

Access to Justice and Climate Change: The Turn to International Courts

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Brief overview

1. In the absence of courts: Turning to UN Human Rights Treaty Bodies
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In the absence of courts:

Turning to UN Human Rights Treaty Bodies

- UN treaty bodies have the competence to hear claims of violations of relevant UN Human Rights treaties
- Often in the absence of legal protection through domestic courts
- No special international HR court
- Some examples
 - *Teitiota vs New Zealand* (2019)
 - *Saachi et al. vs. Argentina, Brazil, Germany, France and Turkey* (2020)
 - *Billy vs Australia* (2022)

Teitiota vs New Zealand (UN HRC, 2019)

- Claimant lost on the merits
- But opening the door for recognition of “climate refugees”

“without robust national and international efforts, **the effects of climate change in sending states may trigger the non-refoulement obligations of receiving states** and that – given that the risk of an entire country becoming submerged under water is such an extreme risk – the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized”



Saachi et al. vs Brazil, Argentina, France, Germany, Turkey (UN CRC, 11 October 2021)

Case inadmissible (no exhaustion of domestic remedies)

But CRC recognized that:

States have the obligation to protect the rights of children under the UN Convention on the Rights of the Child against the impacts of climate change through ambitious climate change mitigation and adaptation action

Protection of children **worldwide**, in and outside of its own territory



Daniel Billy et al. versus Australia (“Torres Strait Islanders case”) UN HRC, 23 September 2022

- States are obliged to take **“timely and adequate”** adaptation measures to protect the right of life, private life and indigenous culture (ICCPR)
- Australia has violated this obligation



&rft.title=UNHRC is Turning up the Heat:
Human Rights Violations Due to Inadequate
Adaptation Action to Climate Change

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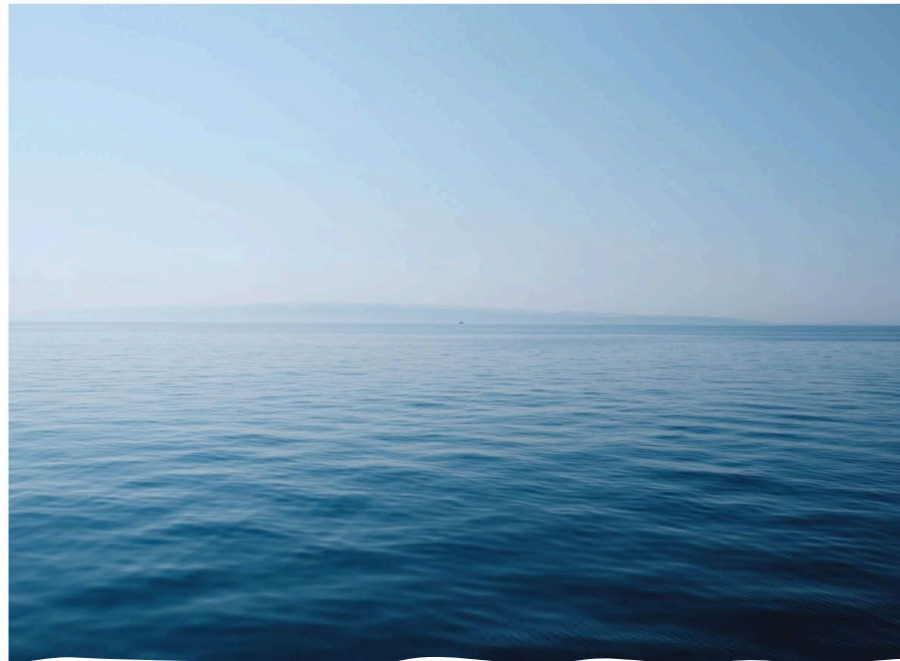
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ABOUT EJIL: TALK!

September 26, 2022

UNHRC is Turning up the Heat: Human Rights Violations Due to Inadequate Adaptation Action to Climate Change

Written by [Christina Voigt](#)



[Christina Voigt](#)

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MORE ARTICLES BY CHRISTINA VOIGT

In the absence of success:

Turning to supra-national courts

- Human rights violations addressed by regional human rights courts, ECtHR, IACtHR
- Exhaustion of national remedies (but: *Angostinho vs Portugal* and 32 CoE members states?)
- Interpretation of right to life (art. 2), right to private life (Art. 8) ECHR in the context of climate change
- General claim: respondent states have not taken all appropriate and necessary measures (“positive obligations”) to protect those rights against being impacted by cc
- Some examples:

ECtHR

3 pending cases

- Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others (hearing 29 March 2023)
- Careme v. France (hearing 29 March 2023)
- Duarte Agostinho and Others v. Portugal and 32 Other States (later in 2023)

6 further cases (adjourned)



Portuguese children sue 33 countries over climate change at European court

Ground-breaking crowdfunding case demands that states make more ambitious emissions cuts



▲ A wildfire in Monchique in Portugal in 2018. The case was initiated in 2017 after devastating forest fires in Portugal killed over 120 people. Photograph: Filipe Farinha/EPA

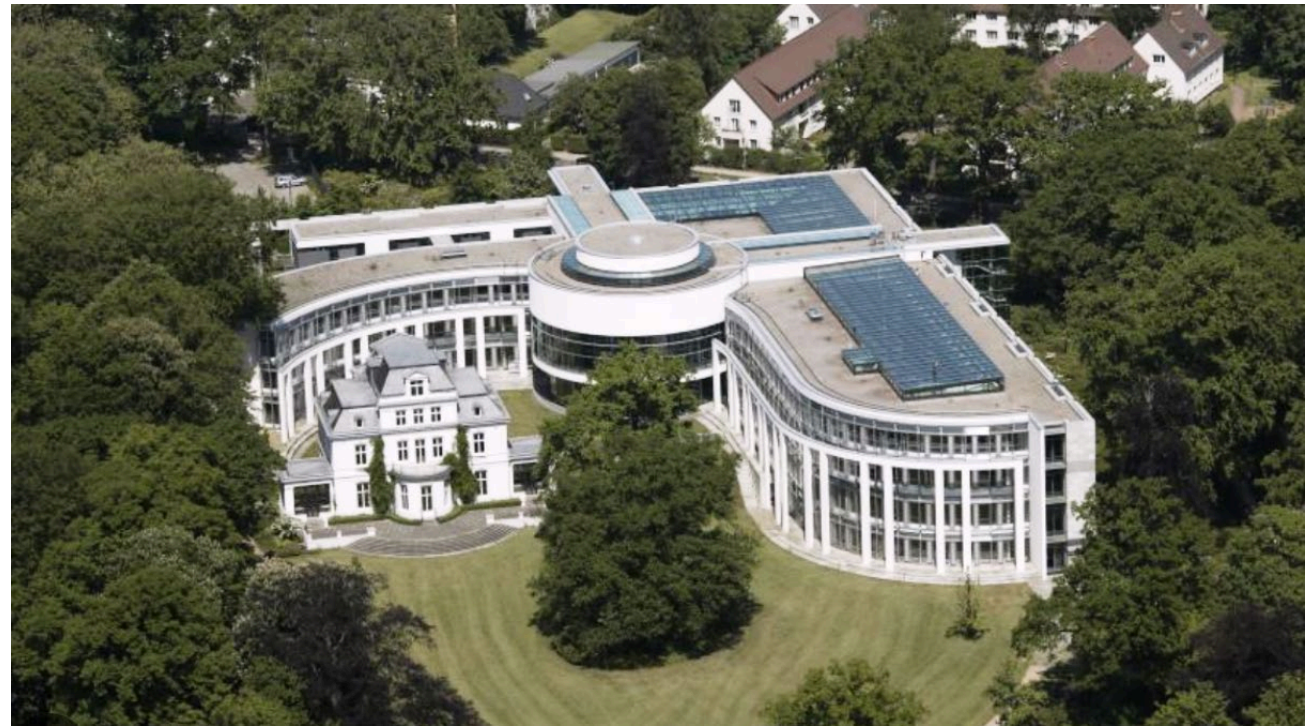
Young activists from Portugal have filed the first climate change case at the [European court of human rights](#) in Strasbourg, demanding 33 countries make more ambitious emissions cuts to safeguard their future physical and mental wellbeing.

In the absence of legal clarity: Turning to international courts

- International law is developing through negotiations and treaty making, but also the jurisprudence of international courts
- Some “grey areas” of law:
 - What exactly is the obligations of states to protect the climate system?
 - Is this obligations different for different states?
 - What are the consequences of a violation?
 - What are the obligations towards future generations in protecting the climate system?
 - What does HR law require states to do?
 - Does the Law of the Sea require States to take climate action?
- Requests for Advisory Opinion (often first step towards contentious cases)
- Some examples

International Tribunal for the Law of the Sea, Hamburg))

- Request for Advisory Opinion (November 2022)
- By COSIS (Barbuda, Palau, Tuvalu)
- Commission established in 2021
- Question:



Media Release

Commission of Small Island States on Climate Change and International Law (COSIS) approves Plan of Action

Three Heads of Government met virtually on 26 August 2022 to pursue ways by which international law could be utilized to secure compensation for damage caused to small island states by Climate Change.

The Heads of Government of Antigua and Barbuda, Tuvalu and Palau gathered under the umbrella organisation, 'The Commission of Small Islands States on Climate Change and international law', which was established last November prior to the opening of the COP-26 meeting in Glasgow.

Reaffirming their determination to pursue climate justice for their countries and other small island states, which are amongst the greatest victims of Climate Change, the Co-Chairs of the Commission conferred with a group of 14 international lawyers who are highly experienced in matters related to loss and damage, sea-level rise, marine environment, and human rights.

The distinguished group of lawyers reported to the leaders on their research activities and a plan of action that is being developed.

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ('UNCLOS'), including under Part XII:

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

Inter-American Court on Human Rights (IACtHR)

- Request for Advisory Opinion
- By Colombia og Chile (9. January 2023)
- Many (20) questions



MINISTERIO DE RELACIONES
EXTERIORES

9 de enero de 2023

Honorable Secretario:

De conformidad con lo establecido en el Artículo 64§1 de la Convención Americana sobre Derechos Humanos, la República de Chile y la República de Colombia se permiten presentar a la Honorable Corte Interamericana de Derechos Humanos la solicitud de opinión consultiva relativa a la Emergencia Climática y Derechos Humanos, cuyo texto principal se encuentra adjunto a esta comunicación.

Agradezco a usted remitir a los señores Tomás Ignacio Pascual Ricke y Luis Ernesto Vargas Silva cualquier notificación relacionada con este asunto. El señor Pascual Ricke fungirá como Agente de la República de Chile y el señor Vargas Silva fungirá como Agente de la República de Colombia para los efectos de la presente solicitud de opinión consultiva. Los datos de contacto de ambos señores son:

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International Court of Justice (ICJ)

- Request by UN General Assembly ([Resolution Res 77/L.58](#), 29 March 2023)
- by consensus
- Initiative by Pacific Law Students
- Spearheaded by Vanuatu, co-sponsored by over 120 states
- Advisory Opinion from the ICJ
- [UN news](#)
- Question:



Vanuatu ICJ Initiative

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The Republic of Vanuatu

Pursuing an Advisory Opinion on Climate Change from the International Court of Justice

The Republic of Vanuatu is building a growing coalition of States seeking an Advisory Opinion on Climate Change from the International Court of Justice (ICJ).

“Having particular regard to the Charter of the United Nations, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment, and the duty to protect and preserve the marine environment,

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

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

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

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

Some reflections

- Climate litigation is now at the international level
- Access to justice leads to taking climate cases to the highest courts, especially in cases where the claim was unsuccessful in domestic courts, or where the law is unclear
- Unclear what international courts will - or can - say... (eg ICJ)
- Advisory opinions building up to contentious cases?
- Relationship to international negotiations: global problem, need for constructive multilateral solutions (but are they fast enough?)
- Can AO be supportive or disruptive to multilateral solutions?