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## OTROS ESTUDIOS

### **A Fundamental Right to Climate Sustainability? EU Developments on Mitigation and Adaptation in the Light of International Law**

¿Un derecho (fundamental) a la sostenibilidad climática? Evolución en la UE sobre adaptación y mitigación a la luz del derecho internacional

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# A Fundamental Right to Climate Sustainability? EU Developments on Mitigation and Adaptation in the Light of International Law

*¿Un derecho (fundamental) a la sostenibilidad climática?  
Evolución en la UE sobre adaptación y mitigación a la luz del derecho  
internacional*

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**Summary:** I. Introduction.—II. The development of a right to climate sustainability in the EU.—III. EU law in the global context: progressive international law developments? 1. The international obligation to curb carbon emissions: particular and interstate effectiveness. 2. A human right?—IV. Considerations in the light of the right to environmental sustainability. 1 Evolution of environmental protection as a human right.—2. Systemic implications for the right to climate sustainability.—V. Modeling the system: substantive and procedural climate rights and duties.—VI. Conclusion.—VII. Bibliography.

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**Abstract:** Based on key normative references, the article argues that a fundamental “right to climate sustainability” is developing as an independent claim in the European Union (EU). However, is such a right systemically viable? In the light of

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the correlativeness between rights and duties, the article contextualises EU developments against the background of international law, whereby the right to climate sustainability emerges as a particular claim, rather than a universal one, and is only sporadically mentioned as a fundamental duty, more specifically as soft law rather than a strictly binding commitment. Arguably, however, the recent declaration of the fundamental nature of the right to a sustainable environment by the UN General Assembly also implies the international recognition of the human rights nature of the right to climate sustainability, with respect to both mitigation and adaptation. Indeed, the right to climate sustainability—including correlated substantive and procedural duties—is a component of the right to environmental sustainability, at both the international and EU level.

**Keywords:** European Union, climate sustainability, fundamental rights, right to environmental sustainability, right to climate sustainability.

**Resumen:** *Basado en referencias normativas clave, el artículo afirma que un «derecho fundamental a la sostenibilidad climática» se está desarrollando como un reclamo independiente en la Unión Europea (UE). Sin embargo, ¿es sistemáticamente viable ese derecho? A la luz de la correlatividad entre derechos y deberes, el artículo contextualiza los avances de la UE en el sistema del derecho internacional, según el cual el derecho a la sostenibilidad climática surge como una reivindicación particular, más que universal, y sólo se menciona esporádicamente como un deber fundamental, más específicamente como una ley indicativa y no como una obligación estricta o un compromiso vinculante. La reciente declaración de la naturaleza fundamental del derecho a un medio ambiente sostenible por parte de la Asamblea General de las Naciones Unidas también implica el reconocimiento internacional de la naturaleza fundamental del derecho a la sostenibilidad climática, con respecto tanto a la mitigación como a la adaptación. De hecho, el derecho a la sostenibilidad climática —incluidos los deberes sustantivos y procesales correlacionados— es un componente del derecho a la sostenibilidad ambiental, tanto a nivel internacional como de la UE.*

**Palabras clave:** *Unión Europea, sostenibilidad climática, derechos fundamentales, derecho a un medio ambiente sostenible, derecho a un clima sostenible.*

## I. Introduction

Is a “right to climate sustainability” developing in the European Union (EU)? Can it be conceived of as a “fundamental” or “human” right?<sup>2</sup> Should it concern both carbon mitigation and adaptation measures? What are the implications of the establishment of a “human right to a sustainable environment” for the “right to climate sustainability”?

An analysis of key normative instruments reveals that, within the context of the European Green Deal,<sup>3</sup> a fundamental “right to climate sustainability” is emerging at the EU level, more progressively than—and possibly in contrast with—international law, which instead focuses intensively on the development of a fundamental “right to a sustainable environment”, along the lines of most domestic constitutions, including those of EU Member States.<sup>4</sup> Indeed, following up on a resolution of the United Nations (UN) Human Rights Council (HRC),<sup>5</sup> which was adopted within the context of the right to development,<sup>6</sup> in 2022 the UN General Assembly acknowledged that the “right to a sustainable, safe, clean, healthy and sustainable environment” is a “human right” under international law.<sup>7</sup> This is an important development that has manifold implications, as the right to a sustainable environment is a broad concept that essentially covers an entire area of international law, encompasses different components and as such might also have critical implications for the establishment of a right to climate sustainability in the EU: how do the right to a sustainable environment and the right to climate sustainability relate to one another? What does the affirmation of the human rights nature of the former entail for the latter?

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<sup>2</sup> The expressions “fundamental rights” and “human rights” are used in this article interchangeably. See the EU Agency for Fundamental Rights, 2021, “What Is the Difference between Human Rights and Fundamental Rights?”, <https://fra.europa.eu/en/about-fundamental-rights/frequently-asked-questions#difference-human-fundamental-rights>.

<sup>3</sup> European Commission, 2019, Doc. COM/2019/640 final, “The European Green Deal”, Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions.

<sup>4</sup> For purposes of simplicity and consistency, we rely on the expression “sustainable climate” throughout this paper, particularly along the lines of the idea of “sustainable development” (World Commission on Environment and Development, 1987, Brundtland Report, “Our Common Future”).

<sup>5</sup> HRC, 2021, UN Doc. A/HRC/48/L.23/Rev.1, “The Human Right to a Safe, Clean, Healthy and Sustainable Environment”, 3, para. 1.

<sup>6</sup> HRC, 2021, UN Doc. A/HRC/48/L.18, “The Right to Development”; HRC, 2021, “The Human Right ...”, 1-2, preamble.

<sup>7</sup> HRC, 2021, “The Human Right ...”, 3, para. 4; UN General Assembly, 1 August 2022, A/RES/76/300, “The Human Right to a Clean, Healthy and Sustainable Environment”.

The analysis is grounded in multi-layered legal positivism, aiming to single out systemic consistency and inconsistency between existing and developing legal rules at the EU–and Member States’–level, against the background of international regulation. In this context, the distinction between primary and secondary rules, regarded as either substantive and procedural elements according to Hart or obligations and sanctions according to Kelsen,<sup>8</sup> provides a viable schematic paradigm for analysing relevant normative frameworks. More specifically, in the light of the theory of jural relationships developed by Wesley Newcomb Hohfeld and Hans Kelsen,<sup>9</sup> it is considered that rights and duties are correlated concepts, whereby the right of one necessarily entails the duty of another and vice versa. The ideas of a “right to climate sustainability” and a “duty to implement climate sustainability” are therefore interchangeably seen as two sides of the same coin, as are the broader concepts of a “right to environmental sustainability” and of the correlated “duty to implement environmental sustainability”.

Against this background, research unfolds in four parts. The first part aims to assess whether a right to climate sustainability can be singled out as a specific fundamental claim within the EU. In this context, the expression “right to climate sustainability” is preferred to that of a “right to a sustainable climate” as, while the former encompasses both mitigation and adaptation duties, the latter can be interpreted more restrictively as a reference to mitigation duties only. The second part compares and contrasts EU developments with the evolution of a right to climate sustainability in international law, along the lines of the distinction between hard and soft law. The third part delves into the matter in the light of the progressive establishment of an international right to a sustainable environment as a turning point with critical systemic implications. It traces the evolution of this right until its recent affirmation as a human right by the UN General Assembly under international law and further considers the implications of the establishment of the human rights nature of the right to a sustainable environment for the right to climate sustainability. The fourth part develops the systemic implications of the EU right to climate sustainability in terms of substance, with respect to both carbon mitigation and adaptation, and procedure.

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<sup>8</sup> Herbert Hart, *The Concept of Law* (Oxford, Clarendon Press, 1952); Hans Kelsen, *Reine Rechtslehre: Einleitung in die rechtswissenschaftliche Problematik* (Leipzig and Wien, Franz Deuticke, 1934).

<sup>9</sup> Wesley Newcomb Hohfeld, “Fundamental Legal Conceptions as Applied in Judicial Reasoning”, *Yale Law Journal* 26 (1916) 710; Kelsen, *Reine Rechtslehre ...*

## II. The development of an EU right to climate sustainability

In recent years, the EU has taken some meaningful steps towards the recognition of a specific human right to climate sustainability. Contrary to environmental developments in the EU normativity, climate developments have taken place despite the conservative stance of the Court of Justice of the EU (CJEU), which has rejected climate claims on procedural grounds, based on the absence of individual damage under article 263(4) of the Treaty on the Functioning of the EU (TFEU).<sup>10</sup> Notably, through Resolution 2020/2134(INI),<sup>11</sup> the European Parliament has acknowledged the necessity of establishing not only a universal “fundamental right to a safe, clean, healthy and sustainable environment”, but also to “a stable climate”, which needs to be “fully enforceable through the justice system at all levels” (principle 9). The statement embeds a core recognition of not only a substantive right, but also of its procedural implications and sanctioning consequences. This is necessitated by the acknowledgment of the impact of climate change on the effective enjoyment of various human rights, including the rights to life, food security, safe drinking water and sanitation, health and housing (preamble, B), whereby, according to the World Health Organisation and the World Food Programme, the impact of climate change exposes around 750 million people—one in ten persons worldwide—to severe food insecurity (preamble, U). The idea of a systemic approach to the right to climate sustainability in terms of substantive obligations, procedural implications and sanctions is further underscored via a reference to climate change litigation as a procedural means to hold both States and corporations responsible for implementing a healthy life for present and future generations (preamble, D).<sup>12</sup> In the light of extensive regulatory initiatives adopted by the EU, in particular, the European Green Deal and European Climate Law,<sup>13</sup> the reference to “sustainability” in the context of the human right to a stable climate should be read as encompassing both mitigation and adaptation measures.<sup>14</sup>

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<sup>10</sup> See, in particular, *Carvalho v. the European Parliament and the Council*, Case T-330/18, EU:T:2019:324; *Carvalho v. the European Parliament and the Council*, Case C-565/19 P EU:C:2021:252, para. 50.

<sup>11</sup> European Parliament, 19 May 2021, Resolution 2020/2134(INI), “Effects of Climate Change on Human Rights and the Role of Environmental Defenders on This Matter”.

<sup>12</sup> See Shalini Iyengar, “Human Rights and Climate Wrongs: Mapping the Landscape of Rights-Based Climate Litigation”, *RECIEL* 32 (2023) 299.

<sup>13</sup> European Parliament and Council, 30 June 2021, Regulation 2021/1119, “Establishing the Framework for Achieving Climate Neutrality”, OJ EU L 243, 9/7/2021, 1.

<sup>14</sup> Juliane Albrecht, “Climate Adaptation Law: A European Perspective”, *China EU Law Journal* (2024) 1.

Such developments have taken place within an advanced regulatory framework for climate and environmental protection at the level of the primary and secondary sources of EU law. Indeed, while the founding treaties were not initially concerned with the environment, upon impulsion by the European Court of Justice (ECJ) first and subsequently by the Court of Justice of the European Union (CJEU), the EU has progressively included environmental protection in its primary sources, with relevant ramifications at the level of secondary EU law. Thus, sustainable development and environmental protection have been recognised as basic principles of EU internal and external action in articles 3(3) and 21(2)(f)-(g) of the Treaty on European Union (TEU) since its adoption in Maastricht in 1992. Consistently, within Title XX of the Treaty on the Functioning of the European Union (TFEU) on “Environment”, article 191 acknowledges the objective of combating climate change in the broader context of high-level environmental protection. Along these lines, TFEU article 11 and article 37 of the EU Charter of Fundamental Rights (EUCFR) create for the Union a duty to integrate a high level of environmental protection into all its policies within the remit of sustainable development as a human rights matter.<sup>15</sup> Despite compulsory language (“must”), however, these rules, notably EUCFR article 37, have been interpreted by a majority of scholars,<sup>16</sup> and consequently by European institutions,<sup>17</sup> as only establishing environmental protection as a principle, rather than a justiciable right, as concerns environmental protection, within the Union. Within this framework, the European Green Deal shapes the 2050 climate neutrality target also in terms of social rights.<sup>18</sup>

By contrast, the Council of Europe system, to which all EU Member States are parties and to which the EU should accede in the foreseeable future, has adopted a more conservative stance, focusing primarily on the right to a safe environment. Notably, via Recommendation 2211/2021, the Parliamentary Assembly of the Council of Europe asked the Committee of Ministers to adopt a protocol additional to the European Convention on Human Rights (ECHR) and one additional to the European Social Charter (ESC), in order to recognise the right to a safe,

<sup>15</sup> In essence, EUCFR article 37 reproduces the content of TEU article 11.

<sup>16</sup> See, notably, Elisa Morgera and Gracia Marin-Duran, “Article 37”, in *The EU Charter of Fundamental Rights: A Commentary*, eds. Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (Oxford, Hart, 2021), 989.

<sup>17</sup> See the European Parliament, “Effects of Climate Change ...”, which, by recommending the establishment of an enforceable human right to a sustainable climate, implicitly acknowledges that it is not yet normatively applicable under EU law.

<sup>18</sup> European Commission, 2019, “The European ...”, 4.

clean, healthy and sustainable environment.<sup>19</sup> This prompted the Committee of Ministers to pass a Recommendation requesting States parties to the Council of Europe to implement the right to a healthy environment at the domestic level.<sup>20</sup> Significantly, however, the European Court of Human Rights (ECtHR) has re-oriented its jurisprudence traditionally aiming at “greening” human rights<sup>21</sup> towards more specific climate protection. Thus, for instance, in *Verein KlimaSeniorinnen Schweiz*, the Court acknowledged that the State has positive obligations to achieve climate neutrality, whereby insufficient climate mitigation—and ancillary adaptation—breaches the right to private and family life under article 8 of the European Convention on Human Rights (ECHR)—and similarly the right to life under ECHR article 2.<sup>22</sup> This approach follows the stance taken by domestic courts in the Netherlands in the case brought by the Urgenda foundation against the Dutch State for taking insufficient climate action, based on the right to life interpreted as a claim to live in a sustainable environment and climate.<sup>23</sup>

### III. EU law in the international context: progressive international law developments?

#### 1. *The international obligation to curb carbon emissions: relative and interstate effectiveness*

In the light of the variety of existing treaties and regulations, the question arises whether any climate rights are recognised within the more comprehensive framework of environmental sustainability at the interna-

<sup>19</sup> Parliamentary Assembly of the Council of Europe, 2021, Recommendation 2011, “Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe”. See also Amnesty International, European Institutions Office, 15 March 2024, “Call for the Adoption of an Additional Protocol to the ECHR on the Right to a Clean, Healthy and Sustainable Environment”, <https://www.amnesty.eu/news/call-for-the-adoption-of-an-additional-protocol-to-the-european-convention-on-human-rights-on-the-right-to-a-clean-healthy-and-sustainable-environment>.

<sup>20</sup> Committee of Ministers of the Council of Europe, 2022, CM/Rec(2022)20, Recommendation to Member States on Human Rights and the Protection of the Environment.

<sup>21</sup> See the Council of Europe, 2022, “Manual on Human Rights and the Environment”, 3rd ed., <https://rm.coe.int/manual-environment-3rd-edition/1680a56197>.

<sup>22</sup> *Verein KlimaSeniorinnen Schweiz v. Switzerland*, ECtHR, Case No. 53600/20, Judgment of 9 April 2024, para. 542 ff, particularly paras 548, 552 and 555.

<sup>23</sup> *The Netherlands v. Urgenda*, Case No. C/09/456689/HA ZA 13-1396, Judgment of 9 October 2018, paras 63-64; *The Netherlands v. Urgenda*, Case 19/00135, Judgment of 20 December 2019, para. 5.1 ff.



tional level. In this regard, although the nature and content of principles and obligations under the UN Framework Convention on Climate Change (UNFCCC)<sup>24</sup> and the Paris Agreement<sup>25</sup> are debated,<sup>26</sup> there is little doubt that the parties to the UNFCCC regime, and thus the EU and its Member States, have at least a duty to pursue the objective of curbing greenhouse gas (GHG) emissions within a maximum increase of 2°C above pre-industrial levels, implementing the best efforts towards the achievement of a more stringent 1.5°C objective.<sup>27</sup> Without entering into a detailed analysis of the UNFCCC normativity, it can be noted that a “right (and duty) to climate sustainability” can be inferred from claims and obligations embedded in the UNFCCC and its additional protocols, particularly the Paris Agreement. Indeed, scholars who have delved into the nature of UNFCCC rules conclude that the convention establishes a primary duty to prevent damage caused by climate change via the reduction and sequestration of carbon emissions.<sup>28</sup> Although very little studies have been devoted to the question, similar considerations should *a fortiori* apply to climate change adaptation, whereby sovereign entities, including the EU and its Member States, should be considered bound by a duty (entailing a correlated right) to make the best efforts and implement adequate adaptation measures for minimising the negative effects of global warming, including obligations that span awareness raising, uncertainty assessment and building barriers to counter sea level rise.<sup>29</sup> In this regard, the essentially sole analysis that has been devoted to the question underscores the decisive contribution of the European Climate Law to outlining the content of the obligation to adapt to climate change.<sup>30</sup> These duties have been confirmed by the International Tribunal on the Law of the Sea (ITLOS) in its opinion on the obligations to protect the marine environment

<sup>24</sup> Opened for signature 9 May 1992, 1771 UNTS 107, entered into force 21 March 1994.

<sup>25</sup> Paris Agreement, UN Doc. C.N.63.2016.TREATIES-XXVII.7.d, opened for signature 12 December 2015.

<sup>26</sup> Malgosia Fitzmaurice, “Responsibility and Climate Change”, *German Yearbook of International Law* 53 (2010) 89; Daniel Bodansky, “The Legal Character of the Paris Agreement”, *Review of European, Comparative and International Environmental Law* 25(2) (2016) 142.

<sup>27</sup> Benoît Mayer, “Obligations of Conduct in the International Law on Climate Change: A Defence”, *Review of European, Comparative and International Environmental Law* 27 (2018) 130.

<sup>28</sup> Roda Verheyen, *Climate Change Damage and International Law: Prevention Duties and State Responsibility* (Leiden, Brill, 2005) 142.

<sup>29</sup> Albrecht, “Climate Adaptation ...”, 3. See also, even if only collaterally, European Parliament, 2023, PE 749.395, “The Normative Status of Climate Change Obligations under International Law”, 11.

<sup>30</sup> Albrecht, “Climate Adaptation ...”, 2.

from climate change, holding, in relation to articles 192 and 194(2) of the UN Convention on the Law of the Sea (UNCLOS), that, by imposing an obligation to prevent transboundary pollution, the rule also covers mitigation and adaptation measures addressing carbon emissions causing global warming.<sup>31</sup> In this respect, a significant contribution might be provided in the future by the pending advisory opinion of the International Court of Justice (ICJ) on the obligations of States in respect of climate change and their consequences.<sup>32</sup>

As it has unfolded within the context of the UNFCCC regime and connected treaties, such as the UNCLOS, which are specific treaty systems,<sup>33</sup> it must be fundamentally considered that the right to climate sustainability—that is, the concept correlated to the duty to prevent climate change damage through carbon emission reduction and sequestration (theoretically leading to net zero carbon emissions), as well as to adapt to its negative effects—has a particular scope of application in international law, in contrast with the EU development as a universal claim. Given the tendency of human rights to achieve a universal scope of application,<sup>34</sup> the limited effectiveness of the right to climate sustainability represents an obstacle to the conception of its human rights nature. This objection might nevertheless be overcome by assuming that the right to climate sustainability might be on track to unfold as a universal one, beyond the particular effectiveness of international agreements.<sup>35</sup> In this respect, it can be noted that, in addition to the EU and its Member States, 179 Parties have thus far ratified the UNFCCC and 164 have ratified the Paris Agreement,<sup>36</sup> which might be interpreted as evidence of the emergence of a universal right and a correlated duty to strive and achieve climate sustainability. Indeed, international conventions including a by far more lim-

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<sup>31</sup> *Request Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, ITLOS, 21 May 2024, paras 252 and 321.

<sup>32</sup> *Obligations of States in Respect of Climate Change*, Request for advisory opinion pursuant to General Assembly Resolution 77/276 of 29 March 2023.

<sup>33</sup> ILC, 2006, UN Doc. A/CN.4/L.682, “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law”.

<sup>34</sup> HRC, “The Human Right ...”, 1, preamble.

<sup>35</sup> See, for instance, Ottavio Quirico, “Environmental Rights and Climate Rights: *Erga Omnes* Obligations in International Law and EU Law?”, *Hungarian HYBILEL* 2022(10) 105, 109 ff.; Adam Perri, “The ‘Common Concern of Humankind’: Establishing *Erga Omnes* Obligations for Climate Change Responsibility in the ICJ’s Forthcoming Advisory Opinion”, *Maryland LR* 83(4) (2024) 1352.

<sup>36</sup> UNFCCC, “Status of Ratification”, <https://unfccc.int/process-and-meetings/the-convention/status-of-ratification/status-of-ratification-of-the-convention>; Paris Agreement, Status of Ratification, <https://unfccc.int/process/the-paris-agreement/status-of-ratification>.

ited number of parties, such as the 1966 human rights covenants,<sup>37</sup> are considered to spawn universal duties.<sup>38</sup>

Another critical characteristic of the international right and duty to strive and achieve climate sustainability, with regard to both mitigation and adaptation, is its classical interstate nature, according to article 1 of the Vienna Convention on the Law of Treaties (VCLT)<sup>39</sup> and of the Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations (VCLTIO),<sup>40</sup> in contrast with the EU development of a human right to climate sustainability as an individual claim. Indeed, rights and duties under the UNFCCC regime and related treaty systems bind sovereign entities, but do not include rules addressing non-sovereign natural and legal persons. For example, concerning mitigation, according to UNFCCC article 4(1)(a), “[a]ll Parties”, must formulate, implement, publish and update national and regional programmes containing climate change mitigation measures, in the light of common but differentiated responsibility. Moreover, UNFCCC article 4(2)(a) provides that “[e]ach of these Parties”, that is, developed country Parties and other Parties included in Annex I, adopt national policies and take corresponding climate change mitigation measures, thus limiting anthropogenic GHG emissions and protecting and enhancing GHG sinks and reservoirs. In the matter of adaptation, under UNFCCC article 4(1)(e), “[t]he Parties” cooperate in preparing for adaptation to the impacts of climate change and develop integrated plans for coastal zone management, water resources and agriculture, as well as for the protection and rehabilitation of areas impacted by drought, desertification and flooding. Consistently, according to article 3 of the Paris Agreement, as concerns mitigation, “all Parties” undertake and communicate ambitious efforts to contain temperature increase within 2°C—and possibly 1.5°C—in order to achieve climate sustainability. With regard to adaptation, article 7 of the Paris Agreement provides that the “Parties” establish the global goal of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, aiming to contribute to sustainable development and ensure adequate adaptation responses in the framework of the 2°C—and possibly 1.5°C—overall temperature goal.<sup>41</sup>

<sup>37</sup> International Covenant on Civil and Political Rights (ICCPR), opened for signature 16 December 1966, 999 UNTS 171, entered into force 23 March 1976; International Covenant on Economic, Social and Cultural Rights, Opened for signature 16 December 1966, 993 UNTS 3, entered into force 3 November 1976.

<sup>38</sup> OHCHR, 1996, Fact Sheet, “The International Bill of Human Rights”.

<sup>39</sup> Opened for signature 23 May 1969, 1155 UNTS 331, entered into force 27 January 1980.

<sup>40</sup> Opened for signature 21 March 1986, not yet into force.

<sup>41</sup> See further Albrecht, “Climate Adaptation ...”, 4 and 5.

While this approach does not exclude the possibility that a State or an international organisation, including the EU, has a duty to stabilise carbon emissions and adapt to the effects of climate change vis-à-vis not only other sovereign entities, but also non-sovereign entities, this can only be implicitly inferred based on an interpretation that extends beyond the scope of the UNFCCC regime and related treaty systems, in the light of a contextual interpretation, according to VCLT and VCLTIO article 31.

## 2. *A human right?*

While the duty—or duties—to curb GHG emissions and adapt to the consequences of climate change can be safely admitted under international law on a particular scale, finding evidence of a correlated human right to climate sustainability—similar to the foreseeable EU normative evolution—is more problematic. In spite of the limited subjective and objective scope of application intrinsic in its conventional basis,<sup>42</sup> the notion of a human right to climate sustainability as an independent claim, with respect to both mitigation and adaptation, emerges at the global level only sporadically, through instances that can be counted on the fingers of one hand.

Scientific data report the gravity and importance of the climate crisis.<sup>43</sup> According to the Intergovernmental Panel on Climate Change (IPCCC), “[a]pproximately 3.3 to 3.6 billion people live in contexts that are highly vulnerable to climate change”, whereby “increasing weather and climate extreme events have exposed millions of people to acute food insecurity and reduced water security”, with the most acute impacts detected “in many locations and/or communities in Africa, Asia, Central and South America, LDCs, Small Islands and the Arctic, and globally for Indigenous Peoples, small-scale food producers and low-income households”.<sup>44</sup> In this context, “[b]etween 2010 and 2020, human mortality from floods, droughts and storms was 15 times higher in highly vulnerable regions, compared to regions with very low vulnerability”.<sup>45</sup> The World Bank affirms that the low-lying Island State of Kiribati in the Pacific “faces considerable risk from climate variability and sea-level rise”, to the extent that it is at “poten-

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<sup>42</sup> See s. 2.1.

<sup>43</sup> WMO, 2025, “WMO Confirms 2024 as Warmest Year on Record at about 1.55°C above Pre-industrial Level”, <https://wmo.int/news/media-centre/wmo-confirms-2024-warmest-year-record-about-155degc-above-pre-industrial-level>.

<sup>44</sup> IPCC, 2023, Synthesis Report, Summary for Policymakers, “Climate Change”, 5.

<sup>45</sup> *Ibid.*

tial risk of permanent inundation”,<sup>46</sup> with negative implications for the right to self-determination as the very basis of all human rights (article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and of the International Covenant on Civil and Political Rights (ICCPR)). Along these lines, a few scholars submit that a human right to “climate sustainability”,<sup>47</sup> rather than the right to a “sustainable climate”,<sup>48</sup> might progressively emerge in international law, as a component of the right to environmental sustainability.

Currently, the claim to climate sustainability is not recognised as a binding human rights norm internationally and domestically, including the EU Member States. This trend follows the UN approach, whereby analysis has initially focused on specific human rights and later on the holistic right to environmental sustainability, while the right to climate sustainability per se rarely emerges and only as an ancillary concept. Indeed, in line with her mandate, the current Special Rapporteur to the HRC on the Promotion and Protection of Human Rights in the Context of Climate Change has thus far exclusively focused on the impact of climate change on different human rights, spanning the rights of migrants and those of older people.<sup>49</sup> Slightly more progressively, the former Rapporteur to the HRC on Human Rights and the Environment prepared a specific “Climate Report”, which is nonetheless still mostly focused on the “right to a sustainable environment” and only incidentally refers to the “right to a safe climate”,<sup>50</sup> a notion that seems to refer to mitigation

<sup>46</sup> World Bank. 2024, “Climate Change Knowledge Portal, Kiribati”, <https://climate-knowledgeportal.worldbank.org/country/kiribati>.

<sup>47</sup> Francesco Francioni and Ottavio Quirico, “Untying the Gordian Knot: Towards the Human Right to a Climatically Sustainable Environment?”, in *Climate Change and Human Rights: An International and Comparative Law Perspective*, Ottavio Quirico and Mouloud Boumghar eds. (London and New York, Routledge, 2016) 133.

<sup>48</sup> Ademola Jegede, “Arguing the Right to a Safe Climate under the UN Human Rights System”, *International Human Rights Law Review* 9 (2020) 184; *Id.*, “Should a Human Right to a Safe Climate Be Recognized under the AU Human Rights System?”, in *Human Rights and the Environment under African Union Law*, eds. Michael Addaney and Ademola Oluorode Jegede (Cham, Palgrave, 2020) 55.

<sup>49</sup> Elisa Morgera, 24 July 2024, A/HRC/56/46, “Scene-setting”, Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change”. See further, with respect to mitigation, Linnéa Nordlander, “What’s in a Right? Concretizing States’ Climate Change Mitigation Obligations under Human Rights Law”, *Human Rights Law Review* 24 (2024) 1. With regard to adaptation, see Alexandra Lesnikowski *et al.*, “Human Rights in Climate Change Adaptation Policies: A Systematic Assessment”, *Climate Policy* 24(8) (2024) 1050.

<sup>50</sup> David Boyd, 2019, UN Doc. A/74/161, “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment”, para. 45.

rather than adaptation. This remains in any case a meaningful indication, which might provide a basis for the possible progressive development of international law towards the acknowledgment of a self-standing human right to climate sustainability. Preliminary submissions to the ICJ in the context of the request for an advisory opinion on States' climate obligations include documents spanning climate protection, the law of the sea and human rights. However, these hard and soft law instruments summarise the current status of international law, whereby a fundamental right to climate sustainability does yet not emerge. More explicit initiatives have been undertaken at the domestic level outside the EU jurisdiction. Notably, a few States, particularly developing countries such as Zambia, Venezuela and Vietnam, embed climate protection as a fundamental value at the constitutional level.<sup>51</sup> In *Juliana*, a District Court in Oregon, US, considered that a “stable climate system” is “the foundation of society”,<sup>52</sup> and thus “the right to a climate system capable of sustaining human life” would be “fundamental to a free and ordered society”.<sup>53</sup> While converging domestic regulation can give rise to general principles of law under ICJ Statute article 38(c), references to a climate right per se are so sporadic that they could hardly give rise to any rules in the international legal sphere.

#### IV. Considerations in the light of the right to environmental sustainability

##### 1. *Evolution of international environmental protection as a human right*

The recent acknowledgment by the UN General Assembly that “the right to a safe, clean, healthy and sustainable environment” is “a human right”<sup>54</sup> represents an important step in international law, which integrates the recognition of such a right in about 110 States at the constitutional level, including all EU Member States, albeit in different forms. Still, despite the stance of authorities such as Judge Weeramantry in *Gabcykovo-*

<sup>51</sup> See Karla Martinez Toral *et al.*, 2 December 2021, “The Eleven Nations Heralding a New Dawn of Climate Constitutionalism”, <https://www.lse.ac.uk/granthaminstitute/news/the-11-nations-heralding-a-new-dawn-of-climate-constitutionalism>.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Juliana v. United States*, 217 F Supp (3d) 1224, (D. Or. 2016), para. 82. See further Rachel Shuen, “Addressing a Constitutional Right to a Safe Climate: Using the Court System to Secure Climate Justice”, *J. Gender Race & Just.* 243 (2021) 377.

<sup>54</sup> UN General Assembly, “The Human Right ...”, para 1. See also the HRC, “The Human Right ...”, 3, para. 1.

*Nagymaros*,<sup>55</sup> the affirmation of the fundamental right to environmental protection cannot be regarded as decisive, as the resolution is not per se a binding instrument, in the absence of a compelling international treaty, and might only be considered to give rise to a general customary practice in the shorter or longer term, particularly through the support of the ICJ.<sup>56</sup>

The possible recognition of the right to a safe environment as a fundamental one in international law is the outcome of a progressive evolution that has taken place particularly in the second half of the 20<sup>th</sup> century. Already in 1948, article 28 of the Universal Declaration on Human Rights posited the right to an international order favourable to the realisation of human rights extensively interpreted so as to include “environmental concerns”.<sup>57</sup> Subsequently, principle 1 of the 1972 Stockholm Declaration on the Human Environment explicitly recognised a “fundamental” right to an “environment of quality”<sup>58</sup> and principle 1 of the 1992 Declaration adopted by the Rio Conference on Environment and Development stated that human beings are “entitled to a healthy and productive life in harmony with nature”.<sup>59</sup> In 1994, the UN Draft Principles on Human Rights and the Environment<sup>60</sup> recognised the intergenerational “right to a secure, healthy and ecologically sound environment”, together with its interdependent and indivisible nature with respect to all other fundamental rights (Principles 2 and 4), including correlated procedural rights (Principles 15-20) and universal duties (Principles 21 and 22). More recently, the right to an ecologically sound environment has been included in the UN Draft Global Pact for the Environment, a draft treaty aiming to outline a new generation of human rights and duties related to environmental protection.<sup>61</sup>

<sup>55</sup> *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* (1997) *ICJ Reports* 7, Separate Opinion Weeramantry.

<sup>56</sup> *North Sea Continental Shelf (Federal Republic of Germany v. Denmark, Federal Republic of Germany v. The Netherlands)* (1969) *ICJ Reports* 3, 43, para. 74.

<sup>57</sup> Fatma Zohra Ksentini, 1994, UN ECOSOC Doc. E.CN.4/Sub.2/1994/9, Final Report of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, “Human Rights and the Environment, Review of Further Developments in Fields with which the Sub-Commission Has Been Concerned”, para. 34.

<sup>58</sup> UN Conference on the Human Environment, 1973, Report, UN Doc. A/CONF.48/14/Rev.1, “Declaration”.

<sup>59</sup> UN Conference on Environment and Development, 1992, Report, “Declaration”, UN Doc. A/CONF.151/26, Annex I.

<sup>60</sup> Ksentini, “Human Rights and the Environment ...”, 22, Annex 1.

<sup>61</sup> UN General Assembly, 2018, Res. 72/277, “Towards a Global Pact for the Environment”. See further Nanda Ved, “The Environment, Climate Change, and Human Rights: The Significance of the Human Right to Environment”, *Denv J Int'l L & Pol'y* 50 (2022) 89; Pau de Vilchez Moragues, *Climate in Court: Defining State Obligations on Global Warming through Domestic Climate Litigation* (Cheltenham, Edward Elgar, 2022) 239 ff.

While there is no acknowledgment of the right to environmental sustainability in international treaties,<sup>62</sup> including the ICCPR and ICESCR, by considering that the right to environmental sustainability is legally recognised in more than 155 States,<sup>63</sup> it can be safely assumed that a right to a sustainable environment is unfolding as a general principle of international law, according to article 38(1)(c) of the ICJ Statute.<sup>64</sup> This evolution is strengthened by the acknowledgment of the right in regional instruments, notably the Inter-American Convention on Human Rights<sup>65</sup> and the African Convention on Human and Peoples' Rights,<sup>66</sup> as confirmed by the jurisprudence of the African Commission and Court on Human and Peoples' Rights and that of the Inter-American Court on Human Rights (IACtHR).<sup>67</sup> The soft acknowledgment via the UN General Assembly resolution strengthens the idea of the human right to environmental sustainability as a general principle of international law under ICJ Statute article 38(1)(b), whereby some scholars interpret domestic recognition and soft international recognition as a sign of the emergence of a customary international rule.<sup>68</sup>

Certainly, international regulation is more progressive than the EU normative framework, whereby the EUCFR only recognises the right to environmental sustainability—high-level environmental protection—as a principle, not as a justiciable right, while the ECtHR offers indirect environmental protection through the prism of first- and second-generation human rights, absent an explicit recognition of a right to environmental sustainability in the ECHR.<sup>69</sup> The binding establishment of a substantive human right to a sustainable environment—or better, to environmental sustainability—in international law would complement existing procedural environmental rights, which are already posited as human rights un-

<sup>62</sup> See Bruce Lindsay, “Can We Conceive of the Right to a Safe Environment in the Face of Climate Catastrophe?”, *Human Rights Def* 29 (2020) 21.

<sup>63</sup> HRC, “The Human Right ...”, 2, preamble.

<sup>64</sup> Opened for signature 26 June 1945, 1 UNTS XVI, entered into force 24 October 1945.

<sup>65</sup> Opened for signature 22 November 1969, 114 UNTS 123 No 17955, entered into force 18 July 1978.

<sup>66</sup> Opened for signature 27 June 1981, 1520 UNTS 128, entered into force 21 October 1986. See John Knox, 2018, UN Doc. A/73/188, “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment”.

<sup>67</sup> *Advisory Opinion*, IACtHR, OC-23/17, 15 November 2017. See also Knox, “Report...”, 12, para. 35.

<sup>68</sup> Cesar Rodríguez-Garavito, “A Human Right to a Healthy Environment? Moral, Legal, and Empirical Considerations”, in *The Human Right to a Healthy Environment*, eds. John Knox and Ramin Pejan (Cambridge, Cambridge University Press, 2018), 155.

<sup>69</sup> Opened for signature 4 November 1950, 213 UNTS 221, entered into force 3 September 1953.



der the Aarhus Convention—a European agreement that has progressively achieved global status<sup>70</sup>—and are conceived of as a means to “contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” (article 1).

## 2. Systemic implications for the right to climate sustainability

Despite the progressive acknowledgment of the right to a sustainable environment as a fundamental one in the international legal sphere, its structural features are for the time being undefined. The reference to a right to a “safe, clean, healthy and sustainable” environment, involving a variety of adjectives, is per se a question of scholarly attention<sup>71</sup> and seems to be literally restrictive with respect to measures such as climate change adaptation, which is instead definitely covered by the broader notion of a right to “environmental sustainability”. Among other systemic issues, the right to environmental sustainability raises the question of the relationship with other (fundamental and non-fundamental) rights, including the right to climate sustainability.

Notably, the question arises as to whether acknowledging the fundamental nature of the right to environmental sustainability—possibly seen as an *erga omnes* obligation<sup>72</sup>—implies a recognition of the human rights nature of the different claims it encompasses as a holistic notion. According to the Stockholm Declaration, the concept of “environment” means the “natural resources of the earth, including the air, water, land, flora and fauna” (Principle 2). Thus, schematically, the right to a sustainable environment—and the broader right to environmental sustainability—includes the corresponding rights to the protection of soils, water, watercourses, groundwater, iced water, the marine environment, air, biodiversity, the Polar Regions, outer space and protection from hazardous waste and substance, which are embedded in international agreements spanning

<sup>70</sup> Nicolas De Sadeleer, “Enforcing EUCHR Principles and Fundamental Rights in Environmental Cases”, *Nordic Journal of International Law* 81 (2012) 39, 49.

<sup>71</sup> See Sara De Vido, “Climate Stability as a Common Good: A Strategy for the European Union”, in *Environmental Sustainability in the European Union: Socio-Legal Perspectives*, eds. Serena Baldin and Sara De Vido (Trieste, EUT, 2020), 101, 102.

<sup>72</sup> Hugh Thirlway, *The Sources of International Law* (Oxford: Oxford University Press, 2019); Daniel Magraw and Kristina Wienhöfer, “The Malé Formulation of the Overarching Environmental Human Right”, in Knox and Pejan, *The Human Right ...* 215, 226; Quirico, “Environmental Rights and Climate Rights ...”, 106-108.

the Convention on Biological Diversity<sup>73</sup> and the Environmental Protocol of Madrid to the Antarctic Treaty.<sup>74</sup> These environmental claims can be further sub-divided into more specific rights,<sup>75</sup> spanning the right to clean and healthy air,<sup>76</sup> the claim that States implement adequate action plans to prevent desertification and the right to climate sustainability, as spelled out in detail in instruments such as the Convention on Long-Range Transboundary Air Pollution,<sup>77</sup> the Convention to Combat Desertification and the UNFCCC.<sup>78</sup>

Within such a systemic framework, conceiving of the right to environmental sustainability—or the more limited right to a sustainable environment—as a fundamental one logically entails that also all its component environmental rights be regarded as fundamental, given that they are the parts of a single construct. This is possibly one of the reasons that have thus far fostered a prudent approach, whereby environmental protection has been regarded as a principle rather than a right under the Stockholm and Rio Declarations. While scholars and practitioners have mostly focused on the question of greening human rights,<sup>79</sup> thus tackling the issue the other way around, declaring the human rights nature of the right to environmental sustainability actually entails a recognition of the fundamental nature of an entire area of international law, which is an unprecedented development with widespread systemic ramifications.<sup>80</sup> In light of this, if human rights status is bestowed upon the right to environmental sustainability, logically—or rather necessarily—its different composing elements, that is, environmental rights, should also be recognised the same status.

<sup>73</sup> Opened for signature 5 June 1992, 1760 UNTS 79, entered into force 29 December 1993.

<sup>74</sup> Opened for signature 4 October 1991, 2941 UNTS 3, entered into force 14 January 1998.

<sup>75</sup> See also Olha Sushyk and Olena Shompol, “The Climate Change Impact on the Human Right to Environmental Conditions of a Specified Quality (Safe, Clean, Healthy and Sustainable Environment): Some International Environmental Law Issues”, *Review of Comparative Law* 36 (2019) 93, 105.

<sup>76</sup> Irmína Kotiuk, Adam Weiss and Ugo Taddei, “Does the European Convention on Human Rights Guarantee a Human Right to Clean and Healthy Air? Litigating at the Nexus between Human Rights and the Environment — The Practitioners’ Perspective”, *Journal of Human Rights and the Environment* 13 (2022) 122, 127.

<sup>77</sup> Opened for signature 13 November 1979, 1302 UNTS 217, entered into force 16 March 1983.

<sup>78</sup> Opened for signature 13 October 1995, 1954 UNTS 3, entered into force 26 December 1996.

<sup>79</sup> See, for instance, Dinah Shelton, “Complexities and Uncertainties in Matters of Human Rights and the Environment: Identifying the Judicial Role”, in Konx and Pejan, *The Human Right ...* 97, 99 ff.

<sup>80</sup> Knox, “Report...”, 5.

This approach impacts the recognition of the right to climate sustainability in the EU as a component of the right to environmental sustainability. In this regard, scholarly work suggests that the acknowledgement of the fundamental right to a sustainable environment *facilitates* the acknowledgment of a human right to climate sustainability. Thus, relevant developments and, most recently, the endorsement of the right to an ecologically sound environment via the UN Draft Global Pact for the Environment,<sup>81</sup> would indicate growing support also for the establishment of a distinctive human right to a sustainable climate.<sup>82</sup> More precisely, recognising the right to environmental sustainability as a fundamental one should *necessarily entail* the systemic effect of also establishing the human rights nature of the right to climate sustainability, particularly in the EU, in the light of relevant normative developments, and of further affirming its universal scope of application as an *erga omnes* duty and right, beyond the particular scope of the UNFCCC regime.<sup>83</sup> In this regard, it is notable that the preamble to UN General Assembly Resolution 76/300 refers to the responsibility of “all business enterprises” to “respect human rights” under the UN Guiding Principles on Business and Human Rights,<sup>84</sup> beyond mere interstate relationships. Interestingly, on the same day it declared the human rights nature of the right to a sustainable environment, the HRC appointed a Special Rapporteur on the “Promotion” and “Protection” of Human Rights in the Context of Climate Change.<sup>85</sup> This signifies the necessity of taking an analytical approach to global warming from a human rights perspective within the more comprehensive framework of the human right to environmental sustainability.<sup>86</sup> Whereas the Rapporteur has thus far exclusively approached the question from the standpoint of the impact of climate change on different human rights,<sup>87</sup> developments on the human right to climate sustainability cannot be excluded in the future, as concerns both mitigation and adaptation to climate change.<sup>88</sup>

<sup>81</sup> UN General Assembly, “Towards a Global Pact ...”.

<sup>82</sup> Jacqueline Peel and Hari Osofsky, 2019, “Litigating the Right to a Sustainable Climate System”, <https://www.openglobalrights.org/litigating-the-right-to-a-sustainable-climate-system>.

<sup>83</sup> Quirico, “Environmental Rights and Climate Rights ...”, 108 ff.

<sup>84</sup> OHCHR, 2011, “Guiding Principles on Business and Human Rights”.

<sup>85</sup> HRC, 2021, UN Doc. A/HRC/48/L.27, “Mandate of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change”.

<sup>86</sup> HRC, “Mandate ...”, preamble, 2-3; HRC, 2021, UN Doc. A/HRC/48/L.22, “Human Rights and Indigenous Peoples”, preamble.

<sup>87</sup> Morgera, “Scene-setting ...”.

<sup>88</sup> See Verena Kahl, “A Human Right to Climate Protection — Necessary Protection or Human Rights Proliferation?”, *NQHR* 42 (2022) 158, 174; Autumn Bordner, Jon Barnett and Elissa Waters, “The Human Right to Climate Adaptation”, *Climate Action* 43 (2023) 1.

## V. Modeling the system: substantive and procedural climate rights and duties

While key EU normative instruments reveal the traces of a nascent right to climate sustainability, in the light of international law developments, the structure of such a substantive right and its procedural implications are far from being elaborate and extensively outlined. Among different studies developed in the area,<sup>89</sup> the most advanced model scoping the right to climate sustainability as a fundamental claim is afforded by the Declaration on Human Rights and Climate Change adopted by the Global Network for Human Rights and the Environment (GNHRE).<sup>90</sup> Indeed, despite its title, the Declaration definitely outlines the relationship between climate change and human rights predominantly from the specific standpoint of the right to climate sustainability, thus tracing a clear difference with respect to other normative instruments that approach climate change from the perspective of specific human rights, such as the rights to life and culture, or from the viewpoint of the right to environmental sustainability.<sup>91</sup> Albeit concise, this is a meaningful tool, which lays down groundwork for the recognition of the right to climate sustainability as a fundamental one quite thoroughly and can thus provide schematic guidance for shaping the claim at the EU level, with widespread systemic implications.

Consistent with the comprehensive scope of the right to environmental sustainability and in the light of the interdependence and indivisibility of human rights, the fundamental right to climate sustainability should be framed within the context of the more comprehensive human right to environmental sustainability (GNHRE Declaration Principle I(1)).<sup>92</sup> In fact, everyone should have a right to the highest attainable standard of health and freedom from harmful emissions as well as from dangerous anthropogenic interference with the climate system through the containment of global temperatures well below 2°C above preindustrial levels (GNHRE Declaration Principle I(5)), including adequate adaptation measures (GNHRE Declaration Principle I(3) and (6)).<sup>93</sup> More precisely, the right to climate sustainability responds to the specific needs of present and future genera-

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<sup>89</sup> ClimateStore, 2021, “Top 50 Non-Profit Organizations Working to Stop Climate Change”, <https://climatestore.com/take-action/get-involved/non-profit-organizations-working-on-climate-change>.

<sup>90</sup> GNHRE, 2021, “Declaration on Human Rights and Climate Change”, <https://gnhre.org/declaration-human-rights-climate-change>.

<sup>91</sup> OHCHR, 2021, OHCHR and Climate Change, <https://www.ohchr.org/en/issues/hrand-climatechange/pages/hrclimatechangeindex.aspx>.

<sup>92</sup> See further Quirico, “Environmental Rights and Climate Rights ...”, 104 ff.

<sup>93</sup> *Ibid.*

tions (GNHRE Declaration Principle I(4)) and involves further fundamental claims. Thus, for instance, everyone should have the right to investment in adaptation and mitigation preventing the negative consequences of anthropogenic climate change (GNHRE Declaration Principle I(6)). Furthermore, along the lines of article 19 of the Universal Declaration of Human Rights and of the ICCPR, all human beings should have a right to specific adaptation measures, such as education on climate change and human rights (GNHRE Declaration Principle II(12)) and freedom of opinion and expression on global warming (GNHRE Declaration Principle II(11)).

Based on the necessary correlativeness between jural positions, the right to climate sustainability implies intertwined duties, on the one hand, for natural persons, and, on the other, for legal entities. While natural persons have, individually and in association with others, a “moral” responsibility to avoid and minimise practices that contribute to climate damage (GNHRE Declaration Principle III(16)), States and businesses have an obligation to respect climate rights and to protect the climate. Along the lines of the well-established tripartite categorisation of human rights,<sup>94</sup> States also have a duty to fulfil the right to climate sustainability, which is framed as a specific obligation within the context of the right to environmental sustainability, whereby all States respect and ensure not only the right to a secure, healthy and ecologically sound environment, but also the right to a stable climate, including a duty to minimise GHG impact (GNHRE Declaration Principle III(21)). Furthermore, international organisations and agencies must observe climate rights and duties (GNHRE Declaration Principle III(23)) and, more comprehensively, all States, international organisations, businesses and individuals acting to reduce climate harm must recognise and respect the right to be free from climate change-related harm (GNHRE Declaration Principle III(24)).<sup>95</sup> Such a general obligation entails for States, as well as other sovereign and non-sovereign entities and persons, specific duties, such as the obligation to assist climate refugees (GNHRE Declaration Principle III(20)).

Procedurally, the right to climate sustainability and the correlated duty to strive and achieve climate sustainability should be complemented by the right to timely, clear and accessible information concerning the climate (GNHRE Declaration Principle II(10)). Based on a parallelism between “procedural environmental rights” under the 1998 Aarhus Conven-

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<sup>94</sup> Eide Asbjorn, 1983, UN Doc E/CN.4/Sub.2/1983/25, Report, “The Right to Adequate Food as a Human Right”.

<sup>95</sup> See Pavel Bureš and Monika A. Król, “Transnational Corporations — Duty Bearers of Obligations to Respect Right to Food and Right to Environment as Human Rights: From Utopia to Reality?”, *Int & Comp LR* 23(2) (2023) 67; Iyengar, “Human Rights ...”, 304.

tion and “procedural climate rights”,<sup>96</sup> the claim to climate sustainability should be complemented by a fundamental right to information, participation in planning and decision-making, as well as to obtain effective remedy and redress (GNHRE Declaration Principles II(13) and II(15)). In the light of UNFCCC articles 4 and 6, procedural climate rights—or the right to access information, participate in decision-making and access effective remedies on climate sustainability<sup>97</sup>—seem to be essential to the implementation of transparent and effective climate action with respect to issues such as measurement, reporting, and verification, allowing vulnerable groups, for instance, indigenous people, women and migrants, to take part in climate decision-making and to activate effective remedies.<sup>98</sup> At the international level, in line with the limited progress on the establishment of a substantive right to climate sustainability, the question has thus far been tackled exclusively from the standpoint of the right of access to information on climate change and human rights.<sup>99</sup>

## VI. Conclusion

An analysis of key regulatory tools reveals that a right to climate sustainability is emerging as a fundamental claim in the EU, with respect to both adaptation and mitigation. By contrast, pending the ICJ advisory opinion on the matter, there is very little evidence of such a right in international law, which, at least for the time being, only recognises a particular inter-state obligation to curb carbon emissions and rather focuses on the more comprehensive fundamental right to a sustainable environment, essentially covering an entire subject-area under international law, spanning outer space, water protection, hazardous substances and biodiversity.

Despite the apparent discrepancy between EU law and international law, the global acknowledgment of a fundamental right to environmental sustainability—even if only as soft law for the time being—represents a crucial development with key implications for the recognition of a fundamental right to climate sustainability. Indeed, the latter is a specific component

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<sup>96</sup> Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, opened for signature 25 June 1998, 2161 UNTS 447, entered into force 30 October 2001.

<sup>97</sup> See, for instance, Iyengar, “Human Rights ...”, .299.

<sup>98</sup> Svitlana Kravchenko, “Procedural Rights as a Crucial Tool to Combat Climate Change”, *Georgia J Int'l & Comp L* 38 (2010) 613, 618, 630, 635 and 648.

<sup>99</sup> Elisa Morgera, 18 July 2024, UN Doc. A/79/176, “Access to Information on Climate Change and Human Rights”, Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change.

of the former, so much so that positing the human rights nature of the right to a sustainable environment—or, preferably, the right to environmental sustainability—logically entails the human rights nature of its different components, and thus of an entire area of international law, which is an unprecedented systemic development. This determines a paradigm shift, overcomes critical objections and discloses the possibility of establishing the claim to climate sustainability as a universal human right at the international and EU level. Such a possibility further entails the need to explore and systemically outline correlated substantive and procedural duties, such as the obligation to implement investment in GHG adaptation and mitigation as well as to grant access to climate information, participation and effective remedies against global warming.

## VII. Bibliography

- Albrecht, Juliane, “Climate Adaptation Law: A European Perspective”, *China EU Law Journal* (2024) 1.
- Amnesty International, European Institutions Office, “Call for the Adoption of an Additional Protocol to the ECHR on the Right to a Clean, Healthy and Sustainable Environment”, 15 March 2024, <https://www.amnesty.eu/news/call-for-the-adoption-of-an-additional-protocol-to-the-european-convention-on-human-rights-on-the-right-to-a-clean-healthy-and-sustainable-environment>.
- Asbjorn, Eide, Report, “The Right to Adequate Food as a Human Right”, UN Doc E/CN.4/Sub.2/1983/25, 1983.
- Benoit, Mayer, “Obligations of Conduct in the International Law on Climate Change: A Defence”, *RECIEL* 27 (2018) 130.
- Bodansky, Daniel, “The Legal Character of the Paris Agreement”, *RECIEL* 25(2) (2016) 142.
- Bordner, Autumn, Barnett, Jon and Waters, Elissa, “The Human Right to Climate Adaptation”, *Climate Action* 43 (2023) 1.
- Boyd, David, “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment”, UN Doc. A/74/161, 2019.
- Bureš, Pavel and Król, Monika, “Transnational Corporations — Duty Bearers of Obligations to Respect Right to Food and Right to Environment as Human Rights: From Utopia to Reality?”, *Int & Comp LR* 23(2) (2023) 67.
- Carvalho v. the European Parliament and the Council*, Case C-565/19 P EU:C:2021:252.
- Carvalho v. the European Parliament and the Council*, Case T-330/18, EU:T:2019:324.
- ClimateStore, “Top 50 Non-Profit Organizations Working to Stop Climate Change”, 2021, <https://climastore.com/take-action/get-involved/non-profit-organizations-working-on-climate-change>.

- Committee of Ministers of the Council of Europe, CM/Rec(2022)20, Recommendation to Member States on Human Rights and the Protection of the Environment, 2022.
- Council of Europe, “Manual on Human Rights and the Environment”, 3<sup>rd</sup> ed., 2022, <https://rm.coe.int/manual-environment-3rd-edition/1680a56197>.
- D. Or., *Juliana v. United States*, 217 F Supp (3d) 1224, (D. Or. 2016).
- De Sadeleer, Nicolas, “Enforcing EUCHR Principles and Fundamental Rights in Environmental Cases”, *Nordic Journal of International Law* 81 (2012) 39.
- De Vido, Sara, “Climate Stability as a Common Good: A Strategy for the European Union, in *Environmental Sustainability in the European Union: Socio-Legal Perspectives*, eds. Serena Baldin and Sara De Vido (Trieste, EUT, 2020), 101.
- De Vilchez Moragues, Pau, *Climate in Court: Defining State Obligations on Global Warming through Domestic Climate Litigation* (Cheltenham, Edward Elgar, 2022).
- EU Agency for Fundamental Rights, “What Is the Difference between Human Rights and Fundamental Rights?”, 2021, <https://fra.europa.eu/en/about-fundamental-rights/frequently-asked-questions#difference-human-fundamental-rights>.
- European Commission, Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Doc. COM/2019/640 final, “The European Green Deal”, 11 December 2019.
- European Parliament, Resolution 2020/2134(INI), “Effects of Climate Change on Human Rights and the Role of Environmental Defenders on This Matter”, 19 May 2021.
- European Parliament, “The Normative Status of Climate Change Obligations under International Law”, PE 749.395, 2023.
- European Parliament and Council, “Establishing the Framework for Achieving Climate Neutrality”, Regulation 2021/1119, 30 June 2021, OJ EU L 243, 9/7/2021, 1.
- Francioni, Francesco and Quirico, Ottavio, “Untying the Gordian Knot: Towards the Human Right to a Climatically Sustainable Environment?”, in *Climate Change and Human Rights: An International and Comparative Law Perspective*, Ottavio Quirico and Mouloud Boumghar eds. (London and New York, Routledge, 2016) 133.
- GNHRE, “Declaration on Human Rights and Climate Change”, 2021, <https://gnhre.org/declaration-human-rights-climate-change>.
- Hart, Herbert, *The Concept of Law* (Oxford, Clarendon Press, 1952).
- HRC, “Human Rights and Indigenous Peoples”, UN Doc. A/HRC/48/L.22, 2021.
- HRC, “Mandate of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change”, UN Doc. A/HRC/48/L.27, 2021.
- HRC, UN Doc. A/HRC/48/L.23/Rev.1, “The Human Right to a Safe, Clean, Healthy and Sustainable Environment”, 2021.
- HRC, UN Doc. A/HRC/48/L.18, “The Right to Development”, 2021.
- IACtHR, *Advisory Opinion*, OC-23/17, 15 November 2017.



- ICJ, *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)* (1997) *ICJ Reports* 7, Separate Opinion Weeramantry.
- ICJ, *North Sea Continental Shelf (Federal Republic of Germany v. Denmark, Federal Republic of Germany v. The Netherlands)* (1969) *ICJ Reports* 3.
- ICJ, *Obligations of States in Respect of Climate Change*, Request for advisory opinion pursuant to General Assembly Resolution 77/276 of 29 March 2023.
- ILC, UN Doc. A/CN.4/L.682, “Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law”, 2006.
- IPCC, Synthesis Report, Summary for Policymakers, “Climate Change”, 2023.
- Iyengar, Shalini, “Human Rights and Climate Wrongs: Mapping the Landscape of Rights-Based Climate Litigation”, *RECIEL* 32 (2023) 299.
- ITLOS, *Request Submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, 21 May 2024.
- Jegade, Ademola, “Arguing the Right to a Safe Climate under the UN Human Rights System”, *International Human Rights Law Review* 9 (2020) 184.
- Kelsen, Hans, *Reine Rechtslehre: Einleitung in die rechtswissenschaftliche Problematik* (Leipzig and Wien, Franz Deuticke, 1934).
- Kahl, Verena, “A Human Right to Climate Protection: Necessary Protection or Human Rights Proliferation?”, *NQHR* 42 (2022) 158.
- Knox, John, “Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment”, UN Doc. A/73/188, 2018.
- Kravchenko, Svitlana, “Procedural Rights as a Crucial Tool to Combat Climate Change”, *Georgia J Int'l & Comp L* 38 (2010) 613.
- Kotiuk, Irmina, Weiss, Adam and Taddei, Ugo, “Does the European Convention on Human Rights Guarantee a Human Right to Clean and Healthy Air? Litigating at the Nexus between Human Rights and the Environment — The Practitioners’ Perspective”, *Journal of Human Rights and the Environment* 13 (2022) 122.
- Lesnikowski, Alexandra *et al.*, “Human Rights in Climate Change Adaptation Policies: A Systematic Assessment”, *Climate Policy* 24(8) (2024) 1050.
- Lindsay, Bruce, “Can We Conceive of the Right to a Safe Environment in the face of Climate Catastrophe?”, *Human Rights Def* 29 (2020) 21.
- Malgosia, Fitzmaurice, “Responsibility and Climate Change”, *German Yearbook of International Law* 53 (2010) 89.
- Martinez Toral, Karla *et al.*, “The Eleven Nations Heralding a New Dawn of Climate Constitutionalism”, 2 December 2021, <https://www.lse.ac.uk/granthaminstitute/news/the-11-nations-heralding-a-new-dawn-of-climate-constitutionalism>.
- Magraw, Daniel and Wienhöfer, Kristina, “The Malé Formulation of the Overarching Environmental Human Right”, in *The Human Right to a Healthy Environment*, eds. John H. Knox and Ramin Pejan (Cambridge, CUP, 2018) 215.
- Morgera, Elisa and Marin-Duran, Grazia, “Article 37”, in *The EU Charter of Fundamental Rights: A Commentary*, eds. Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (Oxford, Hart, 2021), 989.
- Morgera, Elisa, “Scene-setting”, Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, UN Doc. A/HRC/56/46, 24 July 2024.

- Morgera, Elisa, “Access to Information on Climate Change and Human Rights”, Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change, UN Doc. A/79/176, 18 July 2024.
- Nordlander, Linnéa, “What’s in a Right? Concretizing States’ Climate Change Mitigation Obligations under Human Rights Law”, *Human Rights Law Review* 24 (2024) 1.
- OHCHR, “Guiding Principles on Business and Human Rights”, 2011.
- OHCHR, Fact Sheet, “The International Bill of Human Rights”, 1996.
- OHCHR, OHCHR and Climate Change, 2021, <https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx>.
- Parliamentary Assembly of the Council of Europe, Recommendation 2011, “Anchoring the Right to a Healthy Environment: Need for Enhanced Action by the Council of Europe”, 2021.
- Peel, Jacqueline and Osofsky, Hari, “Litigating the Right to a Sustainable Climate System”, 2019, <https://www.openglobalrights.org/litigating-the-right-to-a-sustainable-climate-system>.
- Perri, Adam, “The ‘Common Concern of Humankind’: Establishing *Erga Omnes* Obligations for Climate Change Responsibility in the ICJ’s Forthcoming Advisory Opinion”, *Maryland LR* 83(4) (2024) 1352.
- Quirico, Ottavio, “Environmental Rights and Climate Rights: *Erga Omnes* Obligations in International Law and EU Law?”, *Hungarian HYBILEL* 2022(10) 105.
- Rodríguez-Garavito, Cesar, “A Human Right to a Healthy Environment? Moral, Legal, and Empirical Considerations”, in *The Human Right to a Healthy Environment*, eds. John Knox and Ramin Pejan (Cambridge, Cambridge University Press, 2018), 155.
- Shelton, Dinah, “Complexities and Uncertainties in Matters of Human Rights and the Environment: Identifying the Judicial Role”, in *The Human Right to a Healthy Environment*, eds. John Knox and Ramin Pejan (Cambridge, Cambridge University Press, 2018), 97.
- Shuen, Rachel, “Addressing a Constitutional Right to a Safe Climate: Using the Court System to Secure Climate Justice”, *J. Gender Race & Just.* 243 (2021) 377.
- Sushyk, Olha and Shompol, Olena, “The Climate Change Impact on the Human Right to Environmental Conditions of a Specified Quality (Safe, Clean, Healthy and Sustainable Environment): Some International Environmental Law Issues”, *Review of Comparative Law* 36 (2019) 93.
- The Netherlands v. Urgenda*, Case 19/00135, Judgment of 20 December 2019, Judgment of 9 April 2024.
- The Netherlands v. Urgenda*, Case No. C/09/456689/HA ZA 13-1396, Judgment of 9 October 2018.
- Thirlway, Hugh, *The Sources of International Law* (Oxford: Oxford University Press, 2019).
- UN Conference on Environment and Development, 1992, Report, “Declaration”, UN Doc. A/CONF.151/26, Annex I.
- UN Conference on the Human Environment, Report, “Declaration”, UN Doc. A/CONF.48/14/Rev.1, 1973.

- UN General Assembly, 1 August 2022, A/RES/76/300, “The Human Right to a Clean, Healthy and Sustainable Environment”.
- Verein KlimaSeniorinnen Schweiz v. Switzerland*, ECtHR, Case No. 53600/20, Judgment of 9 April 2024.
- Ved, Nanda, “The Environment, Climate Change, and Human Rights: The Significance of the Human Right to Environment”, *Denv J Int’l L & Pol’y* 50 (2022) 89.
- Verheyen, Roda, *Climate Change Damage and International Law: Prevention Duties and State Responsibility* (Leiden, Brill, 2005) 142.
- Wesley Newcomb, Hohfeld, “Fundamental Legal Conceptions as Applied in Judicial Reasoning”, *Yale Law Journal* 26 (1916) 710.
- WMO, “WMO Confirms 2024 as Warmest Year on Record at about 1.55°C above Pre-industrial Level”, 2025, <https://wmo.int/news/media-centre/wmo-confirms-2024-warmest-year-record-about-155degc-above-pre-industrial-level>.
- World Bank, “Climate Change Knowledge Portal, Kiribati”, 2024, <https://climate-knowledgeportal.worldbank.org/country/kiribati>.
- World Commission on Environment and Development, 1987, Brundtland Report, “Our Common Future”.
- Zohra Ksentini, Fatma, Final Report of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, “Human Rights and the Environment, Review of Further Developments in Fields with which the Sub-Commission Has Been Concerned”, UN ECOSOC Doc. E.CN.4/Sub.2/1994/9.

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