declaration is, therefore,

64 League of Arab States, 2004, Arab Charter on Human Rights, Art. 38.

65 CESCR, E/C.12/1999/5, 1999; CESCR, E/C.12/2000/4., 2000; CESCR, E/C.12/2002/11, 2002.

66 Arab Charter on Human Rights, *ibid.*, Preamble.

67 Said, 1979, pp. 65–68.

68 See: Association of Southeast Asian Nations, 2012, ASEAN Human Rights Declaration, Arts. 28 and 35.

69 Report of the World Commission on Environment and Development: Our Common Future, 1987, para. 27. The Report defines sustainable development as a development that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.

the only human rights instrument – from the scope of either universal or regional documents – explicitly embracing the concept of sustainable development, and thus integrating intergenerational equity and vulnerability. The ASEAN Declaration is a soft law document, which, similar to the Arab Charter, lacks an enforcement mechanism. Nevertheless, it has a certain normative value for the Southeast Asian nations, as the only comprehensive human rights document in the region.

Notwithstanding the legal status of the Arab Charter and the ASEAN Declaration, they bring relevant contributions to the development of the concept of the right to a healthy environment. Both instruments reflect a progressive approach by demonstrating openness to cross-regime influence, allowing them to embody a comprehensive understanding of the protection of the environment in human rights law. The environmental provisions of these instruments imply that there is an emerging consensus across different regional human rights regimes on the interrelation of human rights and the protection of the environment, and the recognition of the right to a healthy environment as well.

4. Concluding Remarks

This chapter has addressed the role of regional human rights courts in incorporating environmental protection into human rights jurisprudence. We examined how adjudicatory bodies respond to current environmental challenges and how they integrate substantive and procedural environmental standards into existing human rights frameworks. The chapter has also compared the recognition of the right to a healthy environment across regional systems and the specificities of the concept in the different regimes. By providing this conceptual overview, the chapter provides the foundation for the following chapters, which will explore thematic developments and cross-regime influences in the jurisprudence of regional courts. Ultimately, the analysis underscores the evolving and increasingly central role of regional human rights jurisprudence at the intersection of human rights and environmental law.

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