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# Climate Change Litigation before International Human Rights Bodies: Insights from *Daniel Billy et al. v. Australia* (Torres Strait Islanders Case)

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## Abstract

The article examines *Daniel Billy et al. v. Australia*, also known as the Torres Strait Islanders case, decided by the United Nations Human Rights Committee. The case stands out as the first instance in which an international (quasi-) judicial body has found human rights violations in the context of an individual complaint concerning climate change. The article sets out three main considerations arising from the case. First, it delves into the specificities of the case in relation to some of the common constraints to climate complaints before international human rights bodies. Second, it outlines the distinctive aspects of human rights arguments when applied to climate change adaptation, as opposed to mitigation. Third, it underscores the need to further investigate the multidimensional impact of climate change litigation before international human rights bodies.

## Keywords

human rights – climate change – climate change litigation – international human rights bodies – UN Human Rights Committee – Torres Strait Islanders – Daniel Billy et al. v. Australia – climate change adaptation

## 1 Introduction<sup>1</sup>

On 22 September 2022, the United Nations Human Rights Committee (hereafter also referred to as the “Committee”) issued its Views on the case *Daniel Billy et al. v. Australia*.<sup>2</sup> The case concerns the impact of climate change on the human rights of a group of native inhabitants of the Torres Strait Islands.

The Views have already received considerable media coverage and have been the subject of a few brief contributions.<sup>3</sup> The case stands out as the first in which an international (quasi-) judicial body has found human rights violations in relation to climate change on the basis of an individual complaint. It marks an important step forward in *rights-based* climate litigation.<sup>4</sup>

1 The author wishes to thank the organizing committee of the 19th Study Meeting of the Young Scholars in International Law “La Tutela Giurisdizionale dell’Ambiente nel Diritto Internazionale ed Europeo” (Luiss, Rome, 2 December 2022) where this paper was presented. The author also expresses gratitude to Prof. Lorenzo Schiano di Pepe and the two anonymous reviewers for their helpful comments on earlier versions, and to Prof. Emanuele Sommario for his guidance and support in research activities. The author acknowledges support from the European Union: Project “European and International Human Rights Standards in Conflicts and Disasters”- EIHRSCaD GA 101127519.

2 *Daniel Billy et al. v. Australia*, Communication No. 3624/2019, Views of 22 September 2022.

3 VOIGT, “UNHRC is Turning up the Heat: Human Rights Violations Due to Inadequate Adaptation Action to Climate Change”, *EJIL:Talk!*, 26 September 2022, available at: <<https://www.ejiltalk.org/unhrc-is-turning-up-the-heat-human-rights-violations-due-to-inadequate-adaptation-action-to-climate-change/>>; FERIA-TINTA, “Torres Strait Islanders: United Nations Human Rights Committee Delivers Ground-Breaking Decision on Climate Change Impacts on Human Rights”, *EJIL:Talk!*, 27 September 2022, available at: <<https://www.ejiltalk.org/torres-strait-islanders-united-nations-human-rights-committee-delivers-ground-breaking-decision-on-climate-change-impacts-on-human-rights/>>; TIGRE, “United Nations Human Rights Committee finds that Australia is violating human rights obligations towards Torres Strait Islanders for climate inaction”, *Climate Law – A Sabin Center Blog*, 27 September 2022, available at: <<https://blogs.law.columbia.edu/climatechange/2022/09/27/u-n-human-rights-committee-finds-that-australia-is-violating-human-rights-obligations-towards-torres-strait-islanders-for-climate-inaction/>>; DALY, “The UNHRC’s Torres Strait Islands decision: A Major Advance, and a Roadmap for the Future”, *The Global Network for Human Rights and the Environment*, 2023, available at: <<https://gnhre.org/community/the-unhrCs-torres-strait-islands-decision-a-major-advance-and-a-roadmap-for-the-future/>>.

4 PEEL and OSOFSKY, “A Rights Turn in Climate Change Litigation?”, *Transnational Environmental Law*, 2018, p. 37 ff; SAVARESI and AUZ, “Climate Change Litigation and Human Rights: Pushing the Boundaries”, *Climate Law*, 2019, p. 244 ff; PUSTORINO, “Cambiamento climatico e diritti umani: Sviluppi nella giurisprudenza nazionale”, *Ordine internazionale e diritti umani*, 2021, p. 596 ff; SAVARESI and SETZER, “Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers”, *Journal of Human Rights and the Environment*, 2022, p. 7 ff.; RODRÍGUEZ-GARAVITO, *Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action*, Cambridge, 2022.

The link between climate change and human rights was acknowledged by the State Parties to the Paris Agreement (in its Preamble).<sup>5</sup> Additionally, international human rights bodies have issued several authoritative documents on the subject, which not only describe the human rights impacts of climate change but also outline a human rights-based approach to climate action.<sup>6</sup> Based on these developments, the protection of human rights, as well as fundamental rights enshrined in national constitutions, has been used as a legal ground in a growing number of lawsuits. According to the most recent data available, more than 120 of such cases have been decided or are currently pending in different jurisdictions worldwide.<sup>7</sup>

Most of these cases are brought before domestic courts, with only a relatively small part of rights-based climate litigation taking place before international human rights bodies at the regional and universal levels. The Grantham Research Institute and Sabin Center databases reported around 20 climate complaints before judicial, quasi-judicial and non-judicial international human rights bodies up to 20 June 2023. As discussed in detail elsewhere,<sup>8</sup> most of these cases are still pending, and, prior to the adoption of the Committee's Views in *Daniel Billy et al. v. Australia*, international human rights bodies had only decided on three climate complaints, all of which resulted in unfavorable outcomes for the applicants.<sup>9</sup>

Although they account for only a tiny fraction of climate change litigation, the examination of climate complaints before international human rights bodies holds relevance due to their strategic ambition and international character.

5 Paris Agreement, 12 December 2015, entered into force 4 November 2016, preamble.

6 A compilation of the activities undertaken by UN human rights bodies is available at: <<https://www.ohchr.org/en/climate-change/human-rights-mechanisms-addressing-climate-change>>.

7 These data can be found in the two main databases on climate litigation, operated by the Sabin Centre for Climate Change Law (available at: <<http://climatecasechart.com/>>) and the Grantham Research Institute on Climate Change and the Environment (available at: <<http://www.climate-laws.org/>>). Savaresi and Setzer listed 112 rights-based cases as of May 2022, see SAVARESI and SETZER, *cit. supra* note 4.

8 LUPORINI and SAVARESI, "International human rights bodies and climate litigation: Don't look up?," *RECIEL*, 2023, p. 1 ff.

9 Inter-American Commission on Human Rights, *Inuit People v. United States* (Petition Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States), Dismissal 16 November 2006; Human Rights Committee, *Ioane Teitiota v. New Zealand*, Communication No. 2728/2016, Views adopted by the Committee of 7 January 2020; Committee on the Rights of the Child, *Sacchi et al. v. Argentina et al.*, Communication No. 104/2019, Decision of 11 November 2021.

In the context of climate change litigation, strategic cases have been defined as those “cases where the claimants’ motives go beyond the concerns of the individual litigant and aim to bring about some broader societal shift”.<sup>10</sup> These cases are usually developed by leading environmental NGOs together with a transnational network of lawyers and academics and are often combined with campaigns or other forms of social-political mobilization.<sup>11</sup>

Currently, international human rights bodies serve as the primary international fora for climate change litigation. While the opportunity to request advisory opinions from the International Court of Justice and the International Tribunal for the Law of the Sea has finally materialized,<sup>12</sup> interstate climate cases before these or other bodies are still missing despite extensive academic speculation on the subject.<sup>13</sup> At the same time, cases have been brought by private companies before the International Centre for Settlement of Investment Disputes. Among others, some cases allege a violation of the Energy Charter Treaty due to the entry into force of stricter climate regulations, which would have an adverse impact on existing investments in the defendant State.<sup>14</sup> It is worth noting that this type of investment litigation has been defined as “anti-climate” (or “anti-regulatory”) litigation, because it challenges environmental regulations and delays climate action. On the

10 SETZER and HIGHAM, “Global trends in climate change litigation: 2022 snapshot”, *Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy*, 2022, available at: <[https://www.lse.ac.uk/grantham\\_institute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation\\_2021-snapshot.pdf](https://www.lse.ac.uk/grantham_institute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf)>.

11 The Torres Strait Islanders case was prepared by ClientEarth, <<https://www.clientearth.org/>>.

12 See Commission of Small Islands States on Climate Change and International Law, Request for Advisory Opinion, Registrar International Tribunal of the Law of the Sea, 12 December 2022; UN General Assembly, Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change, UN Doc. A/77/L.58, (2023).

13 See WEWERINKE-SINGH, *State Responsibility, Climate Change and Human Rights under International Law*, London, 2019; SAVARESI, “Inter-State Climate Change Litigation: ‘Neither a Chimera nor a Panacea’”, in ALOGNA, BAKKER and GAUCCI (eds), *Climate Change Litigation: Global Perspectives*, Leiden, 2021, p. 366 ff.

14 See *RWE AG v. The Kingdom of Netherlands*, ICSID Case No. ARB/21/4, Request for Arbitration of 20 January 2021; *UNIPER SE v. The Kingdom of Netherland*, ICSID Case No. ARB/21/22, Request for Arbitration of 30 April 2021 (the case has been withdrawn in 2022, following the nationalization of UNIPER). See also: FERMEGLIA et al., “Investor-State Dispute Settlement as a new avenue for climate change litigation”, *Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy*, 2021, available at: <<https://www.lse.ac.uk/granthaminstitute/news/investor-state-dispute-settlement-as-a-new-avenue-for-climate-change-litigation/>>.

other hand, the complaints before international human rights bodies can be classified as “pro-climate” or “pro-regulatory” litigation, since they strategically aim to prompt States to advance their climate policies, as well as create public awareness.<sup>15</sup>

Against this background, the Committee’s Views in *Daniel Billy et al. v. Australia* give rise, in the author’s opinion, to three important considerations, which will be the focus of this contribution.

First, in the case at hand, the applicants managed to overcome some of the common obstacles characterizing climate complaints before international human rights bodies. In this regard, Section 3 of this contribution will investigate the role that these requirements played in the specific context of the Torres Strait Islanders case and discuss what this means for pending and future climate complaints before international human rights bodies.

Second, the Committee found human rights violations only in relation to Australia’s failure to adopt climate change adaptation measures, whereas it did not pronounce on its mitigation policy.<sup>16</sup> While this aspect of the Views was criticized,<sup>17</sup> Section 4 will aim to stress the distinctive aspects of addressing adaptation under a human rights lens.

Third, as the first successful climate complaint before an international human rights body, the Committee’s Views prompt an investigation into the impact of this specific type of climate litigation. Aiming to foster the emerging debate on the topic and with no pretension to provide an exhaustive account, Section 5 will present some insights from the Torres Strait Islanders case to discuss the potential impact of such litigation on the victims of climate change-related human rights violations, the advancement of climate action, and the development of international law.

15 GOLNARAGHI et al., “Climate Change Litigation – Insights into the evolving global landscape”, *The Geneva Association*, 2021, available at: <[https://www.genevaassociation.org/sites/default/files/climate\\_litigation\\_04-07-2021.pdf](https://www.genevaassociation.org/sites/default/files/climate_litigation_04-07-2021.pdf)>; SETZER and HIGHAM, *cit. supra* note 10.

16 The Intergovernmental Panel on Climate Change (“IPCC”) defines “mitigation” as “a human intervention to reduce emissions or enhance the sinks of greenhouse gases” while “adaptation” is defined as “the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities”. See: IPCC [FIELD et al. ed.], “Glossary of terms”, in *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation*, Cambridge, 2012, pp. 555–564.

17 See *Daniel Billy et al. v. Australia*, *cit. supra* note 2, “Annex II, Individual opinion by Committee Member Gentian Zyberi (concurring)”; and VOIGT, *cit. supra* note 3.

Prior to presenting these three considerations, Section 2 of this contribution will introduce the reader to the facts of the case and the findings of the Committee.

## 2 The Facts of the Case and the Findings of the Human Rights Committee

The authors of the Communication are eight Australian nationals and members of the indigenous people inhabiting the Torres Strait Islands. They also filed the Communication on behalf of six children (who are sons and daughters of two applicants).<sup>18</sup>

The authors contended that Australia violated their rights to life, private, family and home life, and culture, enshrined in Articles 6, 17, and 27 of the International Covenant on Civil and Political Rights (the “Covenant”) respectively. They also alleged a violation of Article 24 in relation to the rights of the six children involved in the case.<sup>19</sup>

The authors claimed to be among the populations most vulnerable to the impacts of climate change.<sup>20</sup> Sea-level rise has already caused flooding and coastal erosion on the low-lying islands they inhabit. Some of their villages are inundated every year.<sup>21</sup> Soil salinization rendered many previously utilized areas unsuitable for traditional gardening.<sup>22</sup> Extreme weather events, such as cyclones, exacerbate shoreline loss; while higher temperatures and ocean acidification affect the coral reefs, and the entire marine ecosystem and resources.<sup>23</sup> These impacts are expected to escalate over time, as also recognized by the governmental Torres Strait Regional Authority (the “Authority”).<sup>24</sup> In a timeframe of about 10–15 years, some of the Islands will be inundated to the point that displacement of the communities will be inevitable, unless urgent action is taken today.<sup>25</sup>

The authors argued that the State Party “failed to implement an adaptation program to ensure the long-term habitability of the islands.”<sup>26</sup> The numerous requests for assistance and funding by the authors and their communities

18 *Daniel Billy et al. v. Australia*, *cit. supra* note 2, para. 1.1.

19 *Ibid.*, para. 3.1.

20 *Ibid.*, para. 2.1.

21 *Ibid.*, para. 2.4.

22 *Ibid.*, para. 2.5.

23 *Ibid.*, para. 2.3.

24 *Ibid.*, para. 2.2.

25 *Ibid.*, para. 5.3.

26 *Ibid.*, para. 2.7.

have not been adequately met. The authors also argued that the State Party failed to reduce greenhouse gas (“GHG”) emissions to mitigate climate change. Australia’s emissions, which have steadily risen since 1990, place it among the highest emitters globally.<sup>27</sup> In the authors’ view, these failures amounted to a violation of Australia’s positive obligation to protect their human rights under the Covenant.

Australia replied by asserting that the applicants’ claims were inadmissible.<sup>28</sup> According to Australia, alleged violations of international climate change treaties fall outside the scope of the Covenant.<sup>29</sup> In addition, Australia contended that the authors’ claims were not adequately substantiated, as there is a lack of evidence to demonstrate the existence of a current or imminent threat to the rights invoked by the applicants.<sup>30</sup> In the respondent’s view, a causal link between the failure to adopt State measures and the alleged violations cannot be proved, and climate change cannot be attributed to Australia.<sup>31</sup>

In its Views, the Committee found the Communication to be admissible, concluding that the risk of impairment of rights “owing to alleged serious adverse impacts that have already occurred and are ongoing, is more than a theoretical possibility”.<sup>32</sup>

On the merits, the Committee found that Australia violated the rights to private, family and home life and to culture, enshrined in Articles 17 and 27 of the Covenant, respectively.<sup>33</sup> The violation resulted from Australia’s failure to implement “timely adequate” adaptation measures to address some of the adverse effects of climate change on the vulnerable territory of the Islands.<sup>34</sup> The Committee noted that while the State Party has taken numerous actions to address the adverse impacts of climate change, it did not provide an explanation for the delay in building seawalls on the Islands where the authors live. This delay indicates an inadequate response by the State Party to the threat faced by the authors.<sup>35</sup>

While acknowledging that Australia is one of the largest GHG emitters,<sup>36</sup> the Committee did not link the violations of Articles 17 and 27 to the

<sup>27</sup> *Ibid.*, para. 2.8.

<sup>28</sup> *Ibid.*, para. 4.1.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, para. 4.2.

<sup>31</sup> *Ibid.*, para. 4.3.

<sup>32</sup> *Ibid.*, para. 7.9.

<sup>33</sup> *Ibid.*, para. 9.

<sup>34</sup> *Ibid.*, paras. 8.9–8.14.

<sup>35</sup> *Ibid.*, para. 8.14.

<sup>36</sup> *Ibid.*, para. 7.8.



inadequacy of the State's mitigation policy, which is not addressed in the Views.

In addition, the Committee did not find a violation of Article 6 on the right to life. The Committee recalled the obligation of State Parties to protect the right to life against reasonably foreseeable threats resulting from the adverse effects of climate change.<sup>37</sup> However, in the present case, the Committee pointed out that the authors of the Communication failed to demonstrate the existence of a real and reasonably foreseeable risk threatening their right to life.<sup>38</sup>

Moreover, having found a violation of Articles 17 and 27, the Committee decided not to examine the authors' claims about children's rights under Article 24 (1) of the Covenant.<sup>39</sup>

Finally, the Committee recalled Australia's obligation to provide an effective remedy through full reparation to the victims, and to take steps to prevent similar violations in the future. This entails providing adequate compensation for the damage suffered, holding consultations with affected communities, continuing to implement effective protection measures and monitoring and reviewing the effectiveness of these measures.<sup>40</sup>

### 3 The Specificities of the Case in relation to Common Obstacles in Climate Change Litigation before International Human Rights Bodies

A debate has already developed on the many challenges that rights-based climate complaints face.<sup>41</sup> Notably, the exhaustion of domestic remedies, jurisdiction and victim requirement have been defined as three specific constraints to climate complaints before international human rights bodies.<sup>42</sup> This section delves into the role of these requirements in the specific context of the case *Daniel Billy et al. v. Australia*.

Before lodging their complaint with an international human rights body, the applicants must have already exhausted the remedies available to them at

37 *Ibid.*, para. 8.3.

38 *Ibid.*, para. 8.7.

39 *Ibid.*, para. 10.

40 *Ibid.*, para. 11.

41 See references *supra* note 4.

42 LUPORINI and SAVARESI, *cit. supra* note 8.



the domestic level.<sup>43</sup> This requirement, which is found in all major universal and regional human rights systems, provides however for some exceptions. As a general rule, the applicants may bypass domestic remedies if those available are ineffective.<sup>44</sup> In the specific case of communications to the Human Rights Committee, Article 5.2(b) of the Optional Protocol to Covenant provides a single exception to the rule, which relates to the excessive duration of domestic proceedings (if they are “unreasonably prolonged”). However, in the Committee’s practice, the possibility of exception has been widened, in such a way that the applicants need to have exhausted only those domestic remedies that offer a “reasonable prospect of redress”.<sup>45</sup>

Indeed, climate complaints before international human rights bodies often rely on these exceptions and argue that domestic remedies would fail to provide a reasonable chance to redress the alleged violations.<sup>46</sup> One notable case is *Sacchi et al. v. Argentina et al.*, wherein a group of children from multiple countries claimed before the Committee on the Rights of the Child that five respondent States had violated their rights to life, health, culture and best interest of the child due to their failure to take action to mitigate climate change.<sup>47</sup> The case, however, did not meet the admissibility requirements. The Committee on the Rights of the Child dismissed the case, pointing out that the applicants did not attempt to initiate domestic proceedings and they merely expressed concerns about the prospects of success before national courts.<sup>48</sup>

It is therefore worth examining how the requirement of exhausting domestic remedies was addressed in the Torres Strait Islanders case. The authors of the complaint did not pursue remedies before domestic judicial bodies. They contended before the Committee that there were no domestic remedies available for their case because the Australian system does not foresee remedies for the violation of fundamental rights in relation to climate

43 PISILLO MAZZESCHI, “Exhaustion of Domestic Remedies and State Responsibility for Violation of Human Rights”, *The Italian Yearbook of International Law Online*, 2000, p.17 ff.; ROMANO, “The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures”, in BOSCHIERO et al. (eds.), *International Courts and the Development of International Law*, The Hague, 2013.

44 Optional Protocol to the Covenant on Civil and Political Rights, adopted 19 December 1966, Art. 5 (b). See also Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure, 19 December 2011, Art. 7.

45 See for example: *Patiño v. Panama*, Communication No. 437/1990, Decision of 21 October 1994, para. 5.2.

46 See LUPORINI and SAVARESI, *cit. supra* note 8 for a review of practice.

47 According to the authors, remedies in the different domestic jurisdictions would have been “unreasonably prolonged, unduly burdensome, and unlikely to bring them effective relief”. See *Sacchi et al. v. Argentina et al.*, *cit. supra* note 9, para. 311.

48 *Ibid.*, para. 10.18.

change.<sup>49</sup> To support their argument, the authors obtained formal advice from an Australian counsel on the existence and effectiveness of domestic remedies available to them, and they attached the Counsel's opinion (which indicated the absence of such remedies) to their Communication.<sup>50</sup>

Unlike in *Sacchi et al. v. Argentina et al.*, and other pending climate complaints addressed to multiple respondent States,<sup>51</sup> the applicants of the Torres Strait Islanders case would have had to deal exclusively with the Australian system, as, moreover, other native inhabitants of the Islands are doing.<sup>52</sup> Thus, the authors pointed out that Australia presents a rather peculiar situation as it lacks a Bill of Rights in force and the government at the time was strongly opposed to taking climate action.<sup>53</sup> Additionally, they stressed that the High Court of Australia had previously ruled that the State does not owe a duty of care for failing to regulate environmental harm, and that the same ruling was reaffirmed by a Court of Appeal in a climate change case.<sup>54</sup>

The question arises as to whether these unfavorable precedents brought to the attention of the Committee can be deemed sufficient to grant the exception to the requirement of exhausting domestic remedies, on the basis that the latter cannot be considered effective because they do not offer a reasonable prospect of redress. In certain cases, the Committee held that applicants were not obliged to exhaust internal remedies because previous domestic rulings showed that a successful outcome would have proved impossible for them.<sup>55</sup> However, other human rights treaty monitoring bodies have maintained that

49 *Daniel Billy et al. v. Australia*, Communication under the Optional Protocol to the International Covenant on Civil and Political Rights of 13 May 2019, paras. 23–27, available at: <<http://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>>.

50 *Ibid.*, Annex 13.

51 Another example is: European Court of Human Rights, *Duarte Agostinho et al. v. Portugal et al.*, Application No. 39371/20, Relinquishment of jurisdiction in favour of the Grand Chamber of 29 June 2022.

52 *Pabai Pabai and Guy Paul Kabai v. Commonwealth of Australia*, Application No. VID622/2021 to Federal Court of Australia, 26 October 2021, available at: <<http://climatecasechart.com/non-us-case/pabai-pabai-and-guy-paul-kabai-v-commonwealth-of-australia/>>.

53 *Daniel Billy et al. v. Australia*, Communication, *cit. supra* note 49, paras. 9–27.

54 High Court (Australia), *Graham Barclay Oysters v. Ryan*, Judgment of 5 December 2022; Federal Court (Australia), *Sharma and others v Minister for the Environment*, Judgment of 22 April 2022.

55 See for example: Human Rights Committee, *Earl Pratt and Ivan Morgan v. Jamaica*, Communication No. 210/1986 and 225/1987, Views of the Committee of 6 April 1989, para. 12.3.

an unfavorable precedent in a relatively new area of law does not automatically imply that domestic claims on the same subject matter are futile.<sup>56</sup>

Nevertheless, the respondent State did not pursue such a counterargument in its defense and did not elaborate on the domestic remedies available in the present case. On the contrary, Australia preferred to submit that there is no obligation to provide domestic remedies in cases where there is no violation of the rights protected by the Covenant.<sup>57</sup> In response, the Committee decided that the issue could not be dissociated from an examination on the merits of whether or not such violation had in fact occurred, and therefore did not find Article 5.2(b) to be an obstacle to the admissibility of the complaint. The Committee further noted that this was due to the lack of information provided by the respondent State regarding the existing remedies available to the applicants at the national level.<sup>58</sup>

On the one hand, the Torres Strait Islanders case suggests that directly approaching a UN human rights treaty monitoring body and arguing that effective remedies do not exist at the domestic level is a viable option for climate litigants. If the respondent State fails to provide sufficient information about the existence of effective domestic remedies, the Committee can proceed to examine the merits of the case. On the other hand, it should be noted that the assessment of this specific admissibility requirement may be different in other pending climate complaints. This is not only because some complaints are addressed to multiple States, but also because the defense of those States may vary from that of Australia. Furthermore, the assessment will also depend on the specific international human rights body addressed. For example, the European Court of Human Rights typically takes a more restrictive approach to the exhaustion of domestic remedies requirement.<sup>59</sup>

In addition to the exhaustion of domestic remedies, two other common constraints on individual complaints filed with the Human Rights Committee arise from Article 1 of the Optional Protocol to the Covenant. The Article provides that the Committee can receive and consider communications from individuals subject to the *jurisdiction* of the respondent State who claim to be

56 Committee on the Elimination of Racial Discrimination, *Barbaro v. Australia*, Communication No. 7/1995, Declaration of inadmissibility of 14 August 1997.

57 *Daniel Billy et al. v. Australia*, *cit. supra* note 2, para. 6.6.

58 *Ibid.*, para. 7.3.

59 See: HARTMANN and WILLERS, "Protecting Rights through Climate Change Litigation before European Courts", *Journal of Human Rights and the Environment*, 2022, p. 90 ff; KELLER and HERI, "The Future is Now: Climate Cases Before the ECtHR", *Nordic Journal of Human Rights*, 2022, p. 153 ff.

victims of a violation of any right protected by the Covenant committed by that State.

In the case of the Torres Strait Islanders, the requirement of jurisdiction posed no obstacle, since it was undisputed that the applicants were subject to the jurisdiction of Australia, and that the alleged violations fell within the scope of the Covenant. It is worth noting, however, that the same requirement can present significant challenges for claims concerning alleged human rights violations that did not take place within the territory of the respondent States. In such instances, the authors of the complaint must prove the existence of extraterritorial human rights jurisdiction.<sup>60</sup>

The case at hand provides more valuable insights into the victim requirement.<sup>61</sup> To meet this requirement, applicants must demonstrate that they have suffered a real impairment and that they have been directly and personally affected by the action or inaction of the defendant State, or that such impairment is imminent. This requirement, whose corollary is the prohibition of *actio popularis*,<sup>62</sup> can prove particularly challenging in climate complaints. These complaints are often driven by a preventive intent and aim to lessen future climate change impacts, which can affect or pose a threat to multiple individuals indistinctly.

In the present case, the victim requirement was considered fulfilled for the purpose of admissibility. As described above, the Committee, echoing its decision in the *Teitiota v. New Zealand* case, noted that the authors, as inhabitants of territories at risk of flooding, are highly vulnerable to climate change and that the risk of their rights being impaired is more than a theoretical possibility.<sup>63</sup>

60 See MILANOVIC, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy*, Oxford, 2011; DA COSTA, *The Extraterritorial Application of Selected Human Rights Treaties*, Leiden, 2012. We discussed this requirement in the specific context of individual complaints before international human rights bodies in LUPORINI and SAVARESI, *cit. supra* note 8.

61 See Antonio Mariconda's contribution in this Special Issue.

62 *Actio popularis* may be defined as a "right resident in any member of a community to take legal action in vindication of a public interest", see GATTINI, "Actio Popularis", *Max Planck Enciclopedias of International Law*, available at <<https://opil.ouplaw.com/display/10.1093/law-mpeipro/e1167.013.1167/law-mpeipro-e1167#:~:text=1%20Actio%20popularis%20may%20be,%2C%2047%2C%20para%2088>>. In previous case law, the Committee stated that "no person may, in theoretical terms and by *action popularis*, object to a law or practice which he hold at variance with the Covenant", see *Brun v. France*, Communication No. 1453/2006, (CCPR/C/88/D/1453), 26 November 2006, para. 6.

63 *Daniel Billy et al v. Australia*, *cit. supra* note 2, para. 7.9.

The victim requirement, however, also plays a role in the examination on the merits, where the Committee's scrutiny may be more stringent. This indeed occurred in the Torres Strait Islanders case. Despite recalling its General Comment N. 36 (2018) on the right to life and previous case law attesting that this right encompasses the enjoyment of a life with dignity,<sup>64</sup> the Committee did not find a violation of Article 6. As described above, in the Committee's view, the applicants were unable to demonstrate the specific effects that climate change had on their health, or the "real and reasonably foreseeable risk of ... physical endangerment or extreme precarity that could threaten their right to life".<sup>65</sup> In its assessment, the Committee also considered the existence of adaptation infrastructures that Australia has built or planned on the Islands. Drawing on the previous case of *Teititota v. New Zealand*,<sup>66</sup> the Committee stressed that "the time frame of 10 to 15 years, as suggested by the authors, could allow for intervening acts by the State party to take affirmative measures to protect and, where necessary, relocate the alleged victims".<sup>67</sup> This finding sparked some disagreement, as evident in the presence of several dissenting opinions.<sup>68</sup>

In this context, the Committee's Views shed light on the challenges associated with claims on the right to life in relation to the impacts of climate change, especially when such claims concern alleged real and reasonably foreseeable risks that could threaten the enjoyment of this right. As a result, climate litigants dealing with similar situations may consider reorienting their efforts towards other rights, also noting that, in the case at hand, the remedies granted were unlikely to change much if a violation of the right to life was established. In this regard, the case highlights the potential of Article 27 on the right to culture as a promising avenue for climate complaints. While formally an individual right, the article can encompass a collective and intertemporal

64 Human Rights Committee, General Comment No. 36, (CCPR/C/GC/36), 3 September 2019; *Portillo Cáceres et al. v. Paraguay*, Communication No. 2751/2016, Views adopted by the Committee of 20 September 2019.

65 *Daniel Billy et al. v. Australia*, *cit. supra* note 2, para. 8.6.

66 *Teititota v. New Zealand*, *cit. supra* note 9. For a comment, see among others: SOMMARIO, "When Climate Change and Human Rights Meet: A Brief Comment on the Un Human Rights Committee's Teititota Decision", *Questions of International Law*, 2021, p. 51 ff.

67 *Daniel Billy et al. v. Australia*, *cit. supra* note 2, para. 8.7.

68 *Ibid.*, Annex I, Individual opinion by Committee Member Duncan Laki Muhumuza; Annex III, Joint opinion by Committee Members Arif Bulkan, Marcia V.J. Kran and Vasilka Sancin (partially dissenting); Annex IV, Opinión individual del miembro del Comité Carlos Gómez Martínez; Annex V, Opinión individual del miembro del Comité Hernán Quezada (parcialmente disidente).

dimension.<sup>69</sup> The Committee itself acknowledged this feature of the right to culture finding that Australia had violated “the authors’ *collective* ability to maintain their traditional way of life, to transmit to their children and *future generations* their culture and traditions and use of land and sea resources”.<sup>70</sup> Although the right has primarily been litigated by indigenous peoples, it could be progressively extended to other traditional (minority) communities that are severely affected by climate change.

#### 4 Distinguishing States’ Human Rights Obligations to Mitigate and Adapt to Climate Change

Although the Torres Strait Islanders’ Communication marks a significant milestone as the first successful climate complaint before an international human rights body, it must be noted that the authors’ claims were only partially upheld. In addition to rejecting the claim on the right to life and not dealing with children’s rights, the Committee found a violation of Articles 17 and 27 of the Covenant only in relation to Australia’s positive obligation to take “timely adequate” measures to *adapt* to climate change. Notably, the Committee did not express a view on Australia’s climate change mitigation policy, which the authors also addressed in their Communication.

While some commentators criticized the Committee for missing the opportunity to illustrate the content and scope of climate change mitigation obligations,<sup>71</sup> this section aims to shift the focus towards the distinctive aspects of human rights-based litigation on climate change adaptation and to highlight the significance of the Committee’s Views in this context.

The IPCC has defined adaptation as “the process of adjusting to the current or expected climate and its effects in order to moderate harm or exploit beneficial opportunities”.<sup>72</sup> Adaptation measures span various sectors, including agriculture, water management, and disaster risk reduction, and can involve actions such as installing early warning systems or constructing seawalls against sea-level rise and coastal erosion.

69 See SCHEININ, “Amicus Curiae Brief by Professor Martin Scheinin in the Case of Daniel Billy et al. (Torres Strait Islanders) v. Australia by the UN Human Rights Committee”, *Bonavero report*, available at <[https://www.law.ox.ac.uk/sites/default/files/2022-11/Amicus%20Brief%20Bonavero%20Report\\_0.pdf](https://www.law.ox.ac.uk/sites/default/files/2022-11/Amicus%20Brief%20Bonavero%20Report_0.pdf)>.

70 *Daniel Billy et al v. Australia*, *cit. supra* note 2, para. 8.14 (emphasis added).

71 See VOIGT, *cit. supra* note 3. See also *Daniel Billy et al. v. Australia*, *cit. supra* note 2, Annex II Individual opinion by Committee Member Gentian Zyberi (concurring).

72 See IPCC, *cit. supra* note 16.



In its examination on the merits, the Committee identified deficiencies in Australia's response to climate change impacts on the Torres Strait Islands, especially regarding measures such as seawalls. While the Committee acknowledged that Australia had implemented some infrastructure projects, it concluded that these measures were adopted with delay compared to the requests made by the affected communities. This finding indicates an "inadequate response by the State party to the threat faced by the authors".<sup>73</sup>

Most climate change litigation cases, including those that invoke human rights arguments and are filed with international human rights bodies, focus on climate change mitigation, with the main objective of prompting the defendant States to take stronger measures in reducing their GHG emissions.<sup>74</sup> Climate change mitigation is certainly a priority, especially for major emitters like Australia. However, it is essential to recognize that adaptation is a complementary and equally vital action in addressing climate change. Moreover, if it is evident that States are lagging behind in implementing their mitigation obligations, the situation for climate change adaptation is also alarming. The IPCC highlights that if the current slow pace of adaptation planning and implementation continues, the adaptation gaps will only widen.<sup>75</sup> While the problem mainly affects underdeveloped countries due to their limited resources, developed countries also reveal increasing vulnerability to the escalating impact of climate change.<sup>76</sup>

As described in detail elsewhere,<sup>77</sup> international and national laws on adaptation are generally less developed compared to mitigation law. The underdevelopment of adaptation legal frameworks creates uncertainties in determining the specific obligations and responsibilities of States in adapting to climate change impacts. Additionally, assessing progress (or the lack thereof) in adaptation policies presents greater challenges. Unlike mitigation, which can

73 *Daniel Billy et al. v. Australia*, para. 8.14. See also para. 8.12.

74 See SETZER and HIGHAM, *cit. supra* note 10; SAVARESI and SETZER, *cit. supra* note 4; LUPORINI and SAVARESI, *cit. supra* note 8.

75 See IPCC [PÖRTNER et al. (eds.)], "Climate Change 2022. Impacts, Adaptation and Vulnerability. Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change", *Summary for Policy Makers*, 2022, C.1.2: "At current rates of adaptation planning and implementation, the adaptation gap will continue to grow" (*with high confidence*).

76 Besides sea-level rise, reference can be made, for example, to the increase in floods causing casualties in Europe, such as in Germany in July 2021, see CORNWALL, "Europe's deadly floods leave scientists stunned", *Science*, 2021, available at: <[www.sciencemag.org/news/2021/07/europe-s-deadly-floods-leave-scientists-stunned](http://www.sciencemag.org/news/2021/07/europe-s-deadly-floods-leave-scientists-stunned)>.

77 LUPORINI, "Strategic Litigation at the Domestic and International Levels as a Tool to Advance Climate Change Adaptation?", *Yearbook of International Disaster Law*, 2023, p. 202 ff.



be quantitatively measured through GHG emission reductions, evaluating the effectiveness of adaptation measures requires a more nuanced and qualitative assessment of their positive impact on vulnerable communities, ecosystems, and resilience to climate change. These challenges hinder litigation strategies in the field.

However, when examining the relationship between climate change and human rights obligations, it becomes apparent that this relationship is more immediately and directly evident in the context of adaptation. In other words, the human rights framework is better suited to accommodate adaptation than mitigation.<sup>78</sup> When it comes to causation and attribution issues, establishing human rights violations arising from a failure to take action on climate change is less challenging in relation to adaptation.<sup>79</sup> First, in cases where climate change impacts interfere with the enjoyment of human rights, States have a positive obligation to implement adaptation measures that can provide immediate benefits in alleviating the resulting impairment. Second, the responsibility for implementing such measures lies primarily with the territorial State, regardless of determining its own contribution to climate change and solving the complex question of “fair share” in emissions reduction.<sup>80</sup>

In this sense, claims on climate change adaptation are likely to have a better chance of success before international human rights bodies, especially when they address situations of State inaction towards vulnerable communities and territories severely affected by climate change.<sup>81</sup> Certainly, it is important to acknowledge that adaptation claims may also raise complex questions

78 In this sense, see also: OHCHR, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, (A/HRC/31/52), 1 February 2016; HALL and WEISS, “Avoiding Adaptation Apartheid: Climate Change Adaptation and Human Rights Law”, *Yale Journal of International Law*, 2012, p. 310 ff.; MAYER, “Climate Change Mitigation as an Obligation Under Human Rights Treaties?”, *American Journal of International Law*, 2021, p. 409 ff. See also the debate between HERI, “Climate Change before the European Court of Human Rights: Capturing Risk, Ill-Treatment and Vulnerability”, *European Journal of International Law*, 2022, p. 925 and ZAHAR, “The Limits of Human Rights Law: A Reply to Corina Heri”, *European Journal of International Law*, 2022, p. 953.

79 On causation and attribution see, among others: QUIRICO, “Climate Change and State Responsibility for Human Rights Violations: Causation and Imputation”, *Netherlands International Law Review*, 2018, 185 ff.

80 On “fair share” see: RAJAMANI et al., “National ‘fair shares’ in reducing greenhouse gas emissions within the principled framework of international environmental law”, *Climate Policy*, 2021, p. 983 ff.; LISTON, “Enhancing the efficacy of climate change litigation: how to resolve the “fair share question” in the context of international human rights law”, *Cambridge International Law Journal*, 2020, p. 241 ff.

81 We defined these cases as “targeted adaptation cases”, see LUPORINI, *cit. supra* note 77.

of justice, notably when brought against underdeveloped States that lack adequate resources for climate change adaptation.<sup>82</sup> On the other hand, it is evident that, while mitigation remains the long-term priority, adaptation measures can be crucial for the survival of communities such as the Torres Strait Islanders in the immediate term.

## 5 The Potential Impact of Climate Change Litigation before International Human Rights Bodies

While due account must be taken of the specific circumstances of the case, *Daniel Billy et al. v. Australia* demonstrates that climate complaints before international human rights bodies can succeed. This opportunity prompts an inquiry into the potential impact of climate litigation before these bodies.

The literature on climate change litigation has proliferated, but only recently has a debate developed on its impact.<sup>83</sup> This section aims to contribute to the debate by addressing three key points arising from the Torres Strait Islanders case.

Climate change litigation can have a variety of impacts, both direct impacts, when the case leads to a decision requiring a change in the defendant's behavior, and indirect impacts, when the case results in, for example, raising public awareness, creating new costs and risks for certain actors, or inducing

82 We addressed this issue by putting forward the possibility of “transnational adaptation cases”, see LUPORINI, *cit. supra* note 77. On transnational climate litigation, and in particular on cases cutting across the global North-South divide, see also: PEEL and LIN, “Transnational Climate Litigation: The Contribution of the Global South”, *American Journal of International Law*, 2019, p. 679 ff. and RODRÍGUEZ-GARAVITO, “Human Rights: The Global South's Route to Climate Litigation”, *AMERICAN Journal of International Law Unbound*, 2020, p.114 ff.

83 SETZER and VANHALA, “Climate change litigation: A review of research on courts and litigants in climate governance”, *Wires Climate Change*, 2019, p.1 ff.; PEEL and OSOFSKY, “Climate Change Litigation”, *Annual Review of Law and Social Science*, 2020, p. 21 ff., BOUWER and SETZER, “Climate Litigation as Climate Activism: What Works?”, *The British Academy Cop26 Briefings*, 2020, available at: <[https://www.thebritishacademy.ac.uk/documents/2701/Climate-Litigation-as-Climate-Activism-What-Works\\_InBlsWN.pdf](https://www.thebritishacademy.ac.uk/documents/2701/Climate-Litigation-as-Climate-Activism-What-Works_InBlsWN.pdf)>; PEEL, PALMER and MARKEY-TOWLER, “Review of Literature on Impacts of Climate Litigation: Report”, *Children's Investment Fund Foundation and University of Melbourne*, 2022, available at: <[https://www.unimelb.edu.au/\\_data/assets/pdf\\_file/0008/4238450/Impact-lit-review-report\\_CIFF\\_Final\\_27052022.pdf](https://www.unimelb.edu.au/_data/assets/pdf_file/0008/4238450/Impact-lit-review-report_CIFF_Final_27052022.pdf)>. For an analytical framework to assess the impact of strategic human rights litigation see: DUFFY, *Strategic Human Rights Litigation. Understanding and Maximising Impact*, London, 2018.

changes in policy. At the same time, it is important to distinguish impacts from outcomes, because even a successful final judgment (i.e., a positive outcome) may fail to generate impact.

In this context, it is first of all crucial to consider the question of how and to what extent international human rights bodies' decisions can have a positive impact on the victims of climate change-related human rights violations and provide them with an effective remedy.<sup>84</sup>

As described above, in the final paragraphs of the Views, the Committee recalled Australia's obligation to provide reparation to the victims. Full reparation for the injury suffered would consist of adequate compensation, the involvement of the affected communities in consultations, and the implementation of effective adaptation measures.<sup>85</sup> The Committee called on Australia to share information on the measures taken to give effect to its Views within 180 days.<sup>86</sup>

Whether such positive outcomes translate into a direct impact depends in the first place on the legal value and effectiveness of the pronouncement of the international human rights body in question. To put it plainly, unlike judgments of the European Court of Human Rights, which national authorities are required to implement and whose execution is monitored by the Committee of Ministers,<sup>87</sup> the Committee's decisions are not considered formally binding, and the granting of reparation ultimately rests on the will of the condemned State.

On the other hand, bringing an individual complaint before an international human rights body can lead to indirect positive impacts on the victims even before or regardless of the final outcome of the case, contributing to changes in the behavior of the public authorities involved.

The Torres Strait Islanders case is illustrative in this respect. Prior to the adoption of the Committee's Views, the filing of the complaint and the advocacy campaign<sup>88</sup> had already drawn much attention to the situation. As a result, Australia announced its commitment to invest AUD 25 million in adaptation

84 SHELTON, *Remedies in International Human Rights Law*, Oxford, 2005.

85 *Daniel Billy et al v. Australia*, *cit. supra* note 2, para. 11.

86 *Ibid.*, para. 12.

87 See, among others: CALIGIURI, NAPOLETANO, "The Application of the ECHR in the Domestic Systems", *The Italian Yearbook of International Law*, 2010, p. 125 ff.

88 See the website of the campaign "Our Islands, Our Home", available at: <<https://ourislands.ourhome.com.au>>.

measures in the Islands.<sup>89</sup> Moreover, at the beginning of his mandate in June 2022, the new Minister for Climate Change and Energy Chris Bowen spent a visit to the Islands, met with the applicants, and stated that climate change poses a “real and substantial” threat to the Torres Strait Islanders.<sup>90</sup> This demonstrates how the Torres Strait Islanders’ complaint raised awareness and political engagement, resulting in the allocation of additional economic resources for climate change adaptation. These resources serve as a means to redress the rights violations suffered by the applicants.

Secondly, it is important to note that strategic climate change litigation, as defined above, aims to have a broader impact, beyond the immediate dispute between the parties involved, and bring about some structural changes within society.<sup>91</sup>

In this regard, decisions and progressive statements by international human rights bodies can have an indirect impact on a larger number of jurisdictions. All States Parties to international human rights treaties are called upon to respect and protect the rights as progressively interpreted by the monitoring bodies. Moreover, it is not uncommon for the decisions of these bodies to be referenced in domestic court judgments. The landmark *Urgenda* ruling draws heavily on the consolidated environmental case law of the European Court of Human Rights.<sup>92</sup> The Italian *Corte di Cassazione* recently grounded its judgment on a case concerning a request for international protection due to environmental degradation in the country of origin on the Committee’s

89 ClientEarth, “Torres Strait Islanders win key ask after climate complaint”, Press release 19 February 2020, available at: <[www.clientearth.org/latest/latest-updates/news/torres-strait-islanders-win-key-ask-after-climate-complaint/](http://www.clientearth.org/latest/latest-updates/news/torres-strait-islanders-win-key-ask-after-climate-complaint/)>.

90 ClientEarth, “Torres Strait climate claimants win their historic human rights fight against the Australian Government”, Press Release 23 September 2022, available at: <<https://www.clientearth.org/latest/latest-updates/news/torres-strait-islanders-fight-to-hold-australia-accountable-for-climate-change/>>; SBSNews, “Climate change poses a ‘real and substantial’ threat to the Torres Strait Islanders, Chris Bowen says”, 29 June 2022, available at: <<https://www.sbs.com.au/news/article/climate-change-poses-real-and-substantial-threat-to-torres-strait-islander-communities-chris-bowen/boowipvvc>>.

91 See SETZER and HIGHAM, *cit. supra* note 10.

92 Supreme Court (the Netherlands), *The State of the Netherlands v. Stichting Urgenda*, Judgment of 20 December 2019. See also: NOLKKAEMPER and BURGERS, “A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case”, *EJIL:Talk!*, 6 January 2020, available at: <<https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/>>; CORCIONE, “Diritti umani, cambiamento climatico e definizione giudiziale dello standard di condotta”, *Diritti umani e diritto internazionale*, 2019, p. 197 ff.

decision in the *Teitiota* case.<sup>93</sup> These examples demonstrate how decisions like the one at hand can contribute to the advancement of climate action on a broader scale.

Finally, the decisions and statements of international human rights bodies can have a crucial impact on the development of international law, especially concerning the interplay between international human rights law and international climate change law.

In the Torres Strait Islanders case, the applicants argued that States' obligations under international climate change treaties, notably the Paris Agreement, form part of a comprehensive system of norms that are relevant to examining human rights violations.<sup>94</sup> However, Australia contended in its reply that these treaties fell outside the Committee's jurisdiction, the alleged violations of these treaties were to be considered inadmissible *ratione materiae*, and using the Paris Agreement to interpret the Covenant contradicted fundamental principles of international law.<sup>95</sup> In its Views, the Committee found the applicants' arguments admissible to the extent that they did not directly allege violations of climate change treaties but instead used those treaties to interpret the obligations enshrined in the Covenant.<sup>96</sup>

In this way, the Committee's Views provide a concrete example of how States' obligations to protect the environment should be integrated into human rights treaties.<sup>97</sup> This approach, which had already been embraced by the Committee in General Comment No. 36 on the right to life,<sup>98</sup> is eventually applied in a contentious case where human rights violations are established. It remains to be seen what the stance of other international human rights bodies will be,

93 *Corte suprema di cassazione (Sez. II Civile), I.L. v. Italian Ministry of the Interior and Attorney General at the Court of Appeal of Ancona*, Judgment of 24 September 2021. See, in this same journal: VONA, "Environmental Disasters and Humanitarian Protection: A Fertile Ground for Litigating Climate Change and Human Rights in Italy?", *The Italian Review of International and Comparative Law*, 2021, p. 146 ff.

94 *Daniel Billy et al. v. Australia*, *cit. supra* note 2, para. 3.2.

95 *Ibid.*, para. 4.1.

96 *Ibid.*, para. 7.5.

97 See SAVARESI, "Climate change and human rights. Fragmentation, Interplay and Institutional Linkages", in DUYCK, JODOIN and JOHL (eds.), *Routledge Handbook of Human Rights and Climate Governance*, London, 2018.

98 Human Rights Committee, General Comment No. 36, *cit. supra* note 64, para. 62: "The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law".

namely the Inter-American Court of Human Rights in its advisory role,<sup>99</sup> and the European Court of Human Rights in the contentious cases pending on its docket.

## 6 Conclusions

This paper examined the Views adopted by the United Nations Human Rights Committee in the case of *Daniel Billy et al. v. Australia*. The case is notable as the first instance in which an international human rights body has identified human rights violations in relation to a State's failure to take action on climate change following an individual complaint.

Building on previous research,<sup>100</sup> the paper discussed the significance of the Committee's Views in relation to three main aspects: (i) the common obstacles faced by climate complaints filed with international human rights bodies; (ii) the distinctive aspects of human rights arguments when applied to climate change adaptation, as opposed to mitigation; (iii) the potential impact of climate change litigation before international human rights bodies.

Firstly, the Torres Strait Islanders case suggests that climate litigants can attempt to bring their complaints directly before international human rights bodies, relying on the exceptions to the requirement of the exhaustion of domestic remedies under the relevant treaties. If the respondent State fails to provide information on the effective remedies available at the national level, the case can proceed to the merits stage. While the victim requirement was met for admissibility purposes, it posed challenges in the examination of the merits. In this regard, the case revealed how difficult it is to prove a violation of the right to life in relation to the risks of personal physical endangerment posed by climate change impacts. The paper suggests that, in similar situations, climate litigants should attempt to make their claims under other rights. The right to culture, in particular, holds a collective and intertemporal dimension that fits the purpose of climate complaints. This right has been increasingly relied on by members of indigenous peoples, and is also so in the present case. However, in future complaints, other traditional communities severely affected by climate change may seek to ground their claims on this right.

99 Inter-American Court of Human Rights, *Solicitud de Opinión Consultiva sobre Emergencia Climática y Derechos Humanos a la Corte Interamericana de Derechos Humanos de la República de Colombia y la República de Chile*, 9 January 2023, available at: <[https://www.corteidh.or.cr/docs/opiniones/soc\\_1\\_2023\\_es.pdf](https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_es.pdf)>.

100 See LUPORINI and SAVARESI, *cit. supra* note 8 and LUPORINI, *cit. supra* note 77.

Secondly, the paper argues that claims on climate change adaptation are more straightforward than those on mitigation when grounded on human rights arguments. Since human rights-based cases on adaptation today account for only a tiny fraction, this consideration may prompt litigants to further explore the use of human rights as a strategic means to advance adaptation. This is particularly true for complaints targeting States' failure to adopt adequate adaptation measures to protect vulnerable and severely affected communities.

Thirdly and finally, the paper discussed the implications of the Torres Strait Islanders case, with the aim of contributing to the growing debate about the impact of climate change litigation. The case had indirect positive impacts on the victims of the rights violation even before the adoption of the Committee's Views, through raising awareness, fostering political engagement and attracting additional economic resources. At the same time, the paper emphasized the indirect impact that decisions of international human rights bodies can have on multiple jurisdictions, for instance by shaping the stance of domestic courts in future climate cases. These wider impacts are in line with the strategic nature of this type of climate litigation, which aims to bring about social changes well beyond the parties involved. Similarly, the paper underscored the significance of the case for the evolving interplay between international human rights law and international climate change law.

International human rights treaties were not conceived to address environmental issues. Nonetheless, in recent years, international human rights bodies have been increasingly confronted with environmental complaints.<sup>101</sup> These complaints present distinctive challenges, given the inherent tension between the protection of the environment as a collective interest and the essentially individualistic rationale of human rights instruments.<sup>102</sup> Climate change further complicates the matter due to the diffuse and shared nature of its causes and impacts, as well as the necessity for preventive action to lessen future harm. Yet, the Torres Strait Islanders case proves that States can be held responsible for human rights violations in relation to climate change and that international human rights law, far from being a panacea, can play a role in addressing some of its adverse consequences.

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101 See: ANTON and SHELTON, *Environmental Protection and Human Rights*, Cambridge, 2012.

102 FRANCONI, "International Human Rights in an Environmental Horizon", *European Journal of International Law*, 2010, p. 41 ff; PAVONI, *Interesse pubblico e diritti individuali nella giurisprudenza ambientale della Corte europea dei diritti umani*, Napoli, 2013.