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# Human Rights Perspectives on Climate Change and Landmine Contamination in Azerbaijan

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## **Abstract**

*This article discusses the expanding interface between human rights and international climate change law. It underlines the urgent need for a human rights-based approach for the protection of the rights of vulnerable communities residing in disaster-prone areas, and reinstatement of environmental justice. It covers the chronological line of development from an initial lack of human rights inclusion within climate agreements which did not contain any provisions of the named approach. Then, the article discusses two recent historical resolutions of the UN Human Rights Council and the UN General Assembly that recognized the right to a safe, clean, healthy, and sustainable environment as a basic human right. Focusing on the forthcoming COP29 in Baku, the article discusses the need for immediate action related to anthropogenic interference in view of landmine contamination following the Second Karabakh War. It argues that the inclusion of human rights into climate policies is going to be key factor in both mitigating environmental degradation and offering just solutions. Secondly, the article evaluates the developing landscape of human rights based climate change litigations by citing landmark cases such as Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. It also predicts the probable effect of the upcoming Advisory Opinion of the International Court of Justice with respect to state responsibility for climate change, emphasizing the need to focus on vulnerable communities, including those affected by war. In conclusion, the article advocates for a holistic approach that integrates human rights, climate justice, and post-conflict reconstruction efforts. It underscores the significance of COP29 as a platform to address these interconnected challenges and calls for robust legal frameworks to protect both human rights and the environment in the face of climate change.*

## **Annotasiya**

*Məqalədə insan hüquqları və beynəlxalq iqlim dəyişikliyi hüququnun zamanla inkişaf edən kəşiməsi araşdırılır. Yazıda fəlakət riski olan ərazilərdə yaşayan həssas icmaları qorumaq və ekoloji ədaləti bərpa etmək üçün insan hüquqlarına əsaslanan yanaşmanın vacibliyi vurğulanır. Qeyd edilir ki, əvvəlki iqlim razılaşmalarında insan hüquqlarına dair məsələlərə yer verilməmiş, bu yanaşma, ümumiyyətlə, nəzərə alınmamışdır. Bununla belə, son dövrlərdə BMT İnsan Hüquqları Şurası və BMT Baş Assambleyası tərəfindən qəbul edilən və təhlükəsiz, təmiz, sağlam, dayanıqlı ətraf mühit hüququnu əsas insan hüququ kimi təsbit edən qərarlar təhlil edilir. Eyni zamanda məqalədə Bakıda keçiriləcək COP29 konfransı kontekstində İkinci Qarabağ müharibəsindən sonra Azərbaycanın minalarla çirklənməsi kontekstində antropogen müdaxiləyə qarşı tədbirlərin görülməsinin təxirəsalınmaz olduğu vurğulanır. Həmçinin insan hüquqlarının iqlim siyasətinə inteqrasiya edilməsinin ətraf mühitin qorunması və ədalətli həll yollarının tapılması üçün həyati əhəmiyyət daşıdığı iddia edilir. Bununla yanaşı, məqalə Avropa İnsan Hüquqları Məhkəməsi tərəfindən baxılan*

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*“Verein KlimaSeniorinnen Schweiz və digərləri İsveçrəyə qarşı” kimi işlərə istinad edərək iqlim dəyişikliyi ilə bağlı insan hüquqlarına əsaslanan məhkəmə işlərinin artan tendensiyasını təhlil edir. Əlavə olaraq, məqalədə Beynəlxalq Ədalət Məhkəməsinin iqlim dəyişikliyinə görə dövlətlərin məsuliyyəti ilə bağlı verəcəyi Məsləhət Rəyinin mümkün təsirlərinə nəzər salınır və müharibədən təsirlənmiş icmalar kimi həssas qruplara xüsusi diqqət yetirməyin zəruriliyi vurğulanır. Nəticədə, məqalə insan hüquqları, iqlim ədaləti və münaqişədən sonrakı bərpa səylərini bir araya gətirən kompleks yanaşmanı müdafiə edir. Nəticədə, COP29-un bu birləşməyə bağlı problemlərin həlli üçün bir platforma kimi əhəmiyyəti qeyd olunur və iqlim dəyişikliyi fonunda həm insan hüquqlarını, həm də ətraf mühiti qorumaq üçün güclü hüquqi çərçivələrin formalaşdırılmasına çağırış edilir.*

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## Introduction

The interconnectedness of human rights and climate change represents a significant and evolving area within international climate change law. Against this background, this paper examines the historical evolution and current status of human rights in international climate change law, emphasizing the necessity of a human rights-based approach to protect vulnerable communities living in disaster risk areas and restore environmental justice.

Historically, different treaties were concluded at the international and regional levels to protect humanity and the environment against adverse effects resulting from climate change. International climate change agreements such as the United Nations Framework Convention on Climate Change (hereinafter UNFCCC) and the Kyoto Protocol have predominantly focused on combating climate change and its adverse effects without explicitly addressing human rights issues. While these framework documents contain references to sustainable development and procedural rights like public access to information and participation, they did not substantively recognize environmental protection as a fundamental human right.<sup>1</sup>

The turning point came in 2021 with the adoption of Human Rights Council (HRC) Resolution 48/13, which recognized the right to a safe, clean, healthy,

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<sup>1</sup> Lavanya Rajamani, Climate Change, in *International Human Rights Law* 644, 650-651 (2022).

and sustainable environment.<sup>2</sup> This resolution was followed by the UN General Assembly's Resolution 76/300 in 2022, further embedding before mentioned right within international law. These developments underscore the critical need for integrating human rights considerations into climate change policies to ensure a just and equitable approach to addressing environmental challenges.<sup>3</sup>

The fundamental norms and principles of international environmental law are developed within the framework of multilateral diplomacy during global events.<sup>4</sup> Among these types of events, the Conference of Parties (COP) - the supreme decision-making body of the UNFCCC should be emphasized.<sup>5</sup> That's why it is important to seize the forthcoming COP29 in Baku as a unique opportunity to address the intricate relationship between environmental and human rights issues, especially in the post-conflict context.

It is argued in this article that following the end of the Second Karabakh War in 2020, Azerbaijan faces significant challenges due to extensive landmine contamination in its liberated territories. These remnants of war not only pose immediate threats to civilian lives but also hinder land use, development, and environmental rehabilitation efforts, exacerbating the impacts of climate change.

This paper suggests that addressing the newly established human right to a safe, clean, healthy, and sustainable environment at COP29 is crucial for effectively combating anthropogenic interference and safeguarding vulnerable communities. The integration of landmine clearance efforts into broader sustainable development frameworks can promote environmentally sound practices while simultaneously addressing humanitarian concerns.

Furthermore, advancing human rights-based climate change litigation can provide legal precedents and hence, drive more robust climate action globally. In this respect, this analysis provides an overview of the recent decisions of the domestic and international judicial bodies, focusing on the relationship between climate change impacts and human rights violations. It then touches upon the expected Advisory Opinion of the International Court of Justice (hereinafter ICJ) regarding state responsibility in respect of climate change. The focus is made on the need for the ICJ to specifically address the

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<sup>2</sup> Resolution of the UN, No. 48/13 (2021). Available at: [https://digitallibrary.un.org/record/3945636/files/A\\_HRC\\_RES\\_48\\_13-EN.pdf](https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13-EN.pdf) (last visited May 1, 2024).

<sup>3</sup> Resolution of the UN, No. 76/300 (2022). Available at: [https://digitallibrary.un.org/record/3983329/files/A\\_RES\\_76\\_300-EN.pdf?ln=en](https://digitallibrary.un.org/record/3983329/files/A_RES_76_300-EN.pdf?ln=en) (last visited May 1, 2024).

<sup>4</sup> Najiba Mustafayeva, *Multilateral Diplomacy for Shaping the International Environmental Regime: Key Landmark Conference and COP29 in Azerbaijan*, 5 *Caucasus Strategic Perspectives Journal* 69, 70 (2024).

<sup>5</sup> *Ibid.*

issue of anthropogenic interference and the protection of vulnerable communities in war-affected areas.

Hence, the linkage between landmines as anthropogenic interference, the vulnerability of communities in post-conflict areas, and the increasing trend of human rights-based climate change litigation underscores the need for an integrated, more robust human rights-based approach in international climate change law.

Initially, the first chapter of the article will provide an overview of the human rights-based approach, its historical background, and emphasize its importance to protect vulnerable communities and restore environmental justice. Subsequently, the article examines deficiencies of previous environmental treaties, the turning point of the development of the named approach, and the importance of COP in the development of environmental norms. The article's second chapter discusses the Azerbaijani context and the significance of the forthcoming COP29. Finally, the third chapter investigates the court precedent for the underlying relationship between human rights violations and climate change impacts. Special attention is given to ICJ's expected Advisory Opinion for determining states' responsibility for environmental violations.

## I. History of Human Rights-Based Approach to Climate Change

"The human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights".<sup>6</sup> During its initial decades, international climate change law did not address human rights issue related to the environment as a substantive right as well as did not refer to existing international human rights standards. This is evidenced by the major agreements adopted in the area of climate change.<sup>7</sup>

The landmark international treaty in this sphere is the United Nations Framework Convention on Climate Change (UNFCCC) the main object of which is "to stabilize greenhouse gas concentrations at a level that would prevent dangerous anthropogenic (human-induced) interference with the climate system".<sup>8</sup> It stipulates that "such a level should be achieved within a

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<sup>6</sup> Human-Rights Based Approach, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach#:~:text=The%20human%20rights%2Dbased%20approach,promoting%20and%20protecting%20human%20rights> (last visited Apr. 5, 2024).

<sup>7</sup> Rajamani, *supra* note 1, 651.

<sup>8</sup> What is the United Nations Framework Convention on Climate Change?, <https://unfccc.int/process-and-meetings/what-is-the-united-nations-framework-convention-on-climate-change> (last visited Apr. 6, 2024).

time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner”.<sup>9</sup>

In 1997, the UNFCCC was extended by the Kyoto Protocol. The protocol “operationalizes the United Nations Framework Convention on Climate Change by committing industrialized countries and economies in transition to limit and reduce greenhouse gases (GHG) emissions in accordance with agreed individual targets”.<sup>10</sup>

Neither the FCCC nor the Kyoto Protocol made direct mentions of human rights in this sense. The FCCC solely mentions a “right” concerning states’ entitlement to sustainable development. Thus, Article 3(4) of the FCCC which is about balancing emissions reductions with the need for economic development specifically portrays this as a right aimed at fostering sustainable development of the state rather than a human right to development.<sup>11</sup> However, the FCCC indirectly supports certain procedural rights concerning the environment. Article 6(a) of the FCCC mandates state parties to encourage and facilitate public access to information regarding climate change and its impacts, public participation in addressing climate change and its consequences, as well as relevant training programs.<sup>12</sup> Additionally, the FCCC acknowledges interests that have implications for human rights, although they are not explicitly articulated as rights. For example, it defines “adverse effects of climate change” as changes that have significant harmful impacts on, *inter alia*, human health and well-being. Briefly, both the FCCC and its Kyoto Protocol are primarily focused on “combating climate change and its adverse effects”.<sup>13</sup>

Only in 2010, the Human Rights Committee (hereinafter HRC) affirmed that state parties agreed to fully uphold human rights in all activities pertaining to climate change.<sup>14</sup> Consequently, both the HRC and the Office of the United Nations High Commissioner for Human Rights (hereinafter OHCHR) have been committed to highlighting the interconnectedness of climate change and human rights, and hence, advocate for a human-backed approach to guide global climate change issue. The initial explicit mention of human rights within the framework of the FCCC occurred with the adoption of “Decision 1/CP.16” in 2010, which cited HRC Resolution 10/4.<sup>15</sup> This

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<sup>9</sup> *Ibid.*

<sup>10</sup> What is the Kyoto Protocol?, [https://unfccc.int/kyoto\\_protocol](https://unfccc.int/kyoto_protocol) (last visited Apr. 6, 2024).

<sup>11</sup> United Nations Framework Convention on Climate Change, art. 3(4) (1992). Available at: <https://unfccc.int/resource/docs/convkp/conveng.pdf> (last visited Apr. 5, 2024).

<sup>12</sup> *Id.*, art 6(a).

<sup>13</sup> *Supra* note 1, 652.

<sup>14</sup> Integrating Human Rights at UNFCCC, <https://www.ohchr.org/en/climate-change/integrating-human-rights-unfccc> (last visited Apr. 10, 2024).

<sup>15</sup> *Ibid.*

resolution acknowledges the detrimental impacts of climate change on the full realization of human rights and urges states to uphold human rights in their climate-related endeavors.<sup>16</sup>

It is worth mentioning the fact that the OHCHR has consistently shared the outcomes of HRC discussions, research, and initiatives with the sessions of the COP.<sup>17</sup> This underscores the critical importance of integrating human rights considerations into climate change discussions and actions to ensure a just and equitable approach to addressing the challenges ahead.

Particularly noteworthy is COP21, marked by the adoption of the 2015 Paris Climate Agreement, a landmark multilateral and legally binding climate change treaty that explicitly addresses human rights.<sup>18</sup> Therefore, the preamble of the Paris Agreement acknowledges specific human rights:

*“Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”.*<sup>19</sup>

However, this pertains to the treaty's framework rather than being an operational clause of the Paris Agreement, which carries more legal weight. As Rajamani noted, the Paris Agreement's limited scope suggests that states should respect, promote, and consider human rights into account when implementing response measures. However, it does not specify whether they should take necessary actions to prevent others from infringing upon rights or to ensure the complete realization of rights.<sup>20</sup> In contrast to the terms “protect” and “fulfill”, the Paris Agreement employs the vaguer expressions “promote” and “consider”.<sup>21</sup>

The significant transformation took place in 2021, with the adoption of Resolution 48/13 by the HRC, which reaffirmed the importance of a universally recognized right to a safe, clean, healthy, and sustainable environment. This resolution emphasizes the interconnectedness between environmental well-being and human rights, especially in the face of climate change-induced challenges. It underlines that climate impacts pose a threat to the enjoyment of various human rights by disrupting the conditions necessary for a safe, clean, healthy, and sustainable environment.<sup>22</sup> In 2022, the UN

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<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> What is the Paris Agreement?, <https://unfccc.int/process-and-meetings/the-paris-agreement> (last visited Apr. 20, 2024).

<sup>19</sup> Paris Agreement, 1 (2015). Available at:

[https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf) (last visited Apr. 31, 2024).

<sup>20</sup> *Supra* note 1, 563.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Supra* note 2.

General Assembly in its Resolution 76/300 recognized this right as a human right.<sup>23</sup>

These milestone resolutions can be regarded as the formation of a new substantive human right – the right to a safe, clean, healthy, and sustainable environment. The constitutions of 110 states contain provisions pertaining to this right. It is also protected by other human rights accords at the regional level. A total of 156 out of 193 UN member nations recognize this right,<sup>24</sup> either by virtue of having it recognized in their constitutions or by being parties to regional accords, according to the UN Special Rapporteur on human rights and the environment.<sup>25</sup>

Even though the mentioned resolutions are set in the context of climate impacts,<sup>26</sup> there is no doubt that the anthropogenic factor (human-induced interference) is one of the key elements that must be considered for the effective implementation of this newly emerged right. This can also be seen as a reference to the objective of the FCCC to “prevent dangerous anthropogenic interference with the climate system”.<sup>27</sup> Hence, COP events may not only prioritize addressing anthropogenic interference in the climate system by adopting a human rights-based approach to ensure equitable solutions for all, but refer to the substantive human right to a safe, clean, healthy, and sustainable environment. From this perspective, COP29 can incorporate this newly formulated right into its strategies for mitigating anthropogenic interference, emphasizing the protection of vulnerable communities living in post-conflict regions.

## **II. Landmine Contamination in Azerbaijan's Liberated Territories: Prioritizing the Protection of Vulnerable Communities at COP29**

Following the conclusion of the Second Karabakh War in 2020, Azerbaijan was confronted with substantial obstacles arising from the widespread landmine contamination that resulted from over thirty years of Armenian control. In flagrant violation of both international humanitarian law and international human rights law, such war remains were purposefully planted during the occupation. After Azerbaijan's occupied regions were freed, much

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<sup>23</sup> *Supra* note 3.

<sup>24</sup> See A/HRC/40/55: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2019). Available at: <https://documents.un.org/doc/undoc/gen/g19/002/54/pdf/g1900254.pdf> (last visited Aug 20, 2024).

<sup>25</sup> *Supra* note 1, 647.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Supra* note 2, § 43.

more than 350 people were killed or injured as a result of Armenia's international crimes.<sup>28</sup>

Maps indicating the locations of minefields have been sought by Azerbaijan on several occasions, but Armenia has continuously denied having such maps. Armenia then sent Azerbaijan the maps of anti-tank and anti-personnel mines placed in the Aghdam, Fuzuli, and Zangilan areas of Azerbaijan during the occupation as a result of international pressure. Still, Yerevan has not made public the remaining maps showing the mined locations inside the liberated territory of Azerbaijan. Furthermore, only 25% of the submitted maps were correct. It is noteworthy that more than half of the recent mine occurrences have occurred outside of Armenia's defined coverage regions.<sup>29</sup> Noteworthy that over 55% of recent mine incidents have transpired beyond the delineated coverage areas provided by Armenia.<sup>30</sup>

Armenia's constant refusal to submit the remaining maps of mined areas located within Azerbaijan's liberated territories, as well as the deliberate planting of landmines in these territories even after the end of the war, is in violation of its international anti-mine obligations. This has resulted *ipso facto* (by the fact itself) in war crimes and crimes against humanity that raise the issue of Armenia's responsibility under international law for their perpetration.<sup>31</sup>

The upcoming COP29 in Baku presents a crucial opportunity to tackle the pressing issue of anthropogenic interference, *inter alia* within the unique context of Azerbaijan's landmine problem following the Armenian occupation. Recognizing the close relationship between environmental and human rights concerns in areas impacted by armed conflict and occupation is crucial when delegates convene to strategize and negotiate climate solutions. Landmines in Azerbaijan seriously impede attempts at rehabilitation and reconstruction while also posing an imminent threat to human lives. In addition to impeding land usage and development, these covert explosives exacerbate environmental deterioration and obstruct attempts to mitigate climate change.

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<sup>28</sup> Press Release on detection of new landmines produced in Armenia in the territories of Azerbaijan and continuing landmine threat, <https://mfa.gov.az/en/news/no52522> (last visited Apr. 31, 2024).

<sup>29</sup> Leyla Abdullayeva: Pashinyan's baseless allegations seriously question Armenia's desire for peace (2022), [https://azertag.az/en/xeber/Leyla\\_Abdullayeva\\_Pashinyan\\_039s\\_baseless\\_allegations\\_seriously\\_question\\_Armenia\\_039s\\_desire\\_for\\_peace-2131412](https://azertag.az/en/xeber/Leyla_Abdullayeva_Pashinyan_039s_baseless_allegations_seriously_question_Armenia_039s_desire_for_peace-2131412) (last visited Apr. 5, 2024).

<sup>30</sup> Statement of the Ministry of Foreign Affairs on 4 April - International Day for Mine Awareness and Assistance in Mine Action, <https://mfa.gov.az/en/news/no14724> (last visited Apr. 28, 2024).

<sup>31</sup> Najiba Mustafayeva, *Armenia's Obligations under International Law in the Area of Mine Action*, 3 *Caucasus Strategic Perspectives* 133, 133 (2022).



From this perspective, addressing the fundamental human right to a safe, clean, healthy, and sustainable environment at COP29 is essential for effectively combating human-driven environmental harm. It also plays a key role in protecting the dignity and well-being of affected individuals, especially the most vulnerable communities in post-conflict zones, while ensuring accountability, participation, access to justice, and effective remedies.

In this context, incorporating newly developed standards into Azerbaijan's national legislation, policies, and programs across various sectors is essential. Collaboration with international organizations, focusing on capacity building and engaging vulnerable communities, is key for effectively implementing and monitoring this approach.

Moreover, COP29 offers a chance to promote the incorporation of landmine removal initiatives into more comprehensive frameworks for sustainable development. By coordinating landmine clearance initiatives with climate mitigation strategies, policymakers can address humanitarian issues and support socioeconomic recovery in war-affected areas. This approach also promotes environmentally sound practices while contributing to long-lasting peace and stability in the post-conflict period.

Furthermore, a catalyst in this process can be achieved by adjudicating climate change cases in courts. Thus, human rights-based climate change litigation may not only enforce the protection of vulnerable groups but also set precedents that can drive more robust legal arrangements.

### **III. Human Rights-Based Climate Change Litigation: *Quo Vadis?***

The UN Human Rights Office of the High Commissioner indicates that “climate change threatens the effective enjoyment of a range of human rights including those to life, water and sanitation, food, health, housing, self-determination, culture and development”.<sup>32</sup> This, in turn, further underscores the need for a human-rights-based approach to climate change. However, as the above analysis of existing international documents has shown, this approach is not directly and explicitly reflected in these legal arrangements. Consequently, other sources of international law – such as judicial decisions relevant to the issue discussed in this article – are gaining importance.

Thus, demanding respect and restoration of fundamental human rights have made human rights-based climate change litigation a rapidly growing trend. As pressure increases on governments and corporations to

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<sup>32</sup> OCHR and Climate Change (2023), <https://www.ohchr.org/en/climate-change#:~:text=Climate%20change%20threatens%20the%20effective,%2Ddetermination%2C%20culture%20and%20development> (last visited Apr. 3, 2024).

contribute fairly to climate change mitigation, human rights law will increasingly be used in legal proceedings to hold them accountable.<sup>33</sup>

Against this background, the question is: “Why are human rights put at the center of the climate change conversation?” Thematic report on “The use of human rights in climate change litigation in Europe” provides several reasons for such an approach, which is the fact that at the international level, human rights have become a significant component within negotiations on climate change.<sup>34</sup> A national human rights protection system can assist “to fill the accountability gap when governments or corporate actors fail to deliver on their emission reduction promises”.<sup>35</sup> Hence, human rights can thus offer remedies where none exist, provided that environmental interests can be framed as human rights violations.<sup>36</sup>

Finally, there is a real shift towards employing human rights arguments and remedies in courts to promote climate action. Thus, in the last decade, individuals, communities, and NGOs approached domestic and international courts attempting to challenge insufficient governmental measures in this area.<sup>37</sup> At the national level, the ground-breaking decisions such as *Urgenda v Netherlands*, *Neubauer et al v Federal Republic of Germany*, *Asghar Leghari v Federation of Pakistan*, *Shrestha v Nepal* focused on human rights dimension of climate change, addressing the issue of mitigation of climate change and bringing national climate legislation and policies in accordance with international obligations of the states, *inter alia* under the Paris Agreement.<sup>38</sup>

Regarding international litigation, it is worth mentioning the fact that Europe is a pioneer in human rights-based climate litigation. This can be explained by the presence of the European Court of Human Rights (ECHR), a judicial body of the Council of Europe that has traditionally supported the use of human rights claims to achieve environmental goals.<sup>39</sup>

As a result, 2024 was notable for the European Court of Human Rights (ECHR) issuing landmark rulings in three climate change cases: *Verein*

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<sup>33</sup> Kumaravadivel Guruparan & Harriet Moynihan, Climate Change and Human Rights-Based Strategic Litigation, 2 (2021). Available at:

<https://www.chathamhouse.org/sites/default/files/2021-11/2021-11-11-climate-change-and-human-rights-litigation-guruparan-et-al.pdf> (last visited May 23, 2024).

<sup>34</sup> Report: using human rights as a weapon to hold governments and corporations accountable on climate change (2023), <https://caneurope.org/report-using-human-rights-as-a-weapon-to-hold-governments-and-corporations-accountable-on-climate-change/> (last visited Apr. 7, 2024).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Supra* note 1, 656.

<sup>38</sup> *Ibid.*

<sup>39</sup> Annalisa Savaresi & Joana Setzer, Rights-Based Litigation in the Climate Emergency: Mapping the Landscape and New Knowledge Frontiers, 13 *Journal of Human Rights and the Environment* 7, 10-11 (2021). Available at: <https://ssrn.com/abstract=3928385> (last visited May 12, 2024).

*KlimaSeniorinnen Schweiz and Others v. Switzerland, Carême v. France, and Duarte Agostinho and Others v. Portugal and 32 Others*. These cases brought attention to the role of human rights in addressing climate change.

In its landmark decision in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the ECHR ruled that “government inaction on climate change violates fundamental human rights”.<sup>40</sup> The case was initiated by a group of older Swiss women concerned about the effects of global warming on their health. They argued that the Swiss government is not “doing enough to address the issue in accordance with its obligations under the Paris Agreement to keep global warming below 1.5°C”.<sup>41</sup> The Court found the violation of Article 8 (the right to respect for private and family life) and Article 6 (the right to a fair trial) of the European Convention of Human Rights and Fundamental Freedoms.<sup>42</sup>

It is noteworthy that the Court ruled that Switzerland had not complied with its obligations under the Convention regarding climate change, citing Article 8 of the Convention as covering a right to effective protection by the state “from the serious adverse effects of climate change on lives, health, well-being and quality of life”.<sup>43</sup> As According to Pedersen, “for those of us who in the past have been critical of the Court’s often sparse reasoning with respect to its environmental cases, *KlimaSeniorinnen* is a significant step in the right direction”.<sup>44</sup> Meanwhile, this historic choice will undoubtedly have a significant effect on the country and the world at large.<sup>45</sup>

However, in the *KlimaSeniorinnen* case the Strasbourg Court ruled on a violation of Articles 8 and 6 of the European Convention, which do not directly relate to the right healthy environment. On the other hand, it is also possible to claim that the Court quietly incorporated a recently developed right to a healthy environment into the existing framework of ECHR rights.<sup>46</sup>

What about the direct address of this right? As it is known, the European Convention on Human Rights and Fundamental Freedoms (ECHR) does not contain a substantive human right to a safe, clean, healthy, and sustainable

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<sup>40</sup> *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, ECHR No. 53600/20, 254 (Eicke, J., dissenting) (2024). Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-14304%22%5D%7D> (last visited May 6, 2024).

<sup>41</sup> *Id.*, § 44.

<sup>42</sup> *Id.*, 257.

<sup>43</sup> *Id.*, § 572.

<sup>44</sup> Climate Change and the ECHR: The Results Are In (2024), <https://www.ejiltalk.org/climate-change-and-the-echr-the-results-are-in/> (last visited May 12, 2024).

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

<sup>46</sup> Breaking New Ground: Climate Change before the Strasbourg Court (2024), <https://www.ejiltalk.org/breaking-new-ground-climate-change-before-the-strasbourg-court/> (last visited Apr. 13, 2024).

environment. This is understandable considering that the Convention was signed in 1950, long before climate change was a priority on the global scene. In this regard, it should be noted that in September 2021, the Parliamentary Assembly of the Council of Europe proposed the endorsement of an extra protocol to the ECHR, explicitly acknowledging the right to “a healthy and sustainable environment”. This step was advocated on the grounds that it would provide the Strasbourg Court with “a non-disputable base for rulings concerning human rights violations arising from environment-related adverse impacts on human health, dignity, and life”.<sup>47</sup>

Further development came recently with the international judicial opinion on state obligations regarding climate change provided by the International Tribunal for the Law of the Sea (ITLOS). This long-awaited advisory opinion elucidates the responsibilities of states under international law to safeguard the marine environment from the detrimental effects of climate change.<sup>48</sup> It unanimously concluded that greenhouse gas (GHG) emissions constitute pollution of the marine environment within the meaning of Article 1(1)(4) of the United Nations Convention on the Law of the Sea (UNCLOS) and that states are obligated to take all necessary measures to control this pollution. Additionally, the Tribunal determined that states have special obligations to protect and preserve the marine environment concerning climate change impacts.<sup>49</sup>

Finally, the question is what contribution the International Court of Justice will make to this issue. On March 29, 2023, during its 64<sup>th</sup> plenary meeting, the UN General Assembly adopted resolution A/RES/77/276, introduced by a coalition of over 100 states. This resolution outlined the questions to be submitted to the ICJ. The Assembly, referencing the UN Charter, key human rights treaties, the UNFCCC, the Paris Agreement, and the UN Convention on the Law of the Sea (UNCLOS), posed two questions to the Court. Firstly, requesting the clarifications explanation on “*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*”. Secondly, it asks the Court to explain the “*legal consequences [of]...acts and omissions*” by States that have “*caused significant harm to the climate system and other parts of the environment*”.<sup>50</sup>

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<sup>47</sup> See The Parliamentary Assembly of Council of Europe, Resolution No. 2396 (2021).

<sup>48</sup> ITLOS Advisory Opinion on Climate Harm and the Marine Environment (2024), <https://www.justiceinitiative.org/newsroom/itlos-advisory-opinion-on-climate-harm-and-the-marine-environment-a-summary> (last visited Apr. 21, 2024).

<sup>49</sup> *Ibid.*

<sup>50</sup> ICJ to Rule on States’ Climate-related Obligations: How Did We Get Here? (2024), <https://sdg.iisd.org/commentary/policy-briefs/icj-to-rule-on-states-climate-related-obligations-how-did-we-get-here/> (last visited May 20, 2024).

Along with discussions about whether the ICJ can deliver a progressive opinion on this issue,<sup>51</sup> the question also concerns how the historical rulings of the Strasbourg Court will influence this international decision.

It's important to note that numerous states have spoken out in the current debate about the urgent concern that “*the most vulnerable populations who have historically contributed the least to the unfolding climate calamity are being disproportionately affected by the consequences*”.<sup>52</sup> At the same time, of particular interest in the context of this paper is how the ICJ will decide in relation to vulnerable groups of people, including, *inter alia*, those affected by war. It can be argued that the Court should give vulnerable communities more attention in the context of environmental challenges, since international law has established a regime of special attention to these groups.

If the Court adopts a human rights-based approach to addressing human-caused interference in the climate system and ensures equitable solutions for all parties, it could set a powerful precedent. This approach may also serve as a model for tackling other urgent post-conflict issues, such as landmines and their long-lasting effects on communities and the environment.

## Conclusion

This paper examines one of the most important contemporary legal discourses in international law related to the interconnectedness of climate change and human rights. Hence, it is submitted in this article that a human rights-based approach to climate issues should address the protection of vulnerable communities and restore environmental justice.

Since climate change law didn't address human rights issues related to the environment as a substantive right, the adoption of Resolution 48/13 by the HRC in 2021 and Resolution 76/300 by the General Assembly in 2022 is considered a significant transition in this process. These historical resolutions signify the creation of a new substantive human right – the right to a safe, clean, healthy, and sustainable environment.

It is put forward that integrating human rights and climate justice in Azerbaijan's post-conflict context should include measures addressing the landmine problem in Azerbaijan following the Armenian occupation. The post-conflict reconstruction phase presents an opportunity to integrate climate justice into national policies and frameworks. Ensuring the protection of vulnerable communities is crucial in this process.

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<sup>51</sup> For further information see Daniel Bodansky, *The Role of the International Court of Justice in Addressing Climate Change: Some Preliminary Reflections*, 49 *Arizona State Law Journal* 689, 701-712 (2017). Available at: <https://ssrn.com/abstract=3012916> (last visited May 24, 2024). See also Philippe Sands, *Climate Change and the Rule of Law: Adjudicating the Future in International Law*, 28 *Journal of Environmental Law* 19, 25-35 (2016).

<sup>52</sup> General Assembly Adopts Resolution Requesting International Court of Justice Provide Advisory Opinion on States' Obligations Concerning Climate Change (2023), <https://press.un.org/en/2023/ga12497.doc.htm> (last visited Apr. 2, 2024).

From this perspective, COP29 in Azerbaijan represents a unique opportunity to highlight and address the integration of human rights and climate justice within a post-conflict context. As the world comes together to find climate solutions, it's a pivotal moment to recognize the interlinked nature of environmental and human rights concerns in war-affected areas. Because landmines not only pose threats to civilians and create a significant impediment to rehabilitation and reconstruction efforts by the Azerbaijani government but also obstruct the efforts to tackle climate change. Against this background, addressing a newly established human right to a safe, clean, healthy, and sustainable environment at the upcoming COP29 in Baku is significant for efficiently combating anthropogenic interference and protecting the dignity and well-being of *inter alia* vulnerable communities, as well as providing accountability and access to effective remedies.

Since existing legal documents do not explicitly reference a rights-based approach to climate issues, judicial decisions can provide significant insight, particularly in the area of state responsibility for climate change. Thus, it is argued that the progress in this process can be catalyzed by adjudicating climate change cases in courts. Both domestic litigations and the recent decisions of the ECHR, in particular in the *Klimaseniorinnen v Switzerland* case, signify a milestone in the environmental jurisprudence of the Court, introducing a legal framework for future developments.

These future developments include the anticipated Advisory Opinion from the ICJ regarding state responsibility for climate damage. In this regard, the ICJ must address anthropogenic interference in the climate system. Thus, by tackling pressing issues of the post-conflict era, such as the problem of landmines and their devastating impacts on communities and the environment, the ICJ could provide a blueprint for a more robust legal framework.