



CDDH-ENV(2024)02
14 March / mars 2024

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

DRAFTING GROUP ON HUMAN RIGHTS AND ENVIRONMENT
(CDDH-ENV)

COMPILATION OF COMMENTS RECEIVED ON THE
REVISED DRAFT CDDH report
on the need for and feasibility of a further instrument
or instruments on human rights and the environment
for the 10th meeting (19–21 March 2024)

TABLE OF CONTENTS / TABLE DES MATIÈRES

BELGIUM / <i>BELGIQUE</i>	3
DENMARK / <i>DANEMARK</i>	9
FINLAND / <i>FINLANDE</i>	12
FRANCE.....	15
GEORGIA / <i>GÉORGIE</i>	31
NETHERLANDS / <i>PAYS-BAS</i>	32
NORWAY / <i>NORVÈGE</i>	37
POLAND / <i>POLOGNE</i>	41
PORTUGAL / <i>PORTUGAL</i>	41
SWEDEN / <i>SUÈDE</i>	41
SWITZERLAND / <i>SUISSE</i>	43
UNITED KINGDOM / <i>ROYAUME-UNI</i>	48
PARLIAMENTARY ASSEMBLY / <i>ASSEMBLÉE PARLEMENTAIRE</i>	61
CONGRESS OF LOCAL AND REGIONAL AUTHORITIES / <i>CONGRÈS DES POUVOIRS LOCAUX ET RÉGIONAUX</i>	63
SOCIAL RIGHTS / <i>DROITS SOCIAUX</i>	63
OFFICE OF THE UNITED NATIONS HIGH COMMISSIONNER FOR HUMAN RIGHTS <i>HAUT COMMISSARIAT AUX DROITS DE L'HOMME DES NATIONS UNIES</i>	65
CONFERENCE OF INGOs OF THE COUNCIL OF EUROPE / <i>CONFÉRENCE DES OING DU CONSEIL DE L'EUROPE</i>	83

BELGIUM / BELGIQUE**Page 9 - § 19**

Humanity is facing an unprecedented challenge in the form of environmental degradation and the triple planetary crisis of climate change,ⁱⁱ biodiversity loss,ⁱⁱⁱ and pollution.^{iv} Individuals and communities around the world are affected and where there are human rights consequences^v they are most severe for those who are already in vulnerable and in exposed situations.^{vi} Regard should be had to the effects on the younger and future generations.

Commented [A1]:

Suggestion to delete footnote, as it is unusual to mention in a footnote that there is no definition available. Moreover, although it concerns a political concept, it is a very well known concept, one that the EU and its Member States strongly defend at the multilateral level.

Page 10 – MOVED § 27 from page 12 – New § between 21 and 22

A pertinent issue with regard to human rights and the environment is the issue of business and human rights, and thus the responsibilities of businesses. To effectively prevent further environmental degradation and to respond to the triple planetary crisis, the involvement of businesses is key.

Commented [A2]: Suggestion to bring together all separate footnotes into one footnote after 'pollution', as it concerns one interconnected and interdependent crisis.

Page 18 - § 53

As demonstrated above, the Convention protects the environment only insofar as it has an impact on Convention rights.^{vii} The operation of the procedural requirements and the application of the substantive standards for bringing a case before the Court may limit the extent of indirect protection. The following section will examine the operation of these requirements in environmental cases. The scope and application of some of these procedural requirements and substantive standards is currently at issue in climate litigation before the Court.

Commented [A3]: Suggestion to move this paragraph to this part on 'the need', as it outlines the issue, and not the existing framework.

Commented [A4]: Suggestion to avoid absolute statements, as some requirements (e.g. exhaustion of local remedies) are still under review by the Court.

Page 23 - § 71

Building on the UNGPs, within the Council of Europe, the CM/Rec(2016)3 on human rights and business expresses commitment to the national implementation of the UN Guiding Principles on Business and Human Rights, by aiming to provide specific guidance so as to assist member States in preventing and remedying human rights violations by business enterprises and also insists on measures to induce business to respect human rights. The Recommendation elaborates on access to judicial remedy and puts special emphasis on the additional protection needs of workers, children, Indigenous Peoples and human rights defenders.

Commented [A5]: Suggestion to include footnote.

Page 24 - § 75

~~a) Significant (upcoming) EU instruments include the Non-Financial Reporting Directive (NFRD) and the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDD). The aim of the latter Directive is to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance and will aim to ensure that businesses address adverse impacts of their actions, including in their value chains inside and outside Europe.~~

Commented [A6]: The Rapporteur notes that the CSDD is still not adopted and it is unclear at this stage whether it will ever be adopted.

Commented [A7]: Suggestion to include a short description of the NFRD and the CSRD.

Page 29 - § 90

Although the right to a clean, healthy and sustainable environment has been recognised politically at global level in UN General Assembly Resolution 76/300, However, this right is not yet protected as such in a treaty either at global or European level.^{viii} This means that there is not yet a universal understanding amongst Council of Europe member States of the "nature, content and implications"^{ix} of the right.

Page 31 - §§ 98, 100

A number of member States that do not recognise a human right to a healthy environment have codified environmental protection as a constitutional principle or objective.^x These States describe

environmental protection as an objective for the national well-being, which, by virtue of the relevant constitutional provisions, must be promoted and taken into consideration in the relevant legislative, administrative and judicial decision-making processes.^{xi} Some constitutions^{xii} T^{xiii}. The combination of traditional fundamental/ human rights with a constitutional principle of environmental protection has been seen to generate results that are comparable to the effects of the protection of^{xiv}

At this point in time, while it appears that multiple Council of Europe member States have legally recognised the right in some form and that domestic courts have produced extensive jurisprudence on it, there is not yet a universal/common understanding amongst Council of Europe member States of the “nature, content and implications”^{xv} of the right.

Page 32 - §§ 101, 103, 104, 105

In discussions on the need for a new instrument in academic literature, among the experts heard by the working group and in statements by civil society, several recurring lines of arguments for a new instrument can be identified. The following section sets out these rationales and analyses their underlying assumptions without endorsing them.

There is no explicit legally binding recognition of the right to a healthy environment in international law generally and, in particular, within the Council of Europe’s framework. As explained above, unlike Europe, other regional human rights systems have already recognised the right to a healthy environment (see paragraphs 89 – 97 above). Establishing legal recognition of the right would clarify/reinforce the relationship between environmental protection and human rights and would reinforce the understanding that human rights norms require protection of the environment, and that environmental protection depends on the exercise of human rights.

As demonstrated above, there is no universal/common understanding of the material content of the right to a healthy environment amongst Council of Europe member States. In line with the recommendations under CM Rec 2022(20), it has been argued that a new instrument or instruments legally recognising the right to a healthy environment could possibly clarify the understanding amongst Council of Europe member States of the scope and content of the right to a healthy environment and inspire corresponding national legislation. In addition, should the material content of the right be spelled out in a possible new instrument it would allow member States to influence possible further developments related to the right to a healthy environment on the international level. ~~Considering the increasing number of binding and non-binding instruments that refer to the relationship between human rights and the environment, or actively address the issue, it could be argued that now is an optimal time for member States to shape the content of right and its function in a European context.~~ This would contribute greatly to legal certainty, an important consideration.

Another line of argumentation focuses on limitations/requirements and standards in the human rights’ system and in particular the system of the Convention and the Charter that may be potentially limiting.

As noted in paragraphs 52–77, there is no explicit right to a healthy environment in the Convention or the Charter; the environment is only indirectly protected to the extent that environmental degradation following a State action or inaction results in a breach of human rights obligations stemming from the current provisions of the Convention. The current jurisprudence of the Court and the ECSR on the procedural requirements and the application of substantive standards that need to be met when litigating human rights cases relating to the environment before the Court and the ESCR limit the reach of the Convention and the Charter in environmental matters. It has

Commented [A8]: Suggestion to include footnotes in the following paragraphs, or to use a consistent approach in this regard, as some paragraphs include footnotes and others do not. For example in the paragraph on 'viii. Improving national protection of the right to a clean, healthy and sustainable environment', a footnote is included.

Commented [A9]: A mere legal recognition of the right does not necessarily imply a clarification of the relationship between environmental protection and human rights.

Commented [A10]: Suggestion to delete this sentence, because it is too tendentious and does not add great value.

been argued that these limits **may** constitute gaps in the protection of human rights that could be addressed by a new instrument protecting the right to a healthy environment in a way that was not subject to the same procedural requirements and substantive standards. For example, cases involving the right to a healthy environment could be subject to different rules concerning territorial jurisdiction, NGO standing to bring public interest cases, and/ or evidence, which, it is argued, would allow the Court to provide more effective overall protection to rights-holders.

Commented [A11]: Suggestion to include footnote.

Page 33 - § 106

There are different instruments on business and human rights such as the UNGPs, the OECD Guidelines for Multinational Enterprises or CM/Rec(2016)3 on human rights and business. Further environmental and human rights due diligence standards for business enterprises are still under development on international, regional and national levels.^{xvii} It has been argued that a new instrument containing comprehensive environmental human rights due diligence standards for companies and in particular provisions on access to remedies could enhance the responsibility or accountability of businesses. An international [legally binding] mechanism that could provide victims of corporate environmental human rights violations with access to a remedy, such as some form of alternative dispute resolution, does not yet exist. It has been argued that these elements could potentially be addressed by the Council of Europe, while emphasizing and strengthening synergies with existing systems and instruments such as the UNGPs, the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Business Conduct, applicable regional agreements, existing legislation at national and EU level and sectoral approaches, taking into account developments at international level such as the work of the UN Open-Ended Working Group on transnational corporations and other business enterprises with respect to human rights.

Commented [A12]: Suggestion to include a footnote.

Page 35 - § 114

The rationales used in academic literature, among the experts heard by the working group and in statements by civil society to demonstrate the need for a further instrument are diverse. Policy makers will need to decide whether they consider these rationales to be relevant and whether they want to endorse some or all of them. If they do endorse some or all of them and **thus** conclude that there is the need for a new instrument, the respective weight they attach to the rationales they endorse will have implications for deciding on the specific instrument to be adopted.

Commented [A13]: Suggestion to remove the word "thus" as it is not necessary in this sentence, and there may not always be a causal relationship between the identification of rationales and the identification of a need for a new instrument.

Page 36

§ 117 DELETED

~~An additional protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement mechanism. It is also one of the options that is directly responsive to civil society expectations that the Council of Europe will adopt an instrument establishing binding legal protection of the right to a healthy environment.~~

Commented [A14]: Suggestion to delete this paragraph, to avoid repetition (see §125 below, more suitable there).

§§ 118

The core element of any additional protocol to the Convention would be legal protection of the right to a healthy environment. Beyond that, it could be possible to include also constituent elements of the right and/or additional elements relating to procedural requirements and the application of substantive standards in environmental cases (as referred to in paragraphs 49-69 above). Consequently, three conceptual models for an additional protocol may be considered: (i) codification of the right to a healthy environment in general terms; (ii) codification of the right to a healthy environment including its possible constituent elements; and (iii) codification of the right to a healthy environment including both constituent elements **of the right** and additional elements relating to the operation of procedural requirements and the application of substantive standards

in environmental cases but –which are not inherently part of the right as such (referred to as “additional elements”).

Page 37 - § 119, 121

The additional elements could notably include provisions on territorial jurisdiction, victim status/ NGO standing before the Court, exhaustion of local remedies, the substantive standard on the applicability of a Convention right (risk of an actual or imminent violation of their rights), evidentiary standards, and environmental human rights defenders.^{xviii} These elements can themselves be distinguished from one another and need not all be taken together as an indissociable package.

This proposal could cover almost all rationales, with the following (partial) exceptions. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the development of the Court’s jurisprudence. It would also not address the operation of procedural requirements and the application of substantive standards could only be affected to a certain extent through the Court developing its jurisprudence. Finally, while it could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for businesses nor a right that is directly actionable against businesses. To summarise:

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✗ Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✓ Addressing the operation of procedural requirements and the application of substantive standards in European human rights law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Page 38 - § 124

However, this option would not address the operation of procedural requirements, and the application of substantive standards could only be affected to a certain extent through the Court developing its jurisprudence. Finally, while it could, through positive obligations of States, enhance the international accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- ✓ Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis

Commented [A15]: Why is this classified as an 'orange tick'? Suggestion to explain to what degree it would address the application of substantive standards, if that is implied here.

Commented [A16]: Suggestion to classify this as an 'orange tick', as a legal recognition would already strengthen the international accountability in an indirect manner.

- ✓ Addressing the operation of procedural requirements and the application of substantive standards in European human rights law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Page 39 - § 125, 126

This model would codify the right to a healthy environment and specify its constituent elements and include also additional elements relating to the ECHR's operation of procedural requirements and the application of its substantive standards. Possible additional elements include provisions on the following: 1) the Court's territorial jurisdiction; 2) victim status/NGO standing; 3) exhaustion of local remedies; 4) applicability of a Convention right; and 5) rules of evidence, to ease the burden of proof on applicants. 2) rules of evidence, to ease the burden of proof on applicants; 3) recognition of NGO standing, and 6) specific protection for environmental human rights defenders.

By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. Under the current understanding of territorial jurisdiction, the potential transboundary causes of environmental harm may leave victims unable to bring applications before the Court.^{xix} Amendments to the rules on jurisdiction addressing such issues could be envisaged, so as to make more effective the protection of individuals' right to a healthy environment. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 40

- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities

§ 128

However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. Some of these, such as the allocation of economic cost for environmental impact reduction measures or the level of environmental protection to be achieved involve policy choices that are arguably better made and implemented through the democratic process. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. Furthermore, the introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court^{xx} which may need additional financial resources.

Page 41 - § 130

It is important to note, that a Model III additional protocol would require the Court to apply different standards (see paragraphs [x]-[x]) in cases based on the right to a healthy environment. This

Commented [A17]: Suggestion to classify this as an 'orange tick', as a legal recognition would strengthen the international accountability in an indirect manner.

Formatted: Not Highlight

Commented [A18]: Why is there no mention of the requirement of exhaustion of local remedies or the substantive standard of applicability of a Convention right (e.g. to lower the required threshold)?

Commented [A19]: What about victim status? e.g. demonstrating an 'interest' in taking legal action instead of demonstrating a violation of a right, as it is currently required

Commented [A20]: What about exhaustion of local remedies and applicability of a Convention right?

Commented [A21]: Suggestion to classify this as an 'orange tick', as a legal recognition would already strengthen the international accountability in an indirect manner.

could potentially lead to fragmentation of the Court's treatment of cases, depending on the right involved. Furthermore, because the additional elements may lead to an increased caseload, additional financial and human resources for the Court may be required.

Page 42

✘ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [A22]: Suggestion to classify this as an 'orange tick', as a legal recognition would strengthen the international accountability in an indirect manner.

Page 43

✘ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [A23]: Suggestion to classify this as an 'orange tick', as a legal recognition would strengthen the international accountability in an indirect manner.

Page 44

✘ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [A24]: Suggestion to classify this as an 'orange tick', as a legal recognition would already strengthen the international accountability in an indirect manner.

§ 140

Decisions of the European Committee on Social Rights are non-binding on member States, therefore there is a higher risk of non-implementation as compared to binding judgments by a body such as the Court. Furthermore, the impact of an Additional Protocol would be limited as only a small number of States have ratified the collective complaints procedure. The optional collective complaints procedure under the ESC would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment, with no requirement for the complainant to have exhausted domestic remedies or itself to be a victim of the alleged violation. A non-binding monitoring mechanism, combining a reporting procedure and a complaints procedure, may arguably be more appropriate in an area where difficult policy choices need to be made. In addition, rights already protected under the Charter reflect both positive and negative obligations, which would be suitable for the protection of the right to a healthy environment. In addition, the introduction of the right to a healthy environment to the Charter system may result in an increase of the caseload of the ECSR, which may as a result need additional financial resource.

Commented [A25]: Suggestion to further elaborate what this non-binding monitoring mechanism would entail

Page 45 - § 144

This proposal would codify the right to a healthy environment including its possible constituent elements (see paragraphs 49-69 above).

Commented [A26]: Why reference to these paragraphs, on the application of the ECHR in environmental cases? And not the paragraphs on the constituent elements?

Page 46 - § 146

This proposal would codify the right to a healthy environment including its possible constituent elements and furtheradditional elements aimed at rendering the protection of the right more effective.

a) Possible content

Page 48 - § 152

The mechanism could be a committee, similar to the European Commission against Racism and Intolerance (ECRI). But it could also take the form of an individual Commissioner with a mandate wider than just monitoring, similar to the Council of Europe's Commissioner for Human Rights, or indeed some other form.

Commented [A27]: This paragraph should at least explain what this mechanism would monitor or what it would be mandated for.

Page 53 - § 175

As all Council of Europe member States voted in favour of UNGA Res 76/300, recreating the content of that resolution within the Council of Europe's framework would not result in any ~~the~~ fulfillment of any rationale other than establishing (non-binding) legal recognition of the right to a healthy environment in the Council of Europe framework. Given that all Council of Europe member States voted in favour of UNGA Res 76/300, the practical effects of such recognition are debatable; the instrument could appear as ~~purely~~primarily symbolic. At the same time, it could bring the Council of Europe's *acquis* in line with international law.

Commented [A28]: This statement does not correspond with the ticks and crosses below.

✘ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework

Commented [A29]: why red tick?

Page 54

✘ Enhancing protection for human rights defenders working on environmental matters

✘ Improving national protection of the right to a clean, healthy and sustainable environment

Commented [A30]: why red ticks (-> first model)?

§ 179

Finally, the following combinations of instruments have been discussed: (i) additional protocols to both the ECHR and the ESC; (ii) a standalone convention on human rights and the environment plus inclusion of environmental protection in the preamble of the ECHR; (iii) additional protocol to the ECHR and/or the ESC combined with a standalone monitoring mechanism (e.g. a commissioner, a commission)~~commissioner type mechanism~~; and (iv) a standalone convention on human rights and the environment combined with a standalone monitoring mechanism; (v) as proposed in Parliamentary Assembly Recommendation 2211 (2021), additional Protocols to both the ECHR and the ESC, coupled with a "Five P's Convention", and the revision of Recommendation CM/Rec(2016)3 on human rights and business.

Page 57 - § 196

The present report sets out the institutional and wider European and international background on the protection of human rights and the environment. It has identified a growing recognition of the interdependence of human rights and environmental protection ~~in international law~~. This is shown by, amongst other things, the CDDH's Manual on human rights and the environment, which describes the relevant jurisprudence of the European Court of Human Rights and the European Committee on Social Rights within their respective competences, by the political recognition of the right to a healthy environment through UNGA Resolution 76/300 and by the fact that many member States within the Council of Europe recognise in a legally binding manner (some form of) the right to a healthy environment in their legal systems.

Commented [A31]: The examples given also refer to national legislation and soft law.

Page 58 - § 197

At the same time, while some substantive and procedural elements of the right to a healthy environment have been identified in other regional legal systems and various international binding and non-binding instruments, there is no universally agreed definition of the right to a healthy environment and no universal understanding of its implications and content among Council of Europe member States.

DENMARK / DANEMARK

Page 24 - § 75

Significant (upcoming) EU instruments include the Non-Financial Reporting Directive (NFRD), the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDD). The aim of the latter Directive is to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance and will aim to ensure that businesses address adverse impacts of their actions, including in their value chains inside and outside Europe.

Page 32 - § 101

C. Possible rationales for a further instrument or instruments

In discussions on the need for a new instrument in academic literature, among the experts heard by the working group and in statements by civil society, several recurring lines of arguments for a new instrument can be identified. The following section sets out these rationales and analyses their underlying assumptions without endorsing them.

§ 103

As demonstrated above, there is no universal understanding of the material content of the right to a healthy environment amongst Council of Europe member States. In line with the recommendations under CM Rec 2022(20), it has been argued that a new instrument or instruments legally recognising the right to a healthy environment could possibly clarify the understanding amongst Council of Europe member States of the scope and content of the right to a healthy environment and inspire corresponding national legislation. In addition, should the material content of the right be spelled out in a possible new instrument it would allow member States to influence possible further developments related to the right to a healthy environment on the international level. Member states could take ~~Considering~~ the increasing number of binding and non-binding instruments that refer to the relationship between human rights and the environment, or actively address the issue, it could be argued that now is an optimal time into account when considering ~~for member States to shape~~ the content of a right and its function in a European context. This would contribute greatly to legal certainty, an important consideration.

Page 36

§ 117

An additional protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement mechanism in cases where the environment does not necessarily have an impact on other Convention rights. It is also one of the options that is directly responsive to civil society expectations that the Council of Europe will adopt an instrument establishing binding legal protection of the right to a healthy environment.

Page 39 - § 126

By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. Under the current understanding of territorial jurisdiction, the potential transboundary causes of environmental harm may leave victims unable to bring applications before the Court.^{xxi} Amendments to the rules on jurisdiction addressing such issues could be envisaged, so as to make more effective the protection of individuals' right to a healthy environment. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive obligations of States, indirectly enhance the

Commented [F32]: The Rapporteur notes that the CSDD is still not adopted and it is unclear at this stage whether it will ever be adopted.

Commented [F33]: The Secretariat suggests adding two specific rationales, for the following reasons. The current analytical approach in Chapter III gives little visibility to the fundamental reasons for distinguishing between the different types of binding instrument (variants of the two protocols and the standalone convention). There are perceived needs – amounting to separate rationales – for international oversight of States' implementation of the right to a healthy environment in both its individual and collective forms and with respect to its civil/ political and economic/ social nature that are distinct and separate from both simple international legal protection of the right and enhanced protection of human rights generally against environmental impact.

Proposed rationales:

i. Providing international judicial oversight of national implementation of the right to a healthy environment

1. It has been argued that an international judicial oversight mechanism, accepting applications from persons claiming to be victims of violations of the right to a healthy environment and issuing binding judgments in their cases, is necessary to ensure effective and harmonious protection of the right to a healthy environment by States. For those, including the Parliamentary Assembly and civil society organisations, that have made such proposals, the urgency of the triple planetary crisis, the severity of its impact on human rights, and the need for an effective response by governments make this highest level of protection a necessity.

ii. Providing for a system of collective complaints alleging unsatisfactory realisation of the right to a healthy environment

2. It has been argued that the partially collective (or economic/ social) character of the right to a healthy

Commented [F34]: Denmark notes that the Secretariat has proposed to add two rationales.

However, has these rationales also been recurring in the lines of arguments made in academic literature, made by the experts heard by the working group and in statements by the civil society, as indicated in section 100?

Commented [F35]: Denmark suggests this amendment to make the language more neutral

Commented [F36]: Denmark suggest this amendment, since individuals as implied in section 52 already today have access to the Court if the environment has an impact on existing Convention rights.

Commented [F37]: Denmark suggest that the working group discuss the grammar of this sentence. Is it supposed to say "beyond what would be possible...."

Commented [F38]: Denmark suggests a few amendments to this sentence:

"Amendments to the rules on jurisdiction addressing such issues could be envisaged in a way that would make the protection of individual's right to a healthy environment more effective.

international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 40 - §§ 127 - 128

An additional Protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement mechanism. It is also the only option that is directly responsive to the expectations of civil society, as expressed by observers in the CDDH-ENV drafting group.

However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. Some of these, such as the allocation of economic cost for environmental impact reduction measures or the level of environmental protection to be achieved involve policy choices that are arguably better made and implemented through the democratic process. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. The introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court^{xxii} which may need additional financial resources.

Additionally, the Convention is not open for signature and ratification to non-Council of Europe member States (other than the European Union, which in any case is not a State), thereby limiting the scope of protection to the European space.

Page 41 - § 130

It is important to note, that a Model III additional protocol would require the Court to apply different standards (see paragraphs [x]-[x]) in cases based on the right to a healthy environment. This could potentially lead to fragmentation of the Court's treatment of cases, depending on the right involved.

§ 134

As indicated below, this model could cover ~~most more than half~~ of the rationales. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the subsequent decisions/interpretations of the ESCR. It would also not address the operation of procedural requirements. While it could, through positive obligations of States, enhance the accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 42 - § 136

This proposal could cover ~~the same all~~ rationales to an even larger extent than the first option and it could also cover the rationale on shaping the content of the right. By specifying the constituent elements of the right to a healthy environment, member States could actively shape the content of the right and give further guidance on the nature, content and implications of the right. The further development by the ESCR of its jurisprudence on the application of existing Charter rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of a new Charter right to a healthy environment.

Commented [F39]: Denmark suggest to add the same text here as proposed in section 115.

Commented [F40]: Denmark suggests to ad this argument, which originates from section 123 in the previous report.

Commented [F41]: Would it be relevant to add something about model 1 and 2 in regard of effective implementation? Considerations in this regard is somewhat made in the previous report in section 121.

121. Moreover, it has been argued that in the case of codification of the right to a healthy environment through an additional protocol, at least two basic tenets of the Convention system would need to be changed to allow for effective implementation: (i) the victim status requirement; and (ii) the approach to remedial measures (see paragraphs 52–60 describing the limitations of the Convention system). This is because the right to a healthy environment is different in nature from the other Convention rights that essentially protect subjective interests of individual human beings, insofar as it arguably also recognises and protects the collective interest in a clean, healthy and sustainable environment. The Convention system provides a system of access to justice for the pursuit of subjective rights. In addition, an effective remedy for environmental harm may require bespoke, general remedial measures, to a greater extent than is generally the case for existing Convention rights. Deviating from established Convention principles in order to extend its protection to the right to a healthy environment, however, could lead to a fragmentation of applicable standards.

Commented [F42]: Denmark suggests this amendment

Commented [F43]: Denmark suggests this amendment

Page 45 – NEW § after § 140

Additionally, the Charter is not open for signature and ratification to non-Council of Europe member States, thereby limiting the scope of protection to the European space and the process of adopting a new protocol is lengthy.

Commented [F44]: Denmark suggests to include this argument. The wording is from section 127 in the previous draft report.

Page 51 - § 165

An Additional Protocol to the ECHR amending the existing preamble (similarly to Protocol No. 15) ~~would be required that~~ would have to be ratified by all member States to enter into force. Such a process is time and resource intensive at both Council of Europe and national levels.

Commented [F45]: Denmark suggests this amendment

Page 53 - § 175

As all Council of Europe member States voted in favour of UNGA Res 76/300, recreating the content of that resolution within the Council of Europe's framework would not result ~~in any~~ the fulfillment of any rationale other than establishing (non-binding) legal recognition of the right to a healthy environment in the Council of Europe framework. Given that all Council of Europe member States voted in favour of UNGA Res 76/300, the practical effects of such recognition are debatable; the instrument could appear as purely symbolic. At the same time, it could bring the Council of Europe's *acquis* in line with international law.

Page 54 - § 178**A. Further considerations relevant to this proposal**

Recommendations are not subject to ratification; they are adopted by consensus. The process of negotiating and adopting a recommendation is usually less labour and resource intensive than the adoption of binding instruments.

Commented [F46]: Has it been considered to add an argument similar to the arguments used above regarding an additional protocol to the ECHR or the ESC?

Page 57 - § 196

The present report sets out the institutional and wider European and international background on the protection of human rights and the environment. It has identified a growing recognition of the interdependence of human rights and environmental protection in international law. This is shown by, amongst other things, the CDDH's Manual on human rights and the environment, which describes the relevant jurisprudence of the European Court of Human Rights and the European Committee on Social Rights within their respective competences, by the political recognition of the right to a healthy environment through UNGA Resolution 76/300 and by the fact that many member States within the Council of Europe recognise in a legally binding manner (some form of) the right to a healthy environment in their legal systems.

"Additionally, the Convention is not open for signature and ratification to non-Council of Europe member States (other than the European Union, which in any case is not a State), thereby limiting the scope of protection to the European space."

Commented [F47]: Denmark suggests to use the same wording as in section 94 "multiple"

FINLAND / FINLANDE**Page 15 - § 41**

On 29 March 2023, the UNGA adopted by consensus a resolution formally requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States in respect of climate change.^{xxiii} In particular, this request asked the following questions: (a) what are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; and (b) what are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to States, including, in particular, small island developing States [...] and Peoples and individuals of the present and

future generations affected by the adverse effects of climate change? By referring explicitly to international human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

Page 22

Operation of Procedural Requirements in Environmental Cases

Page 23

Business and human rights

Commented [A48]: There is something missing in this sentence as drafted. This could be changed e.g. to 'The request (for an Advisory opinion) referred explicitly to international human rights instruments....'

Commented [A49]: Suggest to demarcate the subheadings under ESC in a manner similar to that of the preceding section on ECHR (e.g. by adding (a), (b) etc.)

Commented [A50]: This subheading may now be understood as continuing the section on ESC, but perhaps adding (a), (b) to the previous subheadings might resolve this issue.

Page 29 - § 90

Although the right to a clean, healthy and sustainable environment has been recognised politically at global level in UN General Assembly Resolution 76/300, However, this right is not yet protected as such in a treaty either at global or European level.^{xxiv} This means that there is not yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”^{xxv} of the right.

Commented [A51]: Some drafting issues in this sentence

Page 39 - § 126

By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. Under the current understanding of territorial jurisdiction, the potential transboundary causes of environmental harm may leave victims unable to bring applications before the Court.^{xxvi} Amendments to the rules on jurisdiction addressing such issues could be envisaged, so as to make more effective the protection of individuals’ right to a healthy environment. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Commented [A52]: It would be important to clarify/reflect on the possible extent to which procedural requirements would be amended under this option. Oftentimes applications to the court do not concern a single right, but several. Would procedural requirements be amended only as regards the right to a healthy environment, or also vis-à-vis other rights that might be raised in a particular application? Applying procedural requirements differentially as regards different rights in a single application might prove unworkable. Initially, we are in principle hesitant about the possibility of adjusting/amending procedural requirements for a specific right.

Page 40 - § 128

However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. Some of these, such as the allocation of economic cost for environmental impact reduction measures or the level of environmental protection to be achieved involve policy choices that are arguably better made and implemented through the democratic process. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. The introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court^{xxvii} which may need additional financial resources.

Commented [A53]: The execution of judgments is supervised by the CM.

Page 41 - § 130

It is important to note, that a Model III additional protocol would require the Court to apply different standards (see paragraphs [x]-[x]) in cases based on the right to a healthy environment. This could potentially lead to fragmentation of the Court’s treatment of cases, depending on the right involved.

Commented [A54]: This para in part addresses our comment at para 124, but it could be extended further to reflect the issue of how/whether procedural requirements would be applied in a single application concerning the right to a healthy environment + other ECHR rights, as we think this is an important issue to consider in further detail (or at least outline as a concern requiring more detailed examination).

Page 45 - § 142

It is important to note, that a Model III additional protocol would require the ESCR to apply different standards in cases based on the right to a healthy environment. This could potentially lead to fragmentation of the ESCR’s treatment of cases, depending on the right involved.

Commented [A55]: Similar comment as earlier re ECHR on this issue.

Page 51 - § 165

An Additional Protocol to the ECHR amending the existing preamble (similarly to Protocol No. 15) would be required that would have to be ratified by all member States to enter into force. Such a process is time and resource intensive at both Council of Europe and national levels.^{xxviii}

Commented [A56]: But on the other hand, once ratified, be applicable to all.

Page 58 - § 199

To consider feasibility, the Report has examined different Council of Europe instruments that have been proposed to address a perceived need for a new instrument. The report has briefly examined their possible material content and has set out which of the rationales identified would be covered by the respective instrument. This allows to check which instruments address the rationale(s) that are considered relevant. The respective weight attached to the relevant rationales allows the narrowing down of options. Finally, the Report sets out key considerations for each of the instruments. The compilation of considerations aims to give an overview of the state of discussions and is intended to provide a meaningful basis for assessing the feasibility of each instrument.

Commented [A57]: This sentence could be highlighted. Also, it is arguably not just the respective weight (i.e. which rationale 'weighs' more than another), but whether any or a combination of rationales are considered sufficiently weighty in order for a further instrument or instruments to be considered as needed.

FRANCE**Page 6 - § 10**

La 9^e édition du Forum mondial de la démocratie du Conseil de l'Europe a examiné, en novembre 2020, la question suivante : « La démocratie peut-elle sauver l'environnement ? » en examinant les différentes réponses à la question de savoir comment stopper et remédier aux dommages causés à l'environnement. Des recommandations ont été formulées afin d'introduire le droit à un environnement « sûr, propre, sain et durable » dans la liste des droits humains protégés par le Conseil de l'Europe, et pour inclure les délits contre un tel droit dans le code pénal des États membres.

Commented [A58]: FRANCE
Suggestion de citer car la recommandation à laquelle il est fait référence en note de bas de page utilise la formulation « sûr, propre, sain et durable » qui n'est pas forcément reprise par tous les instruments traitant du droit à un environnement sain.

Page 7 - §§ 12, 13

En 1970, puis ultérieurement en 1990, 1999, 2003 et 2009, l'Assemblée parlementaire du Conseil de l'Europe s'est efforcée d'aborder la relation entre les droits humains et l'environnement en proposant un protocole additionnel à la Convention européenne des droits de l'homme. L'Assemblée parlementaire a adopté un certain nombre de résolutions et de recommandations pertinentes, en particulier : la Résolution 2286(2019) « Pollution atmosphérique : un défi pour la santé publique en Europe », la Résolution 2415(2022) et la Recommandation 2219 (2022) « Inaction face au changement climatique – Une violation des droits de l'enfant », la Résolution 2398(2021) et la Recommandation 2213(2021) « Examen des questions de responsabilité civile et pénale dans le contexte du changement climatique », la Résolution 2477(2023) et la Recommandation 2246(2023) « Impact environnemental et conflits armés » en complément à la Résolution 2396(2021) et à la Recommandation 2211(2021) « Ancrer le droit à un environnement sain : la nécessité d'une action renforcée au Conseil de l'Europe ». La Recommandation 2211 (2021) contient quatre propositions visant à renforcer les instruments juridiques du Conseil de l'Europe, à savoir : élaborer simultanément (1) des protocoles additionnels à la Convention et (2) à la Charte, (3) préparer une étude de faisabilité pour une convention sur les menaces environnementales et les risques technologiques menaçant la santé, la dignité et la vie humaines et^{xxix} (4) réviser la Recommandation CM/Rec(2016)3 sur les droits de l'homme et les entreprises dans le but de renforcer la responsabilité environnementale des entreprises afin de protéger de manière appropriée le droit humain à un environnement sûr, propre, sain et durable^{xxx}. Il est important de noter que la Recommandation 2211 (2021) de l'APCE comprend une proposition de texte pour un protocole additionnel à la Convention, concernant le droit à un environnement sûr, propre, sain et durable^{xxxi}. L'Assemblée parlementaire du Conseil de l'Europe a également créé

un réseau de parlementaires de référence pour un environnement sain^{xxxii}, qui vise à ancrer le droit à un environnement propre, sain et durable dans la législation, les politiques, les pratiques et la sensibilisation du public en Europe et au-delà. L'Assemblée défend le droit à un environnement sûr, propre, sain et durable. Son choix de ces quatre adjectifs a été renouvelée à l'occasion de l'adoption de la Résolution 2493 (2023) et de la Recommandation 2251 (2023) « Stratégies politiques permettant de prévenir les catastrophes naturelles, de s'y préparer et d'y faire face ».

Lors du Quatrième Sommet (« Sommet de Reykjavík ») qui s'est tenu les 16 et 17 mai 2023, les chefs d'État et de gouvernement du Conseil de l'Europe ont souligné, dans la [Déclaration de Reykjavík](#), « l'urgence d'efforts supplémentaires pour protéger l'environnement, ainsi que pour lutter contre l'impact de la triple crise planétaire, engendrée par la pollution, le changement climatique et la perte de biodiversité »^{xxxiii}, et de « renforcer leur travail au Conseil de l'Europe sur les aspects de l'environnement liés aux droits de l'homme, sur la base de la reconnaissance politique du droit à un environnement propre, sain et durable en tant que droit de l'homme, en ligne avec la Résolution 76/300 de l'Assemblée générale des Nations Unies sur le droit à un environnement propre, sain et durable »^{xxxiv}. À cette fin, ils ont lancé le « processus de Reykjavík », encourageant la création d'un nouveau comité intergouvernemental sur l'environnement et les droits humains (« Comité de Reykjavík ») et appelé à une conclusion rapide de l'étude de faisabilité du CDDH.

Page 9 - § 20

La crise climatique a été qualifiée de plus grande menace pour les droits humains par l'ancien Haut-Commissaire des Nations Unies aux droits de l'homme^{xxxv}. Selon le sixième rapport d'évaluation publié par le Groupe d'experts intergouvernemental sur l'évolution du climat (GIEC), qui a été approuvé politiquement par tous les États parties au Conseil de l'Europe, les mesures d'adaptation et d'atténuation qui donnent la priorité à l'équité, à la justice sociale, à la justice climatique, aux approches fondées sur les droits et à l'inclusivité, conduisent à des résultats plus durables, réduisent les compromis, suscitent un changement profond et font progresser un développement résilient face aux changements climatiques^{xxxvi}. Le déclin de la biodiversité^{xxxvii}, associé à l'impact négatif de la pollution de l'air, de la terre et de l'eau sur le bien-être humain^{xxxviii}, renforce davantage la nécessité de protéger l'environnement pour garantir la pleine jouissance des droits humains.

Page 11 - § 25

Le droit international des droits humains (DIDH) et le droit international de l'environnement (DIE) se sont développés en régimes distincts. Le DIE vise à aborder les impacts négatifs sur l'environnement, dans le but de protéger et de conserver l'environnement, tandis que le DIDH traite essentiellement de la protection des droits humains. Bien qu'il s'agisse de deux branches différentes du droit international, il est reconnu qu'elles se complètent sur certaines questions. À cet égard, la résolution 76/300 de l'AGNU a affirmé « l'importance que revêt un environnement propre, sain et durable pour l'exercice de tous les droits humains » et a reconnu « que l'exercice des droits humains, notamment le droit de rechercher, de recevoir et de communiquer des informations, le droit de participer véritablement à la conduite des affaires gouvernementales et publiques et le droit à un recours utile, est indispensable à la protection d'un environnement propre, sain et durable^{xxxix} ».

Page 15 - § 41

33. Le 29 mars 2023, l'Assemblée générale des Nations Unies a adopté par consensus une résolution demandant officiellement un avis consultatif à la Cour internationale de justice (CIJ) sur les obligations des États en matière de changement climatique^{xl}. En particulier, cette demande

Commented [A59]: FRANCE

Le terme de choix nous semble plus juste que celui d' « adhérence »/adhésion, qui suggère le respect d'une norme contraignante.

Commented [A60]: FRANCE

Traduction officielle en français.

Commented [A61]: FRANCE

Il y a un problème de numérotation dans la version anglaise – ce paragraphe n'y est pas numéroté.

Commented [A62]: FRANCE

Il nous semble important de préciser à quel rapport nous faisons référence car le GIEC en est à son 6ème rapport d'évaluation.

Commented [A63]: FRANCE

La version française ne correspondait pas ici au texte en anglais, lequel cite directement la résolution 76/300. Nous avons repris ici le texte officiel français de la résolution 76/300.

posait les questions suivantes : (a) quelles sont, en droit international, les obligations qui incombent aux Etats en ce qui concerne la protection du système climatique et d'autres composantes de l'environnement contre les émissions anthropiques de gaz à effet de serre pour les Etats et pour les générations présentes et futures et (b) quelles sont, au regard de ces obligations, les conséquences juridiques pour les États qui, par leurs actions ou omissions, ont causé des dommages significatifs au système climatique et à d'autres éléments de l'environnement à l'égard : i) des États, y compris, en particulier, des petits États insulaires en développement [...] ii) des peuples et des individus des générations présentes et futures atteints par les effets néfastes des changements climatiques ? La résolution se réfère explicitement La aux instruments internationaux relatifs aux droits humains, dont la Déclaration universelle des droits de l'homme, le Pacte international relatif aux droits civils et politiques (PIDCP) et le Pacte international relatif aux droits économiques, sociaux et culturels (PIDESC).

Commented [A64]: FRANCE

Nous avons repris ici la version officielle en français des questions posées à la Cour internationale de Justice.

Commented [A65]: FRANCE

La phrase semblait incomplète.

Page 16 - § 45

34. Les organes conventionnels des Nations Unies sont de plus en plus sollicités pour statuer sur des affaires liées à la dégradation de l'environnement^{xli}. Dans l'affaire *Portillo Cáceres et autres c. Paraguay*, le Comité des droits de l'homme des Nations Unies a estimé en 2019 que le Paraguay avait violé ses obligations en vertu du droit à la vie et du droit à la vie privée et familiale, lorsqu'il n'a pas réglementé de manière adéquate la pulvérisation à grande échelle de produits agrochimiques toxiques et n'a pas enquêté sur le décès d'un travailleur agricole exposé à ces produits chimiques^{xlii}. Dans l'affaire *Teitiota c. Nouvelle-Zélande* (2020), l'auteur alléguait que le rejet de sa demande de statut de réfugié en Nouvelle-Zélande violait son droit à la vie en vertu du Pacte en l'expulsant en septembre 2015 vers les Kiribati, que le changement climatique finirait par rendre inhabitables. Le Comité des droits de l'homme des Nations Unies a jugé la plainte recevable au motif que « l'intéressé a suffisamment démontré aux fins de la recevabilité, qu'en raison de l'incidence des changements climatiques et de l'élévation du niveau de la mer qui l'accompagne sur l'habitabilité de Kiribati et sur la situation de sécurité dans les îles, la décision de l'Etat partie de le renvoyer à Kiribati l'exposait à un risque réel d'atteinte au droit à la vie garanti par l'article 6 du Pacte ». »^{xliii}. Après avoir examiné le bien-fondé de la plainte, le Comité a conclu que « sans préjudice de la responsabilité qui continue d'incomber à l'Etat partie de tenir compte, dans les futures affaires d'expulsion, de la situation à Kiribati ainsi que des nouvelles données sur les effets des changements climatiques et de l'élévation du niveau de la mer, le Comité ne peut conclure que les droits que l'auteur tient de l'article 6 du Pacte ont été violés du fait de l'expulsion de l'intéressé vers Kiribati en 2015. »^{xliiv}. Dans l'affaire *Sacchi et al. c. Argentine, Brésil, France, Allemagne et Turquie*, les auteurs de la communications alléguaient que les Etats défendeurs avaient violé les droits des enfants en vertu de la Convention des Nations Unies relative aux droits de l'enfant en ne réduisant pas suffisamment les émissions de gaz à effet de serre et en n'utilisant pas les outils disponibles pour protéger les enfants contre les effets néfastes du changement climatique. La plainte fut jugée irrecevable pour cause de non-épuisement des voies de recours internes, bien que le Comité a fait de nombreuses remarques obiter dicta, y compris sur la juridiction extraterritoriale et la prévisibilité du dommage. En septembre 2022, le Comité des droits de l'homme des Nations Unies a estimé que l'incapacité de l'Australie à protéger de manière adéquate les populations autochtones des îles Torres, en prenant des mesures d'adaptation insuffisantes contre les effets néfastes du changement climatique constituait une violation des articles 17 (droit au respect de la vie privée, familiale et du domicile) et 27 (droits des personnes appartenant à des minorités ethniques, religieuses ou linguistiques) du PIDCP^{xliv}.

Commented [A66]: FRANCE

Nous remplaçons ici par la version française officielle.

Commented [A67]: FRANCE

La version française ne correspondait plus à la dernière version agréée du texte en anglais.

Commented [A68]: FRANCE

Dans la mesure où ces conditions n'empêchent pas d'introduire une requête devant la Cour mais jouent plutôt sur les chances que celle-ci soit jugée recevable et puisse conduire à un constat de violation de la Convention, ne vaut-il mieux pas parler de « chance de succès » d'une requête devant la Cour ?

Page 19 - §§ 54, 55, 58

Les exigences procédurales pour le succès d'une requête devant la Cour concernent essentiellement la question de la juridiction et les critères de recevabilité.

La première exigence procédurale devant la Cour concerne la juridiction. L'article 1^{er} de la Convention prévoit que toute Partie contractante doit « reconnaître » les droits et libertés garantis par la Convention à toute personne relevant de sa « juridiction ». La juridiction au sens de l'article 1^{er}, est avant tout territoriale, par exemple, si la personne se trouve sur le territoire de l'État. Si la personne se trouve en dehors du territoire d'un État partie à la Convention, elle peut exceptionnellement relever de la juridiction extraterritoriale de l'État si (i) l'État exerce un pouvoir (ou un contrôle) sur la personne (notion de compétence personnelle), ou (ii) si l'État exerce un contrôle effectif sur le territoire où se produit la violation alléguée (notion de compétence spatiale^{xvi}). Les exigences en matière de juridiction de la Convention peuvent limiter la compétence de la Cour pour traiter les affaires environnementales, en particulier dans les cas de dommages environnementaux transfrontaliers, où la pollution provenant d'un État a un impact sur les individus situés sur le territoire d'un autre État^{xvii}.

a) Application des standards substantiels issus de la Convention aux affaires liées à l'environnement^{xviii}

La première catégorie de standards substantiels pouvant faire l'objet de débats quant à l'étendue de la protection indirecte de l'environnement offerte par la Convention concerne l'applicabilité des droits de la Convention. Dans l'affaire *Kyrtatos c. Grèce*, la Cour a rejeté les demandes découlant de la destruction d'une zone humide adjacente à la propriété des requérants, au motif que « ni l'article 8 ni aucune autre disposition de la Convention ne garantit spécifiquement une protection générale de l'environnement en tant que tel »^{xlix}. La Cour a rappelé que selon une jurisprudence établie, « des atteintes graves à l'environnement peuvent affecter le bien-être d'une personne et la priver de la jouissance de son domicile de manière à nuire à sa vie privée et familiale sans pour autant mettre en grave danger la santé de l'intéressée »^l. Elle précise que « à supposer même que les aménagements urbains effectués dans la zone aient eu de graves répercussions sur l'environnement, les requérants n'ont présenté aucun argument convaincant démontrant que le tort qui aurait été causé aux oiseaux et autres espèces protégées vivant dans le marais était de nature à porter directement atteinte à leurs propres droits »^l. L'article 8 de la Convention ne s'applique donc pas systématiquement lorsqu'une atteinte à l'environnement ou un risque d'atteinte à l'environnement se produit^{li}. Cette jurisprudence est l'expression d'un principe général selon lequel les droits de la Convention ne sont applicables que si les individus sont directement affectés. Les requérants doivent démontrer qu'il existe un risque de violation réel ou imminent de leurs droits en vertu de la Convention, susceptibles de leur causer un préjudice réel ou potentiel. Dans le contexte de l'environnement, les individus sont considérés comme « personnellement affectés » par la mesure en cause, s'ils se trouvent personnellement dans une situation « à haut risque environnemental », dans laquelle la menace environnementale « devient potentiellement dangereuse pour la santé et le bien-être de ceux qui y sont exposés ».

Page 20 - §§ 59, 60, 61

La deuxième catégorie de standards substantiels pouvant faire débat dans le contexte d'affaires environnementales concerne la reconnaissance d'une violation de la Convention. Il est prouvé que dans les affaires liées à l'environnement en général, et dans les affaires en matière de pollution en particulier, des difficultés de preuve se posent en raison des liens complexes entre les atteintes à l'environnement et les risques ou effets sur la santé qu'un requérant doit démontrer. Ces difficultés ont été reconnues par la Cour dans des affaires liées à la pollution, par exemple, lorsqu'elle a déclaré que « les pollutions graves affectent négativement la santé publique en général, [...] il est souvent impossible de quantifier leurs effets dans chaque cas individuel et de les distinguer de l'influence d'autres facteurs pertinents, tels que l'âge, la profession, etc »^{lii}. D'après la Cour, lors de l'examen des éléments de preuves, le standard applicable est celui de la

Commented [A69]: FRANCE
Même remarque, nous suggérons ici de simplement supprimer ces mots.

Commented [A70]: FRANCE
L'article 1er de la Convention prévoit que les obligations des Etats s'appliquent vis-à-vis de toute personne relevant de la juridiction de celui-ci. Dans la mesure où l'applicabilité de la Convention ne signifie pas nécessairement l'existence d'une violation de la Convention (et donc d'une victime), nous suggérons de parler de personne et non de victime.

Commented [A71]: FRANCE
Reformulation car au sens de l'article 1er de la Convention, la question se pose par rapport aux personnes (relèvent-elles de la juridiction de l'Etat ou non ?). Cette reformulation nous semble plus fidèle à la manière qu'a la Cour de concevoir l'article 1er.

Commented [A72]: FRANCE
Le terme de standard nous semble plus approprié ici.

Commented [A73]: FRANCE
Les critères d'applicabilité des articles de la Convention sont nombreux et variables en fonction des articles ; nous suggérons de parler de catégorie de standards ici.

Commented [A74]: FRANCE
Il nous semble important d'explicitier pourquoi nous ne parlons ici que de certains standards : il s'agit des standards pouvant faire l'objet de débats dans le contexte d'affaires environnementales devant la Cour ou de points pouvant limiter l'étendue de la protection indirecte de l'environnement par la Convention.

Commented [A75]: FRANCE
Version officielle en français.

Commented [A76]: FRANCE
Cette dernière phrase ne figure plus dans la version anglaise.

Commented [A77]: FRANCE
Même remarques que ci-dessus.

Commented [A78]: FRANCE
La référence est manquante, y compris dans la version anglaise.

preuve « au-delà de tout doute raisonnable »; cette preuve peut résulter « d'un faisceau d'indices, ou de présomptions non réfutées, suffisamment graves, précis et concordants »^{iv}. La Cour peut ne pas appliquer systématiquement le principe selon lequel il appartient à la partie à l'origine de l'allégation de la prouver, notamment dans des circonstances où seul le gouvernement défendeur a accès à des informations susceptibles de corroborer ou de réfuter les allégations du requérant^{lv}. Bien que la Cour ait souligné l'importance du principe de précaution dans l'affaire Tatar^{lvi}, dans des affaires plus récentes, elle n'a pas développé davantage l'utilisation de ce principe^{lvii}.

Commented [A79]: FRANCE
Version française officielle.

Une troisième question d'ordre substantiel porte sur l'importance accordée aux questions liées à l'environnement dans l'appréciation de la Cour du « juste équilibre ». La Cour estime que la protection de l'environnement, de la nature, des forêts, du littoral, des espèces menacées, des ressources biologiques, du patrimoine et de la santé publique sont des questions d'intérêt public. Par conséquent, un argument lié à l'environnement peut être avancé pour justifier une ingérence dans certains droits^{lviii} tel que, par exemple, le respect au droit à la propriété^{lix}.

Commented [A80]: FRANCE
On ne comprend pas très bien ici où on veut en venir. Il nous semble nécessaire d'expliquer davantage. Une solution peut être de faire référence à l'argument présenté par la juge Keller lors de la 5ème réunion du CDDH-ENV, selon lequel la Cour accorderait moins d'importance à l'environnement qu'à d'autres intérêts dans son examen du juste équilibre entre divers intérêts / droits ?

En prenant, à des fins d'intérêt général, des mesures constituant une ingérence dans le droit à la propriété, les États jouissent d'une large marge d'appréciation portant à la fois sur le choix des moyens pour atteindre le but visé que sur l'évaluation de la proportionnalité de ces moyens par rapport au but. La Cour a souligné que cela est particulièrement le cas lorsque le but d'intérêt général poursuivi concerne la protection de l'environnement^{lx}. De même, la Cour a indiqué que la marge d'appréciation est plus large lorsque l'ingérence alléguée dans le droit au respect de la propriété concerne les politiques d'aménagement du territoire et de protection de l'environnement^{lxi}. Cela étant, dans un arrêt, la Grande Chambre de la Cour a énoncé un principe général, dans le cadre de l'article 11 de la Convention, selon lequel lorsqu'il s'agit de protéger des « droits ou libertés » qui ne sont pas énoncés dans la Convention (en l'occurrence, la chasse), seuls des « impératifs indiscutables » peuvent justifier une ingérence dans les droits et libertés protégés.

Il est aussi possible d'indiquer que « la question de savoir si l'environnement pèserait davantage dans l'examen par la Cour du juste équilibre s'il faisait l'objet d'un droit garanti par la Convention, plutôt qu'en tant qu'intérêt public, a été posée et reste débattue ».

Commented [A81]: FRANCE
Le terme d'exécution nous paraît pouvoir prêter à confusion (il ne s'agit pas ici d'exécuter un arrêt). Nous suggérons de le supprimer.

Page 21 - § 64

La Charte ne prévoit pas de procédure de réclamation individuelle, mais le CEDS contrôle le respect de la CSE dans le cadre de deux procédures distinctes : (i) les réclamations collectives déposées par les partenaires sociaux et les organisations non gouvernementales (procédure de réclamations collectives) et (ii) les rapports établis par les États parties (procédure de rapports). La procédure de réclamations collectives a été établie par le Protocole additionnel à la Charte sociale européenne prévoyant un système de réclamations collectives. Elle permet aux partenaires sociaux et aux organisations non gouvernementales de déposer des réclamations collectives concernant des violations présumées de la Charte dans les États qui ont ratifié le Protocole additionnel^{lxii}. La réclamation est examinée par le CEDS, qui la déclare recevable si les conditions formelles prévues par le Protocole additionnel sont remplies^{lxiii}. Le CEDS prend ensuite une décision sur le bien-fondé de la réclamation, qu'il transmet aux parties concernées et au Comité des Ministres dans un rapport. Sur la base de ce rapport, le Comité des Ministres adopte une résolution. En cas de violations constatées par le CEDR, le Comité des Ministres peut recommander à l'État concerné de prendre des mesures spécifiques pour rendre la situation conforme à la Charte.

Page 22 - §§ 67, 68, 69

35. La Charte ne protège l'environnement que dans la mesure où les dégradations environnementales ont un impact sur les droits garantis par la Charte. Les conditions de procédure et de fond requises pour que le Comité conclue à une violation de la Charte limitent l'étendue de cette protection indirecte. La section suivante examinera l'application de ces critères

Commented [A82]: FRANCE
Comme pour la Convention, il nous semble que ces conditions n'empêchent pas de saisir le Comité, mais jouent plutôt sur les chances de succès de la réclamation collective qui aura été présentée.

dans les affaires liées à l'environnement, dans la mesure où cela est possible compte tenu du nombre limité d'affaires ayant traité de cette question.

La première exigence procédurale pouvant être perçue comme limitant l'étendue de la protection indirecte de l'environnement offerte par la Charte porte sur la nécessité pour l'État défendeur de ratifier le Protocole additionnel de 1995 qui prévoit un mécanisme de réclamation collective. Il convient de noter que le nombre de ratifications du Protocole additionnel de 1995 à la Charte^{lxiv} est limité.

La deuxième exigence procédurale pouvant faire l'objet de débats dans le contexte d'affaires environnementales porte sur le champ d'application personnel de la Charte. Selon l'annexe à la Charte^{lxv}, les États parties ne sont pas tenus d'appliquer les dispositions de la Charte aux personnes qui ne sont pas des ressortissants d'autres États parties à la Charte ou à celles qui ne travaillent pas régulièrement ou ne résident pas légalement sur le territoire des États parties. Toutefois, le CEDS a estimé, par exemple, que la restriction du champ d'application personnel ne devait pas être interprétée de manière à priver les étrangers entrant dans la catégorie des migrants en situation irrégulière de la protection des droits les plus fondamentaux consacrés par la Charte ou à porter atteinte à leurs droits fondamentaux, tels que le droit à la vie ou à l'intégrité physique ou le droit à la dignité humaine

Page 23

Application des standards substantiels dans les affaires liées à l'environnement

§ 72

L'Article 3 du Traité de l'Union européenne (TUE) et les Article 6, 11 et 191–193 du Traité sur le fonctionnement de l'Union européenne (TFUE) énoncent un ensemble de principes et de critères qui doivent être respectés par les institutions européennes lors de la définition et de la mise en œuvre de la politique européenne en matière d'environnement. Par ailleurs, la Charte des droits fondamentaux de l'Union européenne stipule que « un niveau élevé de protection de l'environnement et l'amélioration de sa qualité doivent être intégrés dans les politiques de l'Union et assurés conformément au principe du développement durable »^{lxvi}.

Page 23 - § 73

L'UE et ses États membres sont également Parties à Convention de l'UNECE sur l'accès à l'information, la participation du public au processus décisionnel et l'accès à la justice en matière d'environnement (Convention d'Aarhus). L'UE met en œuvre les dispositions de la Convention d'Aarhus par le biais de diverses directives^{lxvii}. Les institutions de l'UE garantissent la mise en œuvre de la Convention d'Aarhus dans leurs processus décisionnels par le biais du Règlement n° 1367/2006 (Règlement d'Aarhus)^{lxviii}. La Cour de justice de l'UE (CJUE) s'est également penchée sur la question de l'accès à la justice en matière d'environnement avant la ratification de la Convention d'Aarhus par l'UE^{lxix}. Depuis 2005, la CJUE a statué sur une cinquantaine d'affaires liées à l'accès à la justice en matière d'environnement, couvrant diverses questions telles que la qualité pour agir des particuliers et des organisations non gouvernementales de protection de l'environnement (ONGE)^{lxx}. La CJUE a notamment précisé que les procédures nationales devaient être conçues de manière à permettre aux ONG d'avoir qualité pour agir dans les affaires environnementales et que les ONG peuvent représenter des intérêts environnementaux sur la base de la législation nationale et du droit européen de l'environnement ayant un effet direct. Ces arrêts vont dans le sens du Pacte vert pour l'Europe qui vise à renforcer l'accès à la justice pour le public.

Commented [A83]: FRANCE

Comme pour la Convention, il nous semble important d'explicitier pourquoi nous mettons en avant certains critères. Ici aussi, il s'agit des exigences / critères susceptibles de faire l'objet de débats dans les affaires environnementales, ou de limiter éventuellement l'étendue de la protection indirecte de l'environnement offerte par la Charte.

Commented [A84]: FRANCE

Même remarque

Commented [A85]: FRANCE

Comme pour la Convention, il nous semble ici plus approprié de parler de standards ou de critères que de normes.

Commented [A86]: FRANCE

Il nous semble étrange de dire qu'une procédure peut être interprétée. Il s'agit plutôt que la conception des procédures ou de l'interprétation des critères d'intérêt à agir etc. Nous suggérons une légère reformulation.

Page 25 - §§ 76, 78, 79

C. Le droit à un environnement sain

La présente section fournit, en premier lieu, un bref aperçu des codifications existantes, des soutiens politiques et de la reconnaissance jurisprudentielle d'un droit à un environnement sain par différentes juridictions. L'expression « droit à un environnement sain » est utilisée comme un terme générique « abrégé », qui intègre la grande diversité d'adjectifs qualificatifs utilisés dans les différents instruments traitant de ce droit^{lxxi}. La présente section vise à clarifier, en second lieu, les éléments constitutifs de ce droit, tels qu'ils figurent actuellement dans divers instruments, en vue de fournir une base pour l'examen de la section III du présent rapport.

Au niveau régional, la Charte africaine des droits de l'homme et des peuples (la Charte africaine), adoptée en 1981, prévoit que « [t]ous les peuples ont droit à un environnement satisfaisant et global, propice à leur développement » (article 24). Le Protocole de 2003 à la Charte africaine des droits de la femme en Afrique stipule que les femmes « ont le droit de vivre dans un environnement sain et viable » (article 18) et « le droit de jouir pleinement de leur droit à un développement durable » (article 19). Le Protocole additionnel à la Convention américaine relative aux droits de l'homme (Protocole de San Salvador), adopté en 1988, prévoit que « toute personne a le droit de vivre dans un environnement salubre » (article 11, paragraphe 1). La Charte arabe des droits de l'homme de 2004 inclut le droit à un « environnement sain » dans le cadre du droit à un niveau de vie suffisant qui assure le bien-être et une vie décente (art. 38). La Déclaration des droits de l'homme adoptée en 2012 par l'Association des Nations de l'Asie du Sud-Est (ASEAN) considère que le « droit à un environnement sûr, propre et durable » fait partie du droit à un niveau de vie suffisant (paragraphe 28 (f)). La déclaration est un instrument juridique non contraignant.

Le droit à un environnement sain apparaît également dans certains accords sur l'environnement qui encadrent le droit d'accès à l'information en matière d'environnement, la participation du public au processus décisionnel et l'accès à la justice pour des questions liées à l'environnement : il s'agit de la Convention d'Aarhus^{lxxii} au niveau européen^{lxxiii} et, plus récemment, de l'Accord d'Escazú^{lxxiv} au niveau de l'Amérique latine et des Caraïbes. L'objectif de la Convention d'Aarhus est de « contribuer à protéger le droit de chacun, dans les générations présentes et futures, de vivre dans un environnement propre à assurer sa santé et son bien-être » au moyen de la garantie par chaque Partie des « droits d'accès à l'information sur l'environnement, de participation du public au processus décisionnel et d'accès à la justice en matière d'environnement conformément aux dispositions de la présente Convention » (article 1). Les avis divergent sur la question de savoir si la Convention d'Aarhus codifie les éléments procéduraux du droit à un environnement sain. Le préambule de l'Accord d'Escazú énonce parmi ses objectifs « la création et le renforcement des capacités et de la coopération, en contribuant à la protection du droit de toute personne des générations présentes et futures de vivre dans un environnement sain et de bénéficier d'un développement durable » (article 1)^{lxxv}. L'article 4(1), prévoit que « chaque Partie garantit le droit de toute personne de vivre dans un environnement sain ».

Page 28 - § 86

En 2019, le Rapporteur spécial des Nations Unies sur les droits de l'homme et l'environnement, David Boyd, a présenté un Rapport sur la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable^{lxxvi}. Ce rapport décrit les bonnes pratiques des États pour reconnaître le droit de vivre dans un environnement sûr, propre, sain et durable et pour mettre en œuvre les éléments procéduraux et substantiels de ce droit. Les éléments procéduraux identifiés dans le rapport sont (i) l'accès à

Commented [A87]: FRANCE

Dans la version anglaise, nous avons choisi d'utiliser le terme générique de « right to a healthy environment »

Commented [A88]: FRANCE

Il nous semble que nous nous étions mis d'accord lors de la dernière réunion du CDDH-ENV pour parler d'éléments constitutifs plutôt que de champ d'application matériel.

Commented [A89]: FRANCE

Ce protocole est très connu sous ce nom ; nous suggérons cet ajout.

Commented [A90]: FRANCE

Sauf erreur, la version officielle en français de ce protocole utilise le terme « salubre ».

Commented [A91]: FRANCE

Cela nous semble plus fidèle au texte de l'article premier de la Convention d'Aarhus, qui prévoit que : « Afin de contribuer à protéger le droit de chacun, dans les générations présentes et futures, de vivre dans un environnement propre à assurer sa santé et son bien-être, chaque Partie garantit les droits d'accès à l'information sur l'environnement, de participation du public au processus décisionnel et d'accès à la justice en matière d'environnement conformément aux dispositions de la présente Convention. »

Commented [A92]: FRANCE

Cette phrase nous semble pouvoir être supprimée pour éviter la répétition.

l'information, (ii) la participation du public, et (iii) l'accès à la justice et à des recours utiles. Les éléments de fond comprennent (i) un air pur, (ii) un climat sûr, l'accès à l'eau potable et à des services d'assainissement adéquats, (iii) des aliments sains et produits selon des méthodes durables, (iv) des environnements non toxiques, dans lesquels chacun peut vivre, travailler, étudier et se divertir, et (v) une biodiversité et des écosystèmes sains.

Page 29 - §§ 89, 91

En ce qui concerne les instruments non contraignants, l'Observation générale n° 26 sur les droits de l'enfant stipule que le droit à un environnement sain « [...] est implicite dans la Convention » et « directement lié, en particulier, aux droits à la vie, à la survie et au développement, consacrés à l'article 6, au droit au meilleur état de santé possible, y compris compte tenu des dangers et des risques de pollution du milieu naturel, consacré à l'article 24, au droit à un niveau de vie suffisant, consacré à l'article 27, et au droit à l'éducation, consacré à l'article 28, y compris l'éducation visant à inculquer le respect de l'environnement naturel, conformément à l'article 29". L'Observation générale énonce les éléments substantiels du droit à « un environnement propre, sain et durable », y compris « l'air pur, un climat sûr et stable, des écosystèmes sains et la biodiversité, l'accès à de l'eau salubre en quantité suffisante, des aliments sains et durable et un environnement non toxique »^{lxvii}. L'Observation générale souligne également l'importance des éléments procéduraux de ce droit, notamment « l'accès à l'information, la participation à la prise de décision et un accès à la justice adapté aux enfants, y compris l'accès à des voies de recours utiles »^{lxviii}.

Commented [A93]: FRANCE
Version officielle en français.

Il existe certains points communs entre les instruments cités ci-dessus sur le plan du contenu du droit à un environnement sain. Ces comparaisons figurent dans le tableau à l'annexe III, en référence aux éléments suggérés dans les Principes-cadres du RS des Nations Unies. Toutefois, les éléments constitutifs du droit à un environnement sain n'ont pas encore fait l'objet de négociations internationales.

Commented [A94]: FRANCE
La phrase ne nous semblait pas complète ici.

Page 31 - § 100

À l'heure actuelle, bien qu'il semble que de nombreux États membres du Conseil de l'Europe ont reconnu légalement le droit à un environnement sain, sous une forme ou une autre, et que les tribunaux nationaux ont développé une importante jurisprudence à ce sujet, il n'existe pas encore de compréhension universelle au sein des États membres du Conseil de l'Europe, de la nature, du contenu et des implications^{lxix} de ce droit.

Page 32 - §§ 102, 104

C. Arguments en faveur d'un instrument ou d'instruments supplémentaires

Il n'existe pas de reconnaissance explicite et juridiquement contraignante du droit à un environnement sain dans le droit international en général et, au sein du Conseil de l'Europe en particulier. Comme expliqué ci-dessus, d'autres systèmes régionaux de protection des droits humains ont déjà reconnu le droit à un environnement sain, contrairement à l'Europe (voir les paragraphes 89 à 97 ci-dessus). La reconnaissance juridique de ce droit clarifierait la relation entre la protection de l'environnement et les droits humains et renforcerait l'idée que le plein exercice des droits humains exige la protection de l'environnement et que la protection de l'environnement dépend de l'exercice des droits humains.

Commented [A95]: FRANCE
Par rapport à la proposition du Secrétariat d'ajouter deux rationales :

Il nous paraît difficile d'ajouter de nouveaux rationales à ce stade faute de temps. Nous comprenons cependant les raisons pour lesquelles le Secrétariat formule une telle proposition. Nous proposons d'inclure ces arguments dans les considérations détaillées dans la partie IV.

Il nous semble que ces arguments pourraient aussi figurer comme éléments de certains rationales déjà inclus dans le projet de rapport, en particulier « Veiller à ce que les détenteurs de droits bénéficient d'une meilleure protection de leurs droits contre les effets de la dégradation de l'environnement et de la triple crise planétaire »

iii. Aborder le fonctionnement des exigences procédurales et l'application des normes substantielles en droit européen des droits humains dans le contexte environnemental

Commented [A96]: FRANCE
Il nous semble que ce titre doit être précisé.

Une autre ligne de raisonnement porte sur les limites du système **européen de protection** des droits humains et en particulier du système de la Convention et de la Charte.

Page 33 - § 107

- v. **Veiller à ce que les détenteurs de droits bénéficient d'une meilleure protection de leurs droits contre les effets de la dégradation de l'environnement et de la triple crise planétaire**

Un autre argument qui a été avancé consiste à veiller à ce que les détenteurs de droits puissent demander des comptes en cas de violation du droit à un environnement sain. Un ou plusieurs nouveaux instruments sur les droits humains et l'environnement pourraient instaurer un cadre juridique offrant aux détenteurs de droits des outils procéduraux pour faire respecter le droit à un environnement sain, permettant ainsi de rendre compte des actions ou de l'inaction des États qui violent ce droit, ce qui aurait pour conséquence de contribuer à la prévention des violations de ce droit. Ces aspects préventifs et protecteurs du droit **à un environnement sain** sont particulièrement importants pour les individus les plus exposés aux dommages causés à l'environnement, notamment les femmes, les enfants, les jeunes, les populations autochtones et les communautés locales, les personnes vivant dans la pauvreté, les personnes handicapées, les personnes âgées, les migrants, les personnes déplacées et d'autres communautés en situation de vulnérabilité.

- vi. **Encourager le développement de la jurisprudence de la Cour et du CEDS sur la dégradation de l'environnement et à la triple crise planétaire**
- vii. **Renforcer la protection des défenseurs des droits humains travaillant dans le domaine de l'environnement (« défenseurs des droits humains dans le domaine de l'environnement »)**

Commented [A97]: FRANCE

Il nous semble utile de préciser qu'il s'agit ici de la Cour et du CEDS (et non pas, par exemple, des juridictions nationales).

Page 34 - § 111

- viii. **Améliorer la protection nationale du droit à un environnement sain**

Certains États membres du Conseil de l'Europe ne reconnaissent pas un droit de nature constitutionnelle ou législative à un environnement sain. Il a été soutenu que les effets de la reconnaissance du droit à un environnement sain dans la sphère internationale peuvent avoir une influence indirecte sur le droit constitutionnel national, le droit de l'environnement et les droits de l'homme et produire les avantages juridiques et environnementaux suivants : (i) renforcement des lois et des politiques environnementales ; (ii) amélioration de la mise en œuvre et de l'exécution ; (iii) participation accrue des citoyens à la prise de décision en matière d'environnement ; (iv) responsabilisation accrue ; (v) réduction des injustices environnementales ; (vi) égalité dans la mise en œuvre des droits sociaux et économiques ; et (vii) amélioration des performances environnementales^{lxxx}. Il a pu être argumenté qu'un ou plusieurs nouveaux instruments sur les droits humains et l'environnement pourraient encourager les États qui n'ont pas encore reconnu le droit à un environnement sain à le faire et encourager les États qui ont déjà reconnu ce droit à prendre de nouvelles mesures positives pour le mettre en œuvre

Commented [A98]: FRANCE

Souhaite-t-on ici garder l'abréviation « droit à un environnement sain » ?

Commented [A99]: FRANCE

Ici la référence au corpus juridique des droits de l'homme impose, en français, d'utiliser le terme de droits de l'homme et non de droits humains.

Commented [A100]: FRANCE

Il nous semble qu'il faudrait préciser ici la mise en œuvre et l'exécution de quoi ?

Commented [A101]: FRANCE

De qui ?

Page 35 - § 113

Il a été avancé qu'un nouvel instrument sur les droits humains et l'environnement répondrait directement au mandat donné au Conseil de l'Europe au sein de son statut^{lxxxi}. L'article 1 du Statut prévoit que « le but du Conseil de l'Europe est de réaliser une union plus étroite entre ses Membres afin de sauvegarder et de promouvoir les idéaux et les principes qui sont leur patrimoine commun et de favoriser leur progrès économique et social » et que « [c]e but sera poursuivi au moyen des organes du Conseil, par l'examen des questions d'intérêt commun, par la conclusion d'accords et par l'adoption d'une action commune dans les domaines économique, social,

culturel, scientifique, juridique et administratif, ainsi que par la sauvegarde et le développement des droits de l'homme et des libertés fondamentales ». En outre, l'adoption d'un nouvel instrument serait une manière de donner suite à la déclaration de Reykjavik^{xxxii}. Comme l'indiquent les paragraphes 19 à 24, la dégradation de l'environnement et la triple crise planétaire peuvent avoir un impact direct sur la jouissance des droits humains. Un nouvel instrument sur les droits humains et l'environnement sous l'égide du Conseil de l'Europe serait conforme aux objectifs de l'Organisation, en ce qu'il contribuerait à une plus grande unité entre ses États membres dans leurs réponses à cette menace commune et pour l'accomplissement du mandat du Conseil de l'Europe pour garantir que les droits soient protégés de manière cohérente dans tous les États membres, et de faciliter ainsi leur progrès économique et social.

Page 36

III. La faisabilité d'un ou plusieurs instruments supplémentaires

§ 118

L'élément fondamental de tout protocole additionnel à la Convention serait la protection juridique du droit à un environnement sain. En outre, il serait également possible d'inclure des éléments constitutifs de ce droit et/ou d'autres éléments relatifs aux exigences procédurales et à l'application de standards matériels dans les affaires liées à l'environnement (comme indiqué aux paragraphes 49–69 ci-dessus). Par conséquent, trois modèles de protocole additionnel peuvent être envisagés : (i) un protocole additionnel codifiant le droit à un environnement sain sans détailler le contenu de ce droit ; (ii) un protocole additionnel codifiant le droit à un environnement sain, y compris ses éléments constitutifs et (iii) un protocole additionnel codifiant le droit à un environnement sain et incluant à la fois des éléments constitutifs et d'autres éléments relatifs au fonctionnement des exigences procédurales et l'application de normes de fond dans les affaires liées à l'environnement (dénommés « autres éléments »).

Page 37 - §§ 119, 121

Les éléments supplémentaires pourraient notamment inclure des dispositions relatives à la juridiction, à la qualité de victime/à la qualité pour agir des ONG devant la Cour, aux standards applicables en matière de preuve ou encore aux défenseurs des droits humains dans le domaine de l'environnement^{xxxiii}. Ces éléments peuvent eux-mêmes être intégrés de manière séparée et ne doivent pas nécessairement être considérés comme un ensemble indissociable.

b) Arguments en faveur d'un nouvel instrument couverts par cette proposition

Cette proposition pourrait couvrir pratiquement tous les arguments en faveur d'un nouvel instrument identifiés ci-dessus, à l'exception de ce qui suit. Un nouveau protocole additionnel à la Convention permettrait de reconnaître le droit à un environnement sain au niveau du Conseil de l'Europe. En l'absence de précisions portant sur les éléments constitutifs du droit à un environnement sain, les États membres ne seraient pas en mesure de participer activement à la définition du contenu de ce droit. Celui-ci serait plutôt défini au travers du développement de la jurisprudence de la Cour. Cette proposition n'aborderait pas non plus la mise en œuvre des exigences procédurales. Enfin, bien qu'elle puisse, par le biais d'obligations positives des États, renforcer indirectement la responsabilité internationale des entreprises en ce qui concerne l'impact de leurs activités sur l'environnement, elle ne pourrait établir ni les normes complètes de diligence raisonnable en matière d'environnement pour les entreprises, ni un droit qui serait directement opposable aux entreprises. En résumé :

- ✓ Examiner le fonctionnement des exigences procédurales et l'application des normes de fond dans le droit européen des droits humains

Commented [A102]: FRANCE

Nos modifications correspondent à la version officielle en français.

Commented [A103]: FRANCE

NB aux services : La question de la présentation de cette partie est toujours en suspens. Nous devons rediscuter avec les autres agents de l'opportunité de remplacer la présentation sous forme de liste par une présentation sous forme de tableau.

Commented [A104]: FRANCE

Nous suggérons ces précisions pour que le lecteur comprenne bien ces trois possibilités.

Commented [A105]: FRANCE

Suggestion de modification car, comme l'explique la phrase suivante, il s'agit là d'une liste de possibilités.

Commented [A106]: FRANCE

Il nous semble que cette phrase peut être précisée.

Commented [A107]: FRANCE

L'utilisation du terme « arguments » en français pour se référer aux « rationales » nous semble pouvoir prêter à confusion. Il nous semble nécessaire soit de toujours préciser qu'il s'agit des arguments en faveur d'un nouvel instrument (que nous avons préalablement identifiés), soit de choisir un autre terme (« justification », « besoin » ?)

Commented [A108]: FRANCE

Nous nous interrogeons sur l'opportunité de cette phrase dans la mesure où plusieurs types d'instruments sont susceptibles de couvrir presque tous les arguments en faveur d'un nouvel instrument.

Commented [A109]: FRANCE

Ce rationale est indiqué en orange dans la version anglaise.

Page 39 - § 126

En abordant les exigences procédurales et l'application des normes de fond, ce modèle pourrait garantir une protection renforcée du droit à un environnement sain, au-delà de ce qui serait possible dans le cadre des règles et procédures existantes. En application de la jurisprudence actuelle de la Cour sur la juridiction extraterritoriale, la Cour pourrait conclure à l'absence de juridiction pour certains dommages environnementaux dont les causes seraient transfrontières^{lxxxiv}. Ce point fait cependant l'objet de débats dans des contentieux pendants devant la Cour. Des amendements aux règles portant sur ces questions pourraient être envisagées, afin d'améliorer la protection du droit des individus à un environnement sain. Par ailleurs, le fait d'accorder aux ONG la qualité pour agir dans des affaires d'intérêt public pourrait améliorer l'accès à la justice pour les intérêts environnementaux collectifs. L'allègement de la charge de la preuve pour les requérants peut également être envisagé, de même que des dispositions spécifiques sur les défenseurs des droits humains dans le domaine de l'environnement pourraient être intégrées afin de favoriser un environnement plus sûr et plus propice pour ces derniers. Enfin, si un tel protocole pourrait, par le biais d'obligations positives des États, renforcer indirectement la responsabilité internationale des entreprises en ce qui concerne l'impact de leurs activités sur l'environnement, y compris au cas par cas pour les questions de diligence raisonnable, il ne créerait ni des normes complètes de diligence raisonnable en matière d'environnement pour les entreprises, ni un droit directement opposable aux entreprises.

Commented [A110]: FRANCE
Cette idée nous semble devoir être précisée.

Page 40 - § 128

Cependant, certaines questions liées à l'environnement, et en particulier les questions liées au changement climatique, sont multidimensionnelles et impliquent des questions de justice distributive pouvant nécessiter une approche globale. Certaines de ces questions, telles que la répartition du coût économique des mesures de réduction des impacts environnementaux ou le niveau de protection de l'environnement à atteindre, impliquent des choix politiques qu'il est préférable de faire et de mettre en œuvre par le biais du processus démocratique. La légitimité de la Cour risquerait d'être remise en question si elle se prononce sur des questions qui sont largement perçues comme relevant de la sphère politique. La question de la mise en œuvre d'arrêtés de la Cour qui se prononcerait de manière étendue sur les sujets environnementaux doit également être posée. L'introduction du droit à un environnement sain dans le système de la Convention pourrait éfin entraîner une augmentation de la charge de travail de la Cour^{lxxxv}, ce qui pourrait nécessiter des ressources budgétaires supplémentaires.

Page 41 - §§ 130, 134**(ii) Considérations spécifiques au modèle III ci-dessus**

Il convient de noter qu'un protocole additionnel de type « Modèle III », impliquerait que la Cour applique des normes différentes (voir les paragraphes [x]-[x]) dans les affaires fondées sur le droit à un environnement sain. Cela pourrait éventuellement entraîner une fragmentation du traitement des affaires de la Cour, selon le droit concerné.

Commented [A111]: FRANCE
Le modèle II également ?

Comme indiqué ci-dessous, ce modèle pourrait couvrir la plupart des arguments. Un nouveau protocole à la CSE permettrait aussi de reconnaître explicitement le droit à un environnement sain au niveau du Conseil de l'Europe. Si le protocole ne précise pas les éléments constitutifs du droit à un environnement sain, les États membres ne participeraient pas activement à définir le contenu du droit. Le contenu précis de ce droit serait défini en fonction des décisions/interprétations ultérieures du CEDS. De même, cette option ne traiterai pas directement de la mise en œuvre des exigences procédurales du CEDS dans le contexte environnemental. Bien qu'elle puisse, par le biais d'obligations positives des États, renforcer les

Commented [A112]: FRANCE
Comme s'agissant de la Convention, nous nous interrogeons sur l'opportunité d'inclure une telle affirmation. Il nous semble que différents types d'instruments sont susceptibles de couvrir la plupart des arguments en faveur d'un nouvel instrument et il est peut-être préférable de présenter les choses plutôt sous l'angle des possibilités propres à chaque instrument.

Commented [A113]: FRANCE
Il nous semble pertinent de rappeler qu'il s'agit là d'une autre manière de reconnaître le droit à un environnement sain au niveau du Conseil de l'Europe.

responsabilités internationales des entreprises à l'égard de l'impact de leurs activités sur l'environnement, il ne pourrait établir ni les normes complètes de diligence raisonnable en matière d'environnement pour les entreprises, ni un droit qui serait directement opposable aux entreprises.

Commented [A114]: FRANCE
Ici aussi, il nous semble nécessaire de préciser davantage l'effet des obligations positives de l'Etat.

Page 42

✓ Répondre aux attentes de la société civile

§§ 136, 137

Ce modèle pourrait couvrir tous les arguments de manière encore plus large que la première option. En définissant les éléments constitutifs du droit à un environnement sain, les États membres pourraient définir fermement le contenu de ce droit et donner des indications supplémentaires sur la nature, le contenu et les implications de ce droit. Le développement ultérieur par le CEDS de sa jurisprudence sur l'application des droits existants de la CSE dans des contextes liés à l'environnement serait vraisemblablement influencé par la manière dont un protocole additionnel spécifierait les éléments constitutifs d'un nouveau droit de la CSE à un environnement sain.

Commented [A115]: FRANCE
Ce point est en orange dans la version anglaise et mériterait peut-être d'être expliqué.

Commented [A116]: FRANCE
Même remarque que ci-dessus.

Cette option ne traiterai toujours pas de l'application des exigences procédurales du CEDS dans le contexte environnemental. Enfin, si un nouveau protocole à la CSE pourrait, par le biais d'obligations positives des États, renforcer indirectement les responsabilités internationales des entreprises à l'égard de l'impact de leurs activités sur l'environnement, il ne pourrait établir ni des normes complètes de diligence raisonnable en matière d'environnement pour les entreprises, ni un droit directement opposable aux entreprises.

Commented [A117]: FRANCE
Ici aussi, il nous semble nécessaire d'expliquer davantage l'argument relatif aux obligations positives des Etats.

Page 43

✓ Répondre aux attentes de la société civile

§ 138

Ce modèle pourrait codifier le droit à un environnement sain, y compris ses éventuels éléments constitutifs, et inclure aussi d'autres éléments relatifs à la mise en œuvre du droit à un environnement sain devant le CEDS. Sans de tels ajouts, l'impact de la codification du droit pourrait s'avérer limité car seule une minorité d'États (16 sur 42) ont accepté la procédure de réclamations collectives. Si le protocole autorise l'acceptation de la procédure de réclamations collectives pour le droit à un environnement sain, les États parties pourraient être disposés à l'accepter. La protection garantie par la Charte est en outre limitée par la restriction de son champ d'application personnel. C'est la raison pour laquelle, d'éventuels éléments additionnels pourraient inclure des dispositions sur les points suivants : (i) la suppression de la restriction du champ d'application personnel de la Charte et l'extension de la portée des droits qu'elle garantit, soit pour la Charte dans son ensemble, soit uniquement pour un protocole additionnel sur le droit à un environnement propre, sain et durable^{lxxxvi} ; (ii) l'option d'accepter la procédure de réclamations collectives uniquement pour le protocole additionnel.

Commented [A118]: FRANCE
Ce point est en orange dans la version anglaise et mériterait peut-être d'être expliqué.

Commented [A119]: FRANCE
Il nous semble nécessaire de préciser un peu à quoi ces éléments additionnels se rapporteraient.

Commented [A120]: FRANCE
Cette idée ne nous paraît pas très claire : pourquoi les Etats seraient plus disposés à accepter la procédure de réclamations collectives du fait d'ajout d'éléments additionnels au projet de protocole ?

Page 44 - §§ 139, 140

Ce modèle pourrait couvrir la plupart des arguments de manière exhaustive. Selon la formulation retenue, les exigences procédurales devant le CEDS pourraient être modifiées. La suggestion de supprimer la restriction du champ d'application personnel de la Charte et d'autoriser, dans le protocole additionnel, l'acceptation de la procédure de réclamations collectives uniquement en ce qui concerne ce droit, pourrait éventuellement répondre aux préoccupations concernant le fonctionnement des exigences procédurales. Toutefois, même sous sa forme la plus complète,

Commented [A121]: FRANCE
Même interrogation que ci-dessus.

cette option ne répondrait pas aux attentes de la société civile, qui préfère l'option d'un protocole additionnel à la Convention.

✓ Répondre aux attentes de la société civile

140.

La procédure facultative de réclamations collectives en vertu de la CSE permettrait aux organisations non gouvernementales et aux partenaires sociaux de déposer des réclamations concernant le droit à un environnement sain, sans qu'il soit nécessaire que le plaignant ait épuisé les voies de recours internes ou qu'il soit lui-même victime de la violation alléguée. Un mécanisme de suivi non contraignant combinant une procédure de rapport et une procédure de réclamations pourrait sans doute s'avérer plus approprié dans un domaine comme l'environnement où des décisions politiques sensibles doivent être prises. En outre, les dispositions de la Charte sont formulées en termes d'obligations positives et négatives, ce qui conviendrait à la protection du droit à un environnement sain.

Les décisions du CEDS ne sont pas contraignantes pour les États membres, ce qui entraîne un risque plus élevé de non-respect par rapport aux arrêts contraignants rendus par un organe tel que la Cour. Par ailleurs, l'introduction du droit à un environnement sain dans le système de la Charte peut entraîner une augmentation de la charge de travail du CEDS, qui pourrait donc avoir besoin de ressources budgétaires supplémentaires.

Page 45 - §§ 143, 145

Pour aborder la question des liens entre droits humains et environnement à travers des normes robustes, il a été proposé d'élaborer une Convention autonome du Conseil de l'Europe sur les droits humains et l'environnement. Toutes les propositions impliquant une convention autonome comprennent la reconnaissance du droit à un environnement sain en tant que droit autonome. Elles varient cependant dans la mesure où elles incluent des éléments supplémentaires relatifs à l'effectivité de la protection de ce droit. Par conséquent, trois options peuvent être envisagées : (i) une convention autonome codifiant le droit à un environnement sain sans en préciser les éléments constitutifs ; (ii) une convention autonome codifiant le droit à un environnement sain, y compris ses éléments constitutifs ; et (iii) une convention autonome codifiant le droit à un environnement sain (y compris ses éléments constitutifs), assortie d'autres éléments tels que décrits ci-dessous.

Ce modèle permettrait aux États membres de définir de manière précise et directe le contenu du droit. Il contribuerait également à l'accomplissement du mandat du Conseil de l'Europe qui consiste à s'assurer que les droits sont protégés de manière cohérente et homogène dans tous les États membres.

Page 46 - §§ 147, 148

En plus de garantir le droit à un environnement sain, une convention autonome pourrait aussi définir les éléments constitutifs de ce droit, tant matériels que procéduraux, et ainsi fixer de nouveaux standards. Une convention autonome pourrait aussi inclure des dispositions visant à renforcer les responsabilités des entreprises, notamment par le biais d'obligations de diligence raisonnable pour les entreprises ou de la création d'un mécanisme de règlement extrajudiciaire des litiges impliquant des entreprises.

Quant aux mécanismes de contrôle, diverses options pourraient être envisagées, telles qu'un système de rapports par les États, comme le prévoient les traités des Nations Unies relatifs aux

Commented [A122]: FRANCE
Il nous semble nécessaire d'expliquer pourquoi cette option ne répondrait pas aux attentes de la société civile.

Commented [A123]: FRANCE
Ce point est en orange dans la version anglaise et mériterait peut-être d'être expliqué.

Commented [A124]: FRANCE
Cela nous semble devoir être expliqué davantage.

Commented [A125]: FRANCE
Nous suggérons de rassembler les arguments présentant les avantages d'une telle option et ceux présentant ses limites, pour faciliter la lecture.

Commented [A126]: FRANCE
Il nous paraît nécessaire d'ajouter ces précisions pour que le lecteur comprenne bien les trois options différentes. Par ailleurs, la version anglaise de ce paragraphe ne fait référence qu'à deux options.

Enfin, peut-on vraiment imaginer une convention autonome qui ne contiendrait rien d'autre que la codification du droit à un environnement sain de manière générale ?

Commented [A127]: FRANCE
Ce paragraphe traite de l'option d'une convention autonome qui ne préciserait pas les éléments constitutifs du droit à un environnement sain. Aussi nous suggérons de revoir ce passage.

droits humains. Ce système pourrait être combiné à un système de réclamations individuelles et/ou collectives auprès d'un comité. Les conditions de recevabilité pourraient être adaptées aux spécificités du contenu de la convention et différer de celles de la CEDH et de la CSE. Une autre possibilité consisterait à autoriser les demandes d'avis consultatifs de la Cour, comme le prévoit la Convention d'Oviedo, qui autorise la Cour à donner des avis consultatifs sur des questions juridiques concernant l'interprétation de cette convention à la demande de l'une des Parties ou du Comité du Conseil de l'Europe désigné à cette fin par le Comité des Ministres (voir l'article 29).

Ce modèle, en raison de sa flexibilité et sous réserve de son contenu, pourrait couvrir la plupart des arguments. Une convention autonome pourrait indirectement encourager le développement d'une nouvelle jurisprudence, la CEDH devant être interprétée de manière homogène avec les autres règles de droit international dont elle fait partie. Elle n'aurait cependant pas d'effet sur les conditions de juridiction et de recevabilité ainsi que sur les standards matériels applicables au titre de la Convention et de la CSE (telles que décrites aux paragraphes 49–69)^[xxxvii].

Page 47 - § 149

Une convention autonome n'est pas soumise aux systèmes de la CEDH ou de la CSE et serait susceptible de donner aux États la possibilité de créer un instrument ad hoc. Pour les États qui estimerait préférable de ne pas lier la reconnaissance du droit à un environnement sain à la compétence de la Cour, la convention offre une excellente alternative avec une large gamme d'options négociables pour déterminer un mécanisme approprié aux spécificités de la protection des droits de l'homme dans le contexte environnemental. Un tel mécanisme ne serait cependant pas forcément aussi contraignant que les arrêts rendus par la Cour. Une nouvelle convention pourrait être ouverte à la signature et à la ratification des États membres du Conseil de l'Europe, ainsi que des États non-membres du Conseil de l'Europe. Ses normes pourraient ainsi exercer une influence au-delà de l'Europe.

Page 48 - § 155

Un mécanisme autonome de suivi ne couvrirait que quelques-uns des besoins identifiés précédemment et seulement de manière indirecte. Grâce au dialogue avec les autorités nationales et les entreprises, il pourrait, dans une certaine mesure, améliorer la protection nationale du droit à un environnement sain et renforcer les responsabilités internationales des entreprises à l'égard de l'impact de leurs activités sur l'environnement. Grâce à ces travaux thématiques, le mécanisme de suivi pourrait indirectement encourager le développement d'une jurisprudence plus protectrice face à la dégradation de l'environnement et la triple crise planétaire. Parallèlement, le contenu matériel du droit humain à un environnement sain est en cours d'élaboration. Un mécanisme de suivi autonome qui agit par le biais du dialogue et de recommandations peut mieux s'adapter à l'évolution du droit international et peut donc, dans une certaine mesure, contribuer à la compréhension par les États membres du contenu du droit à un environnement sain.

Page 50 - § 164

Si l'ajout de la protection de l'environnement dans le préambule de la Convention pouvait conférer une légitimité supplémentaire à sa jurisprudence et pouvait encourager son développement futur, conformément aux exigences procédurales existantes et de l'application des normes de fond de la CEDH, les effets de cette option - même assortie d'un exposé des motifs clarifiant l'objectif de l'ajout - dépendront de la manière dont la Cour utilisera un tel ajout au préambule dans le cadre de son interprétation des dispositions de la Convention.

Commented [A128]: FRANCE

Nous suggérons de traiter :

- D'abord des dispositions substantielles (reconnaissance du droit à un environnement sain, obligations etc)
- Puis des mécanismes de contrôle

S'agissant des dispositions substantielles, il nous paraît nécessaire d'expliquer que dans cette option II, il s'agirait aussi de définir les éléments constitutifs du droit à un environnement sain (matériels et procéduraux).

Ce paragraphe semble inclure des éléments allant au-delà des seuls éléments constitutifs du droit à un environnement sain. Faut-il revoir l'intitulé de cette proposition, qui semble plutôt correspondre au « modèle iii » annoncé précédemment ?

Commented [A129]: FRANCE

Il nous semble nécessaire de préciser ici ce que nous essayons de dire. Quelle serait cette jurisprudence ?

Page 51 - § 170

Si l'ajout de la protection de l'environnement dans le préambule de la Charte confère une légitimité supplémentaire à sa jurisprudence et à l'interprétation du CEDS en matière d'environnement, les effets de cette option - même assortie d'un exposé des motifs clarifiant l'objectif de l'amendement - dépendront de la manière dont le CEDS utilisera un tel ajout au préambule dans le cadre de son interprétation des dispositions de la CSE.

Page 52 - § 173

Une autre option évoquée au sein du groupe de rédaction consiste à négocier et à adopter un instrument non-contraignant du Conseil de l'Europe, reconnaissant le droit à un environnement sain. La Recommandation existante CM/Rec(2022)20 sur les droits de l'homme et la protection de l'environnement ne reconnaît pas le droit à un environnement sain. Une nouvelle recommandation pourrait, soit (i) suivre la voie tracée par la Résolution 76/300 de l'AGNU et reconnaître le droit, ou (ii) en plus de la reconnaissance, elle pourrait décrire les éléments constitutifs de ce droit.

Commented [A130]: FRANCE

Peut-on dire qu'un instrument non-contraignant « garantirait » les éléments constitutifs du droit à un environnement sain ?

Page 53 - § 175

Étant donné que tous les États membres du Conseil de l'Europe ont voté en faveur de la résolution 76/300 de l'AGNU, réécrire le contenu de cette résolution dans le cadre du Conseil de l'Europe n'aboutirait pas à un autre objectif que la reconnaissance juridique (non contraignante) du droit à un environnement sain dans le cadre du Conseil de l'Europe. Étant donné que tous les États membres du Conseil de l'Europe ont voté en faveur de la résolution 76/300 de l'Assemblée générale des Nations Unies, les effets pratiques d'une telle reconnaissance sont discutables ; l'instrument pourrait apparaître comme purement symbolique. Cela étant, il pourrait placer les acquis du Conseil de l'Europe au même niveau que ceux des Nations Unies.

Commented [A131]: FRANCE

Nous ne sommes pas certains qu'il soit exact de dire qu'il s'agirait là de conformité avec le droit international.

Page 54 - § 179

Enfin, l'option d'une combinaison de plusieurs nouveaux instruments a été envisagée au sein du groupe de travail. Les combinaisons d'instruments suivantes ont été examinées : (i) protocoles additionnels à la CEDH et à la CSE ; (ii) convention autonome sur les droits humains et l'environnement et inclusion de la protection de l'environnement dans le préambule de la CEDH ; (iii) protocole additionnel à la CEDH et/ou à la CSE combiné à un mécanisme de type commissaire ; (iv) convention autonome sur les droits humains et l'environnement combinée à un mécanisme de suivi autonome ; (v) tel que proposé dans la Recommandation 2211 (2021) de l'Assemblée parlementaire - Protocoles additionnels à la CEDH et à la CSE combinés à une convention « cinq P » et à la révision de la Recommandation CM/Rec(2016)3 sur les droits humains et les entreprises.

Page 55 - § 180, 182, 184, 185

Le principal avantage de ces différentes options est de pouvoir combiner les possibilités ouvertes par chaque type d'instrument tout en palliant certaines de leurs limites respectives. L'option de combiner plusieurs instruments serait toutefois susceptible de poser d'autres problèmes en raison des complexités liées à la combinaison et à l'adoption de différents instruments.

a) Justification de la combinaison proposée

La CSE et la Convention sont deux systèmes complémentaires et interdépendants, chacun ayant ses propres caractéristiques. L'adoption de protocoles additionnels à ces deux instruments pourrait protéger le droit à un environnement sain par le biais de systèmes correspondant aux différentes dimensions de ce droit, qui peut être compris comme comprenant à la fois des éléments civils et politiques, et des éléments sociaux et économiques. Un protocole à la

Commented [A132]: FRANCE

Nous suggérons de modifier ce titre car il ne s'agit plus là de présenter le contenu éventuel des instruments mais d'expliquer pourquoi la combinaison proposée serait intéressante.

Convention permettrait de renforcer la protection des droits individuels, tandis qu'un protocole à la Charte, qui permettrait éventuellement aux organisations non gouvernementales de déposer des réclamations collectives en matière d'environnement, pourrait permettre la protection des intérêts collectifs. Cette approche combinée pourrait nécessiter moins de changements dans les systèmes respectifs pour atteindre une protection effective du droit à un environnement sain, qu'avec l'un ou l'autre des deux systèmes.

Commented [A133]: FRANCE
Cette idée nous paraît devoir être clarifiée.

Inclure le droit à un environnement sain dans les deux instruments, pourrait entraîner un chevauchement substantiel sans précédent des droits protégés par chaque instrument. Il pourrait en résulter un éventuel conflit entre les normes de la CEDH et de la CSE. Ce serait notamment le cas si les protocoles additionnels codifiaient le droit à un environnement sain dans son ensemble, laissant aux organes de contrôle respectifs le soin de clarifier les éléments constitutifs. Pour répondre à ces préoccupations, il serait essentiel d'examiner attentivement et de clarifier la formulation des protocoles additionnels. Les facteurs de temps et de ressources budgétaires de cette option seraient également importants, surtout si l'on considère les éventuelles difficultés liées à l'harmonisation des systèmes respectifs.

Commented [A134]: FRANCE
Cette idée nous semble devoir être précisée.

Page 56 - § 187, 188, 190

(i) *Convention autonome et ajout de la protection de l'environnement dans le préambule de la CEDH et/ou de la CSE*

a) Événuel Contenu

Pour la convention autonome mentionnée ci-dessus, trois options peuvent être examinées : i) la codification du droit à un environnement sain dans son ensemble ; ii) la codification du droit à un environnement sain, y compris ses éventuels éléments constitutifs ; et iii) la codification du droit à un environnement sain (y compris ses éléments constitutifs) associé à d'autres éléments tels que décrits ci-dessus.

Commented [A135]: FRANCE
Cette proposition nous semble devoir être davantage expliquée. S'agirait-il d'une convention disposant d'un mécanisme de suivi autonome ? Faudrait-il envisager que la Cour et/ou le CEDS se saisissent de la convention autonome comme outil d'interprétation de la Convention/la CSE ?

Cette approche serait également assujettie à des contraintes de temps et de ressources budgétaires importantes. En outre, le défi pratique que représente l'établissement de délimitations claires entre les deux systèmes peut nuire à l'efficacité de cette approche.

Commented [A136]: FRANCE
Il ne nous paraît pas forcément nécessaire de rappeler à nouveau ces différentes options.

a) Justification de la combinaison proposée

Cette approche impliquerait également des contraintes de temps et de coût en raison de la nécessité d'harmoniser à différents niveaux, comme expliqué ci-dessus au sujet de l'option consistant à adopter des protocoles additionnels à la CEDH et à la CSE.

Commented [A137]: FRANCE
Cette idée nous semble devoir être précisée.

Page 57 - § 192

a) Justification de la combinaison proposée

Cette option permettrait la plus grande flexibilité dans la mesure où les systèmes de la Convention et de la Charte resteraient intacts tout en conservant la possibilité de créer un nouveau mécanisme de contrôle dans le cadre d'une convention autonome et de renforcer le cadre politique.

a) Justification de la combinaison proposée

Commented [A138]: FRANCE
Cette idée nous semble devoir être précisée.

Page 58 - § 199

Pour examiner la faisabilité d'un ou plusieurs nouveaux instruments sur les droits de l'homme et l'environnement, le Rapport a examiné divers types d'instruments du Conseil de l'Europe qui ont été proposés en vue de répondre à un besoin perceptible d'un nouvel instrument. Le Rapport a brièvement examiné l'éventuel contenu de chaque type d'instrument et a exposé les arguments en faveur d'un nouvel instrument susceptibles d'être couverts par l'instrument concerné. Cela permet de vérifier quels instruments traitent le(s) argument(s) considéré(s) comme étant pertinent(s). L'importance respective que les décideurs politiques pourront attacher à chaque argument en faveur d'un nouvel instrument déterminera les éléments devant être couverts en priorité et permettra de réduire le nombre d'options. Enfin, le Rapport présente certaines considérations concernant chaque instrument. La compilation de ces considérations vise à donner une vue d'ensemble de la situation des discussions et à fournir une base significative pour évaluer la faisabilité de chaque instrument.

GEORGIA / GÉORGIE**Page 32****C. Possible rationales for a further instrument or instruments****Page 33**

- vi. Encouraging the further development of jurisprudence on environmental degradation and the triple planetary crisis

Page 37

- ✓ Addressing the operation of procedural requirements and the application of substantive standards in European human rights law

Page 47 - § 150

In case of option (iii), if a compliance mechanism is included (which would arguably be important for the effective protection of human rights and the environment), member States would have to fund such a body and its activities. The establishment of a new convention with new institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. However, without a compliance mechanism, the new convention would be in addition to the many existing international instruments that lack the authoritative force of a binding control mechanism such as the Court, resulting in a loss of effectivity for the new convention. Finally, the process of adopting a convention, and its entry into force, can be lengthy.

Page 54

- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [A139]: The Secretariat suggests adding two specific rationales, for the following reasons. The current analytical approach in Chapter III gives little visibility to the fundamental reasons for distinguishing between the different types of binding instrument (variants of the two protocols and the standalone convention). There are perceived needs – amounting to separate rationales – for international oversight of States' implementation of the right to a healthy environment in both its individual and collective forms and with respect to its civil/ political and economic/ social nature that are distinct and separate from both simple international legal protection of the right and enhanced protection of human rights generally against environmental impact.

Proposed rationales:

i. Providing international judicial oversight of national implementation of the right to a healthy environment

2. It has been argued that an international judicial oversight mechanism, accepting applications from persons claiming to be victims of violations of the right to a healthy environment and issuing binding judgments in their cases, is necessary to ensure effective and harmonious protection of the right to a healthy environment by States. For those, including the Parliamentary Assembly and civil society organisations, that have made such proposals, the urgency of the triple planetary crisis, the severity of its impact on human rights, and the need for an effective response by governments make this highest level of protection a necessity.

ii. Providing for a system of collective complaints alleging unsatisfactory realisation of the right to a healthy environment

Commented [A140R139]: GEORGIA
The proposed rationale might overlap with two other rationales, rationale VI and rationale IX.

Commented [A141]: GEORGIA
It is not quite clear what is the jurisprudence on environmental degradation and the triple planetary crisis, it is better to formulate it in the following way:

"Encouraging the further development of jurisprudence to address environmental degradation and the triple planetary crisis"

Commented [A142]: GEORGIA
Technical remark: Ticking some rationales with different colour might not be very clear, maybe it will be better to make a small explanatory remark as a reference.

Commented [A143]: GEORGIA
With regard to the stand-alone Convention there is also a possible risk of duplicating already existing international or regional instruments and standards and it might be challenging to define and agree on the scope and to what extent the Convention should regulate different aspects of the right (such as clean air, safe climate, healthy ecosystems and biodiversity, safe water, non-toxic environment, etc.), as well procedural rights necessary for its effective implementation (three pillars of the Aarhus Convention).

Commented [A144]: GEORGIA
There is a possibility that the CoE resolution could address business responsibilities to a certain extent

NETHERLANDS / PAYS-BAS

Page 19 - § 55

The first procedural requirement for introducing an application before the Court, and for invoking the Convention as such, concerns jurisdiction. Article 1 of the Convention states that a Contracting Party must 'secure' the protected rights and freedoms to persons within its "jurisdiction". National jurisdiction under Article 1 is primarily territorial, i.e. the victim is within the national territory of the State. If the victim is outside a State's territory, extraterritorial jurisdiction may exceptionally be established if (i) the State exercises power (or control) over the victim (personal concept of jurisdiction), or (ii) the State exercises effective control over the territory in which the alleged violation occurs (spatial concept of jurisdiction).^{lxxxviii} The Convention's jurisdictional requirements may limit its competence to address environmental cases, in particular in cases of transboundary environmental harm, where pollution originating in one state has an impact on individuals in another.^{lxxxix}

Commented [A145]: NLD proposal: Art 1 jurisdiction determines the applicability of the Convention as such, not just the jurisdiction of the Court. It is the primary responsibility of the High Contracting Parties to secure Convention rights, and litigants must first go to domestic courts. Therefore, we should not focus solely here on applications before the Court; that is the (potential) end station, only.

Page 36 - §§ 116, 118

An additional protocol to the European Convention on Human Rights codifying the right to a healthy environment has been proposed, in various forms, since 1970. Over the past 25 years, the Parliamentary Assembly has adopted several recommendations to the Committee of Ministers^{xc} including the proposal examined below, following earlier suggestions in academic work and expert meetings

Commented [A146]: NLD proposal so as to refer to the efforts undertaken in the context of the CDDH-ENV.

The core element of any additional protocol to the Convention would be legal protection of the right to a healthy environment. Beyond that, it could be possible to include also constituent elements of the right and/or additional elements relating to procedural requirements and the application of substantive standards in environmental cases (as referred to in paragraphs 49-69 above). Consequently, three conceptual models for an additional protocol may be considered: (i) codification of the right to a healthy environment in general terms ('model I'); (ii) codification of the right to a healthy environment including its possible constituent elements ('model II'); and (iii) codification of the right to a healthy environment including both constituent elements and additional elements relating to the operation of procedural requirements and the application of substantive standards in environmental cases (referred to as "additional elements") ('model III').

Commented [A147]: NLD proposal

Commented [A148]: NLD proposal

Commented [A149]: NLD proposal

Page 37 - §§ 119, 120, 121

The additional elements could notably include provisions on territorial jurisdiction, victim status/ NGO standing before the Court, evidentiary standards, and environmental human rights defenders.^{xcii} These elements can themselves be distinguished from one another and need not all be taken together as an indissociable package.

Commented [A150]: NLD: also referring to the parts above where these elements are discussed?

This option would simply codify the right to a healthy environment in general terms. It would not specify its constituent elements or involve additional elements relating to the operation of procedural requirements and the application of substantive standards.

Commented [A151]: NLD proposal

This option could cover almost all rationales, with the following (partial) exceptions. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the development of the Court's jurisprudence. It would also not address the operation of procedural requirements. Finally, while it could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for businesses nor a right that is directly actionable against businesses. To summarise:

Commented [A152]: NLD proposal

Commented [A153]: NLD: here we speak of "international accountability of businesses", whereas below we speak of "international responsibilities".

What would be the correct wording to use throughout the document?

✓ Addressing the operation of procedural requirements and the application of substantive standards in European human rights law

Commented [A154]: NLD: appreciates the colour coding, but for those who are colour blind it would be helpful to give the orange icons a different format such as "~"

Page 38

✓ Enhancing protection for human rights defenders working on environmental matters

§ 122

This option would codify the right to a healthy environment including its possible constituent elements.

Commented [A155]: NLD: is it already clear that the sole recognition of the right contributes to the protection of EHRD? Perhaps orange?

Commented [A156]: NLD proposal

Commented [A157]: NLD: would it be helpful to, following the example of additional elements, explain what these constituent elements could entail on the basis of the research done in the sections above?

Page 39 - §§ 125, 126

This model would codify the right to a healthy environment and specify its constituent elements and include also additional elements relating to the ECHR's operation of procedural requirements and the application of its substantive standards. Possible additional elements include provisions on, for example, 1) the Court's territorial jurisdiction; 2) rules of evidence, to ease the burden of proof on applicants, 3) recognition of NGO standing, and 4) specific protection for environmental human rights defenders.

Commented [A158]: NLD: proposal so as to leave it open.

By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. Under the current understanding of territorial jurisdiction, the potential transboundary causes of environmental harm may leave victims unable to invoke the Convention, or to bring applications before the Court.^{xcii} Amendments to the rules on jurisdiction addressing such issues could be envisaged, so as to make more effective the protection of individuals' right to a healthy environment. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Commented [A159]: NLD proposal: Art 1 jurisdiction determines the applicability of the Convention as such, not just the jurisdiction of the Court. It is the primary responsibility of the High Contracting Parties to secure Convention rights, and litigants must first go to domestic courts. Therefore, we should not focus solely here on applications before the Court; that is the (potential) end station, only.

Page 40 - § 128

However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. Some of these, such as the level of environmental protection to be achieved involve policy choices that are arguably better made and implemented through the democratic process. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. The introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court^{xciii} which may need additional financial resources.

Commented [A160]: NLD proposal to limit this to the level of environmental protection and not to include financial aspects, as these might touch upon discussions in other fora and are not per se suitable to include here.

Page 41 - §§ 130, 131, 134

It is important to note, that a Model III additional protocol would require the Court to apply different standards (see paragraphs [x]-[x]) in cases based on the right to a healthy environment compared to cases revolving around other human rights issues. This could potentially lead to fragmentation of the Court's treatment of cases, depending on the right involved.

Commented [A161]: NLD proposal.

An Additional Protocol to the ESC codifying the right to a healthy environment ~~has also been proposed~~ is another option.

As indicated below, this model could cover most of the rationales. Without specifying the constituent elements of the right to a healthy environment, member States ~~could~~ can not actively shape the content of the right. Instead, this would be shaped through the subsequent decisions/interpretations of the ESCR. It would also not address the operation of procedural requirements. While it could, through positive obligations of States, enhance the accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Commented [A162]: NLD proposal. Or specify by whom it is proposed.

Commented [A163]: NLD proposal

Page 42 - §§ 135, 136

This proposal would codify the right to a healthy environment including its possible constituent elements (see paragraphs 83-90) without any additional elements.

Commented [A164]: NLD proposal

This proposal-option could cover all rationales to an even larger extent than the first option. By specifying the constituent elements of the right to a healthy environment, member States could actively shape the content of the right and give further guidance on the nature, content and implications of the right. The further development by the ESCR of its jurisprudence on the application of existing Charter rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of a new Charter right to a healthy environment.

Commented [A165]: NLD proposal

Page 43 - § 138

This proposal would codify the right to a healthy environment including its possible constituent elements with additional elements. Without such additions, the impact of codification of the right might be limited as only a minority of States (16 out of 42) have accepted the collective complaints procedure. If the protocol allowed for acceptance of the collective complaints procedure only in relation to the right to a healthy environment, States Parties might be willing to accept it. The protection offered by the Charter is furthermore limited by the restriction on its personal scope. Possible additional elements ~~therefore could, for example,~~ include provisions on the following: (i) removing the restriction on the personal scope of the Charter and extending the reach of rights either for the Charter as a whole or solely for an Additional Protocol on the right to a clean, healthy and sustainable environment;^{xiv} (ii) an option to accept the collective complaints procedure only in relation to the additional protocol.

Commented [A166]: NLD proposal so as to leave it open

Commented [A167]: NLD: are other possibilities also possible, as adjusting the personal scope rather than removing or deleting it?

Page 44 - §§ 139, 140

This proposal could cover most rationales ~~to a fuller extent~~. Depending on the formulation of the protocol, the operation of procedural requirements could be amended. The suggestion of ~~removing the restriction on~~ adjusting the personal scope of the Charter and that the additional protocol might allow for acceptance of the collective complaints procedure only in relation to this right could possibly address the issues concerning the operation of these procedural requirements.

Commented [A168]: NLD proposal

Commented [A169]: NLD proposal

Commented [A170]: NLD proposal

~~Decisions of the European Committee on Social Rights are non-binding on member States, therefore there is a higher risk of non-implementation as compared to binding judgments by a body such as the Court.~~ The optional collective complaints procedure under the ESC would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment, with no requirement for the complainant to have exhausted domestic remedies or itself to be a victim of the alleged violation. Despite the fact that Decisions of the European Committee on Social Rights are non-binding on member States and

~~that there might be a higher risk of non-implementation compared to a body such as the Court issuing binding decisions and judgments, therefore there is a higher risk of non-implementation as compared to binding judgments by a body such as the Court.~~ A non-binding monitoring mechanism, combining a reporting procedure and a complaints procedure, may arguably be more appropriate in an area where difficult policy choices need to be made. In addition, rights already protected under the Charter reflect both positive and negative obligations, which would be suitable for the protection of the right to a healthy environment. In addition, the introduction of the right to a healthy environment to the Charter system may result in an increase of the caseload of the ECSR, which may as a result need additional financial resource.

Commented [A171]: NLD proposal

Page 45 - § 143

To address the linkages between human rights and the environment through robust standard-setting, the drawing-up of a standalone Council of Europe Convention on Human Rights and the Environment has been proposed. All of the proposals involving a standalone convention include the recognition of the right to a healthy environment as a standalone right. They vary, however, in the extent to which they include additional elements relating to the effectiveness of protecting this right. Consequently, two options may be considered: (i) codification of the right to a healthy environment including its possible constituent elements; and (ii) codification of the right to a healthy environment (including its constituent elements) coupled with additional elements as described below.

Commented [A172]: NLD: if this is the topic of the Convention, would it also be possible to have a broader Convention, not (only) focusing on the RHE?

Commented [A173]: NLD: we believe a footnote with the proposals made (and by whom) would be appropriate here.

Page 46 - §§ 146, 147

This ~~proposal option~~ would codify the right to a healthy environment including its possible constituent elements and further elements aimed at rendering the protection of the right more effective.

Commented [A174]: NLD proposal

Different options could be envisaged, such as a State reporting system as foreseen under Council of Europe treaties or UN human rights treaties. This could be combined with a system of individual and/or collective complaints to a committee. Admissibility requirements could be tailored to the specificities of the convention's content and could differ from those under the ECHR and ESC. In addition to guaranteeing the right to a healthy environment, it could include provisions aimed at enhancing the accountability of businesses through, for example, due-diligence obligations for businesses or the creation of a mechanism of alternative dispute resolution that involves business entities. Another possibility would be to allow for requests for Advisory Opinions from the Court, as foreseen in the Oviedo Convention, which allows the Court to give advisory opinions on legal questions concerning the interpretation of that convention at the request of any of the Parties or the Council of Europe committee designated to this end by the Committee of Ministers (see Article 29 of the Oviedo Convention).

Commented [A175]: NLD: it would be helpful to provide examples in the footnotes.

Page 47 - §§ 149, 150

A new convention is not subject to the ECHR or ESC systems and would ~~provide the opportunity for States to create an instrument that States would deem feasible. For States for which an Additional Protocol with Court jurisdiction is not politically viable, the Convention offers~~ a strong alternative with an extensive range of negotiable options to determine an effective yet workable mechanism ~~that States would deem feasible.~~ A new convention could be opened for signature and ratification by Council of Europe member States, as well as non-Council of Europe member States. Thereby its standards could have influence beyond Europe.

Commented [A176]: NLD proposal

In case of option (iii), if a compliance mechanism is included (which would arguably be important for the effective protection of human rights and the environment), member States would have to fund such a body and its activities ~~as . The establishment of a new convention with new~~

Commented [A177]: NLD proposal

institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. However, without a compliance mechanism, the new convention would be in addition to the many existing international instruments that, for example, lack the authoritative force of a binding control mechanism such as the Court, possible resulting in a loss of effectivity for the new convention. Finally, the process of adopting a convention, and its entry into force, can be lengthy.

Commented [A178]: NLD: could it be elaborated upon here what is meant by this, and perhaps contemporary examples?

Commented [A179]: NLD proposal as there are more examples of compliance mechanisms than a Court.

Commented [A180]: NLD proposal

Page 49

✓ Enhancing the international responsibilities of businesses for the environmental impact of their activities

✗ Responding to the expectations of civil society

§§ 159, 160

Member States would have to fund this body and its activities. Furthermore, there is a risk that the creation of a new Commissioner for Human Rights and the Environment could encroach on the mandate of the Commissioner for Human Rights and lead to fragmentation. It may also be recalled that there are already several UN and other special rapporteurs working on human rights issues relating to the environment or climate change, whose activities cover all Council of Europe member States.

The idea has been raised within the working group to include the protection of the environment in the preamble of the ECHR.

NORWAY / NORVÈGE

Page 32

C. Possible rationales for a further instrument or instruments

Page 37 - § 120

(i) Model I (basic model): a protocol to the Convention codifying the right to a healthy environment in general terms

a. Possible content

This proposal would simply codify the right to a healthy environment in general terms. It would not specify its constituent elements or involve additional elements relating to the operation of procedural requirements and the application of substantive standards.

b. Covered rationales

✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis

Page 38 - § 123

This model would also allow member States actively and directly to shape the content of the right. The further development by the Court of its jurisprudence on the application of existing Convention rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of a new Convention right to a healthy environment.

Page 39 - § 126

By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. Under the current understanding of territorial jurisdiction, the potential transboundary causes of environmental harm may leave victims unable to bring applications before the Court.^{x^{cv}} Amendments to the rules on jurisdiction

Commented [A181]: NLD: if the body could reach out to business entities and start a dialogue on environmental due diligence, then the responsibilities can also be enhanced. Perhaps not in a legal matter, but nonetheless.

Commented [A182]: NLD: a dialogue and other possibilities for a standalone monitoring mechanism is perhaps a guarantee for responding to the expectations of civil society?

Commented [A183]: NLD: if this is included, then it should also be explained why the current Commission for Human Rights is not in a position to handle this topic, or what could be done so as the CHR's mandate also covers this topic.

Commented [A184]: NLD: "as a matter of human rights" or "so as to safeguard human rights".

The ECHR is a human rights treaty and any change or addition to the preamble thereof should reflect this.

Commented [A185]: In our view, the background for the proposal, and particularly how these new rationales relate to rationale v "Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis" is unclear. The relationship between these two suggested rationales and rationale v would need further clarification, considering that rationale v is further explained in para 105 below as follows:

"Another rationale that has been put forward is to ensure that rights holders can seek accountability for violations of the right to a healthy environment. A new instrument or instruments on human rights and the environment could create a legal framework that provides rights holders with procedural tools to enforce the right to a healthy environment, thereby providing accountability for States' actions or inactions that violate the right which in turn could contribute to preventing violations of this right."

Commented [A186]: The Secretariat suggests adding two specific rationales, for the following reasons. The current analytical approach in Chapter III gives little visibility to the fundamental reasons for distinguishing between the different types of binding instrument (variants of the two ...

Commented [A187]: The wording "codifying" could be understood to presuppose that a legally binding right to a healthy environment already exists in international law. We suggest to use the wording "establishing" instead.

Commented [A188]: See comment above.

Commented [A189]: Potential to cover rationales?

Commented [A190]: NOR: Should there be a distinction here as to what degree the three different models could encourage development of further jurisprudence? It would seem that model II and III could fulfill this rationale to a larger extent, as model II would also contain the constituent ...

Commented [A191]: NO: Suggest to start with a similar sentence here as in para 134 concerning Model II for an additional protocol to the Charter, as this sums up in general terms the difference between Model I & Model II: ...

Commented [A192]: NO: As in comment to para 121 above, suggest to start with a similar sentence here as in para 134 concerning Model II for an additional protocol to the Charter, as this sums up in general terms the difference between Model I & Model II: ...

addressing such issues could be envisaged, so as to make more effective the protection of individuals' right to a healthy environment. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 40 - §§ 127, 128

An additional Protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement mechanism. It is also the only option that is directly responsive to the expectations of civil society, as expressed by observers in the CDDH-ENV drafting group. The proposed additional Protocols (model I, II and III) would provide a direct protection of the right to a healthy environment, as opposed to an indirect protection against the consequences of environmental degradation and the triple planetary crisis for the enjoyment of the protections accorded to other rights through their interpretation, thereby expanding the scope of environmental protection of the Convention. The proposed Protocols would not however, provide protection of the environment as such.^{x cvi}

However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. Some environmental issues, such as the allocation of economic cost for environmental impact reduction measures or the level of environmental protection to be achieved also involve policy choices, with potentially society-wide implications, that are arguably better made and implemented through the democratic process. An additional protocol to the ECHR setting out an individual right to a healthy environment would thus require balancing the content and effects of this individual right on the one hand and the need for holistic and multidimensional considerations to take into account the broader issues involved. Whether and how this could be achieved would require careful consideration. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. The introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court^{x cvii} which may need additional financial resources.

Commented [A193]: In our view it is unfortunate that the possible challenges that may arise in connection with a new protocol to the ECHR have now been reduced to three short paragraphs, while the rationales for a new instrument are explained in depth in part C, and in addition repeated throughout part III of the report. In our view, the report would be more balanced if the possible challenges are presented in more detail.

Page 41 – NEW §§

It may be argued that codifying the right to a healthy environment in general terms may lead to some uncertainty with regard to the detailed content of the right, at least until the Court's case law on the right is developed. It is also not precisely clear what would be the relevant benchmark to determine if there has been a violation, i.e., what constitutes a "healthy" or "unhealthy" environment in a given case. Model II would allow for more specification of the elements of the right, thereby creating more clarity from the outset.

However, it has also been argued by some that the current framework of the Convention impact -the effectiveness of a right to a healthy environment, a need to rethink evidentiary rules in light of the complexity underlying environmental harms.^{x cviii}
Different proposals to ease the burden of proof on applicants have been put forward.^{x cix}

It has also been pointed out that the current understanding of the jurisdictional scope of the ECHR may limit the- application of the right in climate change cases. Although issues of extraterritoriality may

§ 130

These issues could be mitigated by different amendments to the framework of the Convention in model III.

Page 41 - § 134

As indicated below, this model could cover most of the rationales. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. ~~Instead, this would be~~ However, ~~the subsequent decisions/interpretations of the ESCR would contribute to shaping the content of the right.~~ ~~ed through the subsequent decisions/interpretations of the ESCR~~ It would also not address the operation of procedural requirements. While it could, through positive obligations of States, enhance the accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Commented [A194]: The original wording of this sentence could give the impression that the Committees development if further elements of such a right would be binding on member states. Since the Committee does not issue binding decisions, we suggest a reformulation of the sentence.

Page 42 - § 136

This proposal could cover ~~all-most~~ rationales to an even larger extent than the first option. By specifying the constituent elements of the right to a healthy environment, member States could actively shape the content of the right and give further guidance on the nature, content and implications of the right. The further development by the ESCR of its jurisprudence on the application of existing Charter rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of a new Charter right to a healthy environment.

Commented [A195]: NO: As several rationales are marked with a red cross indicating that they would not be met.

Page 44 - § 140

It could be argued that a right to a healthy environment could be more easily integrated into a system of social rights, than into a system of civil and political rights, given the broad societal considerations and balancing of interests that need to be done in many cases raising environmental issues. Whereas the Convention focuses mainly on civil and political rights, and is characterised by a conception of human rights as rights conferred on individuals. The Charter contains rights that are formulated as more collective and so-called solidarity rights. In addition, a large majority of the ESC provisions are drawn up in terms of positive legal obligations of States to take measures or implement policies, rather than in terms of subjective rights of individuals, which could arguable be more suitable for possible human rights provisions concerning environmental protection.^{ch} In addition, rights already protected under the Charter reflect both positive and negative obligations, which would be suitable for the protection of the right to a healthy environment. It could, on the other hand also be argued that the other side of the coin to this broader room for balancing different interests left to the states is that it could result in a less effective right to a healthy environment and thus a less effective protection of the environment, and that consequently the rationales could be covered to a lesser extent. Decisions of the European Committee on Social Rights are non-binding on member States. A non-binding monitoring mechanism, combining a reporting procedure and a complaints procedure, may arguably be more appropriate in an area where difficult policy choices need to be made. The optional collective complaints procedure under the ESC would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment, with no requirement for the complainant to have exhausted domestic

Commented [A196]: We suggest to present first the considerations relating directly to the Charter, before the considerations concerning the monitoring mechanism. We also suggest elaborating more on arguments which support that a right to a healthy environment could more suitably be established as a social right than as a civil and political right.

remedies or itself to be a victim of the alleged violation. ~~However, therefore~~ there is a higher risk implementation as compared to binding judgments by a body such as the Court. ~~The optional~~ introduction of the right to a healthy environment to the Charter system may result in an increase of the caseload of the ECJ, which may as a result need additional financial resource

Page 47 - § 150

In case of option (iii), if a compliance mechanism is included (which would arguably be important for the effective protection of human rights and the environment), member States would have to fund such a body and its activities. The establishment of a new convention with new institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. However, without a compliance mechanism, the new convention would be in addition to the many existing international instruments that lack the authoritative force of a binding control mechanism such as the Court, resulting in a loss of effectivity for the new convention. Finally, the process of adopting a convention, and its entry into force, can be lengthy.

Page 53 - § 175

As all Council of Europe member States voted in favour of UNGA Res 76/300, recreating the content of that resolution within the Council of Europe's framework would not result in any the fulfillment of any rationale other than establishing (non-binding) legal recognition of the right to a healthy environment in the Council of Europe framework. Given that all Council of Europe member States voted in favour of UNGA Res 76/300, the practical effects of such recognition are debatable; the instrument could appear as purely symbolic. At the same time, it could bring the Council of Europe's *acquis* in line with international law.

POLAND / POLOGNE

Page 24 - § 75

Significant (upcoming) EU instruments include the Non-Financial Reporting Directive (NFRD), the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDD). The aim of the latter Directive is to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance and will aim to ensure that businesses address adverse impacts of their actions, including in their value chains inside and outside Europe.

Page 29 - § 95

The right to a healthy environment is ~~either explicitly or implicitly~~ recognised at national level as a human right^{ciii} in multiple Council of Europe member States.^{civ} Most of them qualify the right by including a reference to human well-being and/or human quality of life in the relative provisions, using formulae such as a "healthy environment"^{cv} or an environment "favorable/conducive to health".^{cvi} Other member States use adjectives such as "benevolent"^{cvi} or "habitable"^{cvi} in relation to the environment and "decent"^{cix} or "enjoyable"^{cx} in relation to the quality of life. Rights holders are always human beings; no member State defines the environment or nature itself as a legal subject entitled to protection. In almost all of these member States, the Supreme and/or Constitutional Courts play an important role in applying and developing the right to a healthy environment.

Page 36

III. The feasibility of a further instrument or instruments

Commented [A197]: We suggest that the arguments in favour of such a protocol are presented before the arguments against.

Commented [A198]: NO: There are only two options (i) & (ii) described above, and option (ii) seems to include a compliance mechanism with individual and/or collective complaints to a committee, see under a) possible content above.

Commented [A199]: There seems to be a certain discrepancy between this statement and the ticks and crosses below?

Commented [A200]: The Rapporteur notes that the CSDD is still not adopted and it is unclear at this stage whether it will ever be adopted.

Commented [A201]: There is no explicit recognition of right to healthy environment as a human nor fundamental right in Polish Constitution. The right to environment may be derived from the obligation of public authorities to protect the environment and to prevent the negative health consequences of degradation of the environment. In case the proposed wording is not accepted, Poland should be removed from note 173.

Commented [A202]: Rapporteur's note: the Group will need to decide whether to include a list of rationales under each option or present it another way.

PORTUGAL / PORTUGAL

The Portuguese Government endorses the draft report on the need for and feasibility of a further instrument or instruments on human rights and the environment (Doc. CDDH-ENV(2023)06REV2), but notes that due to the fact that the Corporate Sustainability Due Diligence Directive (CSDD) has not been approved the wording of §75 may need to be adjusted as a result.

SWEDEN / SUÈDE**Page 11 - § 25**

International Human Rights Law (IHRL) and International Environmental Law (IEL) have developed as separate regimes. IEL primarily aims to address the negative impacts on the environment, with the objective of protecting and conserving the environment whilst IHRL is principally concerned with the protection of human rights. Although they are two different branches of international law, it is recognised that they complement one another on some issues. To that end, GA Res 76/300 affirmed "the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights," and recognised "that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment".^{cxii}

Page 12 - § 28

Exploration of the relationship between human rights and the environment has not only taken place at the Council of Europe level, but also at the international level, notably at multilateral institutions. The table under [appendix II](#) represents an overview of existing Council of Europe and, non-exhaustively, some of the other international instruments that address human rights and/or the environment. The following section reviews the evolution of developments in the recognition and articulation of the relationship between human rights and environmental protection at the international level.

Page 24 - § 75

Significant (upcoming) EU instruments include the Non-Financial Reporting Directive (NFRD), the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDD). The aim of the latter Directive is to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance and will aim to ensure that businesses address adverse impacts of their actions, including in their value chains inside and outside Europe.

Page 32**C. Possible rationales for a further instrument or instruments****§ 105**

As noted in paragraphs 52–77, there is no explicit right to a healthy environment in the Convention or the Charter; the environment is only indirectly protected to the extent that environmental degradation results in a breach of human rights obligations stemming from the current provisions of the Convention. The current jurisprudence of the Court and the ECSR on the procedural requirements and the application of substantive standards that need to be met when litigating human rights cases relating to the environment before the Court and the ESCR limit the reach of the Convention and the Charter in environmental matters. It has been argued that these limits

Commented [A203]: SE comment:

We are fine with the amended text of this paragraph.

Commented [A204]: Editorial: we have commented already twice on what seems to be an overlap in the appendix where UNGA res 76/300 is mentioned two times (the first time in its L-doc form). Please take note of this comment in the table in appendix II.

Commented [A205]: The Rapporteur notes that the CSDD is still not adopted and it is unclear at this stage whether it will ever be adopted.

Commented [A206]: The Secretariat suggests adding two specific rationales, for the following reasons. The current analytical approach in Chapter III gives little visibility to the fundamental reasons for distinguishing between the different types of binding instrument (variants of the two protocols and the standalone convention). There are perceived needs – amounting to separate rationales – for international oversight of States' implementation of the right to a healthy environment in both its individual and collective forms and with respect to its civil/ political and economic/ social nature that are distinct and separate from both simple international legal protection of the right and enhanced protection of human rights generally against environmental impact.

Proposed rationales:

i. Providing international judicial oversight of national implementation of the right to a healthy environment

4. It has been argued that an international judicial oversight mechanism, accepting applications from persons claiming to be victims of violations of the right to a healthy environment and issuing binding judgments in their cases, is necessary to ensure effective and harmonious protection of the right to a healthy environment by States. For those, including the Parliamentary Assembly and civil society organisations, that have made such proposals, the urgency of the triple planetary crisis, the severity of its impact on human rights, and the need for an effective response by governments make this highest level of protection a necessity.

ii. Providing for a system of collective complaints alleging unsatisfactory realisation of the right to a healthy environment

2. It has been argued that the partially collective (or economic/ social) character of the right to a healthy environment and the often-widespread effects of environmental degradation may be best addressed through a monitoring mechanism that allows for collective complaints, rather than one that relies on individual applications whose scope may not reflect the full extent and context of the cause of the complaint.

Commented [A207R206]: SE comment:

1. We would accept adding this rationale.

2. It seems to us that this is aspect is inherent in some of the options presented and hence addressed in the considerations of these options (e.g. Model III of an additional Protocol to the ECHR, or Model III of an additional Protocol to the ESC). We are not convinced that this could or should be considered as a separate rationale for a new instrument.

constitute gaps in the protection of human rights that could be addressed by a new instrument. Furthermore, a new instrument could protect the right to a healthy environment in a way that is not subject to the same procedural requirements and substantive standards. For example, cases involving the right to a healthy environment could be subject to different rules concerning territorial jurisdiction, NGO standing to bring public interest cases, and/ or evidence, which, it is argued, would allow the Court to provide more effective overall protection to rights-holders.

Commented [A208]: SE comment: Proposal to better reflect the fact that a new instrument would in itself expand the scope of European Human Right Law in terms of substantive standards.

Page 36

III. The feasibility of a further instrument or instruments

Page 40 - § 128

However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. It has been argued that some of these, such as the allocation of economic cost for environmental impact reduction measures or the level of environmental protection to be achieved involve policy choices that are better made and implemented through the democratic process. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. The introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court^{Cxxii} which may need additional financial resources.

Commented [A209]: Rapporteur's note: the Group will need to decide whether to include a list of rationales under each option or present it another way.

Commented [A210R209]: SE comment: We have no objections on how the rationales and feasibility chapter is currently structured. In order to finalize the report, it is in our view crucial that we find a format that all MS can agree to at the next meeting. Should there be changes to the current format due to other MS views, we would however like to get the opportunity to provide comments on this.

Commented [A211]: SE comment: We propose a more neutral framing of this argument. We do not agree that "arguably better" is neutral in this context.

Page 44 - § 140

Decisions of the European Committee on Social Rights are non-binding on member States, therefore there is a higher risk of non-implementation as compared to binding judgments by a body such as the Court. The optional collective complaints procedure under the ESC would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment, with no requirement for the complainant to have exhausted domestic remedies or itself to be a victim of the alleged violation. It has been argued that a non-binding monitoring mechanism, combining a reporting procedure and a complaints procedure, may be more appropriate in an area where difficult policy choices need to be made. In addition, rights already protected under the Charter reflect both positive and negative obligations, which would be suitable for the protection of the right to a healthy environment. In addition, the introduction of the right to a healthy environment to the Charter system may result in an increase of the caseload of the ECSR, which may as a result need additional financial resource.

Commented [A212]: SE comment: Also here we propose a more neutral framing of this argument. We do not agree that "arguably more appropriate" is neutral in this context.

Page 47 - § 147

It could be argued that the effective protection of human rights and the environment would require the inclusion of a compliance mechanism. Member States would have to fund such a body and its activities. The establishment of a new convention with new institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. However, without a compliance mechanism, the new convention would be in addition to the many existing international instruments that lack the authoritative force of a binding control mechanism such as the Court. Finally, the process of adopting a convention, and its entry into force, can be lengthy.

Commented [A213]: SE comment: Proposal to present this consideration in a clear and neutral manner.

SWITZERLAND / SUISSE

Page 17 - § 48

The United Nations Guiding Principles (UNGPs) can be considered the milestone document on the responsibility of businesses to respect human rights. The UNGPs rest on three pillars: (1) States' existing obligation to respect, protect and fulfil human rights and fundamental freedoms ("the State duty to protect human rights"); (2) corporate responsibility to respect human rights, including the exercise of due diligence ("the corporate responsibility to respect human rights"); and (3) the responsibility of States and business enterprises to ensure those affected by human rights abuses have access to effective remedy ("access to remedy"). The UNGPs and the OECD Guidelines ~~enfor~~ Multinational Enterprises on Responsible Business Conduct^{cxiii} are the main international standards for responsible business conduct. The OECD Guidelines, updated in 2023, recommend that enterprises conduct due diligence to assess and address adverse human rights and environmental impacts associated with their operations, products and services. Chapter VI on the environment is aligned with the business responsibility to respect human rights established in the ~~UNGPs-Guiding Principles on Business and Human Rights~~, and sets out the expectation that enterprises conduct due diligence on environmental impacts, including in relation to climate change and biodiversity. Moreover, adherent States to the OECD Guidelines are obliged to establish a National Contact Point to serve as a non-judicial grievance mechanism in cases of alleged violations

Page 23 - § 71

Building on the UNGPs, within the Council of Europe, the CM/Rec(2016)3 on human rights and business expresses commitment to the national implementation of the ~~UNGPs-Guiding Principles on Business and Human Rights~~, by aiming to provide specific guidance so as to assist member States in preventing and remedying human rights ~~violations-abuses~~ by business enterprises and also insists on measures to induce business to respect human rights. The Recommendation elaborates on access to judicial remedy and puts special emphasis on the additional protection needs of workers, children, Indigenous Peoples and human rights defenders.

Page 25 - § 78

At the regional level, the 1981 African Charter on Human and Peoples Rights (the African Charter) provides that "all peoples shall have the right to a general satisfactory environment favorable to their development" (art. 24). The 2003 Protocol to the African Charter on the Rights of Women in Africa, states that women "shall have the right to live in a healthy and sustainable environment" (art. 18) and "the right to fully enjoy their right to sustainable development" (art. 19). The 1988 Additional Protocol to the American Convention on Human Rights states that "everyone shall have the right to live in a healthy environment" (art. 11, para. 1). The 2004 Arab Charter on Human Rights includes a right to a "safe environment" as part of the right to an adequate standard of living that ensures well-being and a decent life (art. 38). The Human Rights Declaration adopted by the Association of Southeast Asian Nations (ASEAN) incorporates a "right to a safe, clean and sustainable environment" ~~also~~ an element of the right to an adequate standard of living (para. 28 (f)), this, however, is a soft law document.

Commented [A214]: As?

Page 29 - §§ 90, 91

Although the right to a clean, healthy and sustainable environment has been recognised politically at global level in UN General Assembly Resolution 76/300, ~~However~~, this right is not yet protected as such in a treaty either at global or European level.^{cxiv} This means that there is not yet a universal understanding amongst Council of Europe member States of the "nature, content and implications"^{cxv} of the right.

Commented [A215]: Effacer?

There are some commonalities in substance between instruments. These comparisons can be found in the table under appendix III, ~~with reference to~~, contain the suggested elements listed in

Commented [A216]: Veuillez vérifier la formulation.

the UN SR's Framework Principles. However, the constituent elements of the right have not yet been the subject of international negotiations.

Page 33 - § 104

There are different instruments on ~~business and human rights~~ responsible business conduct such as the UNGPs, the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct or CM/Rec(2016)3 on human rights and business. Further environmental and human rights due diligence standards for business enterprises are still under development on international, regional and national levels.^{cxvi} It has been argued that a new instrument containing comprehensive environmental and human rights due diligence standards for companies and in particular provisions on access to remedies could enhance the responsibility or accountability of businesses. An international [legally binding] mechanism that could provide victims of corporate environmental human rights violations-abuses with access to a remedy, such as some form of alternative dispute resolution, does not yet exist. It has been argued that these elements could potentially be addressed by the Council of Europe, while emphasizing and strengthening synergies with existing systems and instruments such as the UNGPs, the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Business Conduct, applicable regional agreements, existing legislation at national and EU level and sectoral approaches, taking into account developments at international level such as the work of the UN Open-Ended Working Group on transnational corporations and other business enterprises with respect to human rights.

Commented [A217]: The title of this section is going beyond business and human rights, but also focussing on the environmental impact of companies. Furthermore, the OECD GL are not only dealing with human rights, but also ecological aspects.

Commented [A218]: What are "environmental human rights standards"? We rather propose "environmental and human rights standards".

Commented [A219]: See comment above.

Page 37 - § 121

This proposal could cover almost all rationales, with the following (partial) exceptions. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the development of the Court's jurisprudence. It would also not address the operation of procedural requirements. Finally, while it could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for businesses nor a right that is directly actionable against businesses. To summarise:

Commented [A220]: Une telle appréciation introductive n'est pas faite pour tous les options. De plus, l'utilisation de « almost all », « most », etc. doit être uniforme. Par exemple, le model I (protocole à la CEDH) couvrirait 7 arguments entier et est caractérisé par « could cover almost all ». Le model ii d'une Convention indépendante ci-après couvrirait 8 arguments entier et est caractérisé « could cover most ».

Commented [A221]: Cet argument est pourvu d'un crochet orange ci-après. Il serait utile de préciser dans le texte dans quelle mesure le model I couvrirait cet argument.

Page 37

✓ Enhancing protection for human rights defenders working on environmental matters

Commented [A222]: Comment cette option peut-elle renforcer la protection des défenseurs des droits humains travaillant dans le domaine de l'environnement ?

Page 42

✗ Addressing the operation of procedural requirements and substantive standards in European human rights law

Commented [A223]: La codification du droit dans un protocole additionnel à la CEDH couvrirait partiellement cet argument (crochet orange). Pourquoi la codification du droit dans un protocole additionnel à la Charte ne couvrirait-elle pas partiellement cet argument ?

✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities

✓ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis

✗ Enhancing protection for human rights defenders working on environmental matters

Commented [A224]: La codification du droit dans un protocole additionnel à la CEDH couvrirait cet argument. Pourquoi un protocole additionnel à la Charte ne couvrirait-il pas cet argument ?

§ 136

This proposal could cover ~~most~~ rationales to an even larger extent than the first option. By specifying the constituent elements of the right to a healthy environment, member States could actively shape the content of the right and give further guidance on the nature, content and

Commented [A225]: Cette formulation donne l'impression que cette option couvrirait tous les arguments.

implications of the right. The further development by the ESCR of its **jurisprudence** on the application of existing Charter rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of a new Charter right to a healthy environment.

Commented [A226]: Terme peu adéquat pour le CEDS. Il vaut mieux parler de "pratique" ou d'"interprétation" du CEDS.

Page 43

- ✗ Addressing the operation of procedural requirements and substantive standards in European human rights law
- ✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities
- ✓ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis
- ✗ Enhancing protection for human rights defenders working on environmental matters

Commented [A227]: La codification du droit dans un protocole additionnel à la CEDH couvrirait partiellement cet argument (crochet orange). Pourquoi la codification du droit dans un protocole additionnel à la Charte ne couvrirait-elle pas partiellement cet argument ?

Page 44

- ✗ Enhancing protection for human rights defenders working on environmental matters

Commented [A228]: La codification du droit dans un protocole additionnel à la CEDH couvrirait cet argument. Pourquoi un protocole additionnel à la Charte ne couvrirait-il pas cet argument ?

Page 45

- (i) **Codification of the right to a healthy environment including its possible constituent elements**

Commented [A229]: La codification du droit dans un protocole additionnel à la CEDH couvrirait cet argument. Pourquoi un protocole additionnel à la Charte ne couvrirait-il pas cet argument ?

Commented [A230]: Préciser que ce modèle ne prévoit pas de mécanisme de *reporting/monitoring*.

Page 46

- ✗ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis
- ✓ Enhancing protection for human rights defenders working on environmental matters

Commented [A231]: La codification du droit dans un protocole additionnel à la CEDH couvrirait cet argument. Pourquoi la codification du droit dans une convention autonome ne couvrirait-elle pas cet argument ?

Commented [A232]: Comment cette option peut-elle renforcer la protection des défenseurs des droits humains travaillant dans le domaine de l'environnement ?

Commented [A233]: Nous partons du principe que les Etats pourraient choisir d'accepter ou non cette procédure de réclamations individuelles ou collectives (comme c'est le cas dans le système actuel de la Charte sociale pour les réclamations collectives).

§§ 147, 148

Different options could be envisaged, such as a State reporting system as foreseen under Council of Europe treaties or UN human rights treaties. This could be combined with a **voluntary** system of individual and/or collective complaints to a committee. Admissibility requirements could be tailored to the specificities of the convention's content and could differ from those under the ECHR and ESC. In addition to guaranteeing the right to a healthy environment, it could include provisions aimed at enhancing the accountability of businesses through, for example, due-diligence obligations for businesses or the creation of a mechanism of alternative dispute resolution that involves business entities. Another possibility would be to allow for requests for Advisory Opinions from the Court, as foreseen in the Oviedo Convention, which allows the Court to give advisory opinions on legal questions concerning the interpretation of that convention at the request of any of the Parties or the Council of Europe committee designated to this end by the Committee of Ministers (see Article 29).

Commented [A234]: Almost all ?

This proposal, due to its flexibility and depending on its content, could cover **most** of the rationales. It could indirectly encourage the development of further jurisprudence as the ECHR should be interpreted in harmony with other rules of international law of which it forms part. It could not address, however, the operation of procedural requirements and substantive standards of European Human Rights Law (as described in paragraphs 49-69).^{cxvii} If combined with a voluntary system of individual and/or collective complaints to a committee, it could, however, itself tailor admissibility requirements to the specificities of the convention's content.

Page 47

✓ Enhancing protection for human rights defenders working on environmental matters

§§ 149, 150

A new convention is not subject to the ECHR or ESC systems and would provide the opportunity for States to create an instrument that States would deem feasible. For States for which an Additional Protocol to the ECHR with Court jurisdiction is not politically viable, the Convention offers a strong alternative with an extensive range of negotiable options to determine an effective yet workable mechanism. A new convention could be opened for signature and ratification by Council of Europe member States, as well as non-Council of Europe member States. Thereby its standards could have influence beyond Europe.

In case of option (iii), if a compliance mechanism is included (which would arguably be important for the effective protection of human rights and the environment), member States would have to fund such a body and its activities. The establishment of a new convention with new institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. However, without a compliance mechanism, the new convention would ~~be in addition to the many existing international instruments that~~ lack the authoritative force of a binding control mechanism such as the Court, resulting in a possible loss of effectivity for the new convention. Finally, the process of adopting a convention, and its entry into force, can be lengthy.

Page 51 - §§ 167, 169, 170

The Charter's preamble could underline the relationship between human rights and the environment, stress the importance of environmental protection, and thereby provide textual support for the ECSR's environmental jurisprudence.

Inclusion of environmental protection in the preamble of the ESC could only address the rationales of potentially encouraging the development of the Committee's jurisprudence on environmental matters.

While including environmental protection in the Charter's preamble provides additional legitimacy to the Committee's environmental jurisprudence and interpretation, this option – even with an explanatory memorandum clarifying the aim of the amendment – would leave States with no possibility to shape the way the Committee will use the addition to the preamble.

Page 51 - § 175

As all Council of Europe member States voted in favour of UNGA Res 76/300, recreating the content of that resolution within the Council of Europe's framework would not result in any the fulfillment of any rationale other than establishing (non-binding) legal recognition of the right to a healthy environment in the Council of Europe framework. Given that all Council of Europe member States voted in favour of UNGA Res 76/300, the practical effects of such recognition are debatable; the instrument could appear as purely symbolic. At the same time, it could bring the Council of Europe's *acquis* in line with international law.

✓ Enhancing protection for human rights defenders working on environmental matters

Page 54 - § 177

However, while a Council of Europe non-binding instrument recognising the right to a healthy environment would be in line with the organisation's mandate, would allow member States to

Commented [A235]: Comment cette option peut-elle renforcer la protection des défenseurs des droits humains travaillant dans le domaine de l'environnement ?

Commented [A236]: Terme peu adéquat pour le CEDS. Il vaut mieux parler de "pratique" ou d'"interprétation" du CEDS.

Commented [A237]: Terme peu adéquat pour le CEDS. Il vaut mieux parler de "pratique" ou d'"interprétation" du CEDS.

Commented [A238]: Terme peu adéquat pour le CEDS. Il vaut mieux parler de "pratique" ou d'"interprétation" du CEDS.

Commented [A239]: Selon le tableau ci-dessous, un instrument non-contraignant ne couvrirait pas l'argument « Établir une reconnaissance juridique du droit à un environnement sain dans le cadre du Conseil de l'Europe ». S'agissant de la formulation « any rationale other than », il convient de rappeler que le tableau ci-dessous énumère différents autres arguments qui seraient couverts par cette option.

Commented [A240]: Comment cette option peut-elle renforcer la protection des défenseurs des droits humains travaillant dans le domaine de l'environnement? Pourquoi cet argument est couvert ici et non pas sous le chiffre 174 ?

actively shape the understanding of the right by defining its content in more detail, and could influence the development of the Court's and the ESCR's jurisprudence, it would not meet any other rationale.

- × Enhancing protection for human rights defenders working on environmental matters
- × Improving national protection of the right to a clean, healthy and sustainable environment

Page 56 - § 189

This option would combine the aforementioned strengths of additional protocols to both the Convention and the Charter, coupled with a commissioner type standalone monitoring mechanism which could further aid in the political process of the protection of the right to a healthy environment through the proposed activities laid out in paragraphs 149- 151 above. In terms of the combination of the ECHR and/or the ESC the considerations are the same as above.

- (ii) Standalone convention on human rights and the environment combined with a commissioner type mechanism

Page 57 - § 196

The present report sets out the institutional and wider European and international background on the protection of human rights and the environment. It has identified a growing recognition of the interdependence of human rights and environmental protection in international law. This is shown by, amongst other things, the CDDH's Manual on human rights and the environment, which describes the relevant jurisprudence of the European Court of Human Rights and the European Committee on Social Rights within their respective competences, by the political recognition of the right to a healthy environment through UNGA Resolution 76/300 and by the fact that many member States within the Council of Europe recognise in a legally binding manner (some form of) the right to a healthy environment in their legal systems.

UNITED KINGDOM / ROYAUME-UNI

Page 10 - §§ 21, 22, 23

The possible consequences of these environmental issues for human rights are common and urgent concerns that need to be further addressed, including as a matter of inter-generational equity and solidarity.^{cxxviii}

The acknowledgment of Consideration of the relationship between human rights and the environment has grown significantly in recent years, including by the Parliamentary Assembly^{cxxix} and the Committee of Ministers^{cxxx} of the Council of Europe. There is also an increasing recognition – at the national^{cxxxi}, regional^{cxxxii} and international^{cxxxiii} levels – of a right to a clean, healthy and sustainable environment. However, this right is not yet protected as such in a treaty either at global or European level.^{cxxiv} This means that there is not yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”^{cxxv} of the right.

The urgency of addressing the impact of environmental degradation and the triple planetary crisis on human rights is also voiced by civil society. The Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe, on the issue of climate change, demanded that international negotiations go beyond the strict context of greenhouse gas reductions and include the protection of the fundamental rights of all human beings, taking into

Commented [A241]: Terme peu adéquat pour le CEDS. Il vaut mieux parler de "pratique" ou d'"interprétation" du CEDS.

Commented [A242]: Pourquoi cette option ne couvrirait-elle pas cet argument (cf. ch. 172 ci-avant) ?

Commented [A243]: Pourquoi cette option ne couvrirait-elle pas cet argument (cf. ch. 172 ci-avant) ?

Commented [A244]: Standalone monitoring mechanism?

Commented [A245]: Veuillez vérifier la numérotation de cette dernière section.

Commented [A246]: Terme peu adéquat pour le CEDS. Il vaut mieux parler de "pratique" ou d'"interprétation" du CEDS.

Commented [A247]: There was agreement to delete this at the last session so grateful if the Secretariat would ensure that such changes are reflected for the sake of efficiency.

As discussed then, we can all agree that these are common and urgent concerns so suggest it is more persuasive to policy makers keep this sentence short (solidarity and intergenerational equity will not necessarily be accepted by Governments of all persuasions).

Commented [A248]: UK Neutral framing.

account the impact of all phenomena related to climate change on the enjoyment of these rights.^{cxxvi} At the high-level Conference on environmental protection and human rights, organised by the Georgian Presidency of the Committee of Ministers of the Council of Europe in February 2020, the President of the Conference of INGOs called upon the Committee of Ministers to define environmental issues as a priority.^{cxxvii} More recently, in March 2023, as an outcome of the Civil Society “Shadow” Summit, the Conference of INGOs together with the CURE Campaign^{cxxviii} issued the Hague Civil Society Declaration on Council of Europe Reform, calling on the Council of Europe to “address the triple planetary crisis of climate change, biodiversity loss and pollution as a supreme human rights crisis” and more specifically to “recognise and protect a legally binding, autonomous right to a clean, healthy and sustainable environment through an additional protocol to the European Convention on Human Rights.”^{cxxix}

Page 11 - § 26

As per the current state of law, while certain IEL instruments grant limited directly actionable rights to individuals or groups that can be invoked before national courts or international monitoring mechanisms,^{cxxx} IEL does not grant any general, directly actionable right to individuals or groups to an environment of a certain standard.^{cxxxi} IHRL usually grants directly actionable rights to individuals and groups, including oversight at the international level by courts and treaty bodies.^{cxxxii} However, where IEL sets rules to which States must adhere in relation to the natural environment,^{cxxxiii} IHRL does not grant direct protection to the environment.

Page 12 - § 30

The 1992 UN Convention on Biological Diversity^{cxxxiv} was adopted at the UN Conference on Environment and Development, also known as the “Earth Summit” in Rio de Janeiro.^{cxxxv} It entered into force on 29 December 1993 and has been ratified by 196 States. The Convention on Biological Diversity recalls the importance of biological diversity for maintaining life sustaining systems of the biosphere and affirms that its conservation is a common concern of mankind.^{cxxxvi} It ~~requires contains a provision that calls on States Parties to introduce appropriate procedures requiring requiring environmental impact assessment of [relevant] projects, allowing for public participation where appropriate adhere to procedural obligations by conducting assessments, providing access to information and facilitating public participation in relation to environmental impact assessments.~~

Page 13 - §§ 33, 35, 36, 37

Whilst these important instruments recognise in different ways the inter-connection between environmental issues and various aspects of human rights, ~~some would prefer they established additional they do not establish~~ specific standards ~~and/or~~ protection mechanisms in this respect.

A milestone is ~~r~~Resolution 48/13 on “[t]he human right to a clean, healthy and sustainable environment”, adopted by the Human Rights Council (HRC) on 8 October 2021.^{cxxxvii} The resolution politically recognised the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights, while simultaneously encouraging States to cooperate on the implementation of this right. The text of HRC ~~r~~Resolution 48/13 was proposed by, among others, two Council of Europe member States, Slovenia and Switzerland. It was passed with 43 votes in favour and 4 abstentions. All Council of Europe member States which voted were in favour. ~~Some States also gave Explanations of Votes, including certain Council of Europe members.~~ The HRC also established on the same day, via ~~r~~Resolution 48/14, a Special Rapporteur on the promotion and protection of human rights in the context of climate change. This Special Rapporteur, among other things, studies the impact of climate change on human

Commented [A249]: UK

Perhaps we could include a reference here to the civil society annex discussed in the last session, for coherence?

Commented [A250]:

UK

As flagged previously, the UK would not accept that the Aarhus Convention creates the directly actionable right described in the second part of the sentence, so we would suggest removing Aarhus from the footnote, or reframing as 'A notable exception exists under the Escazu Agreement. Divergent views exist as to whether the Aarhus Convention grants such a right.' Please also check if FN 39 and 40 are in the correct order.

Commented [A251]: UK

Amend 'agreements' to 'instruments' in footnote. (Agreements is used only when legally binding)

Commented [A252]: UK

We suggest revising the language so that it is a closer paraphrasing of the obligation in Article 14 of the CBD, which we understand is being referenced here. The information provisions in CBD are more about 'information exchange' which are understood to be between parties rather than with the public.

Commented [A253]: UK

The CBD and UNFCCC do establish standards and mechanisms.

Commented [A254]: UK

Resolutions are not capitalised. Global change

Commented [A255]: UK

As discussed at multiple sessions previously, it is important to retain reference to these EoVs and is simply a statement of fact. There was no agreement to remove the previous sentence setting this out. We should therefore be grateful if you would please reinstate.

rights, provides recommendations to address it, promotes human rights integration in climate policies, and raises awareness.

In its preamble, ~~r~~Resolution 48/13 stressed the negative implications, both direct and indirect, of environmental damage for the effective enjoyment of human rights and highlights that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life.”

Based on the text adopted by the HRC, the UN General Assembly, on 28 July 2022, with a record of 161 States (including all Council of Europe member States) voting in favour, zero against and eight abstentions, adopted resolution 76/300 recognising the right to a clean, healthy and sustainable environment as a human right (UNGA ~~r~~Resolution).^{cxviii} Among the co-sponsors of the UNGA ~~r~~Resolution were 38 Council of Europe member States.^{cxviii} The UNGA ~~r~~Resolution was also accompanied by a number of Explanations of Votes, including from Council of Europe member States, some noting the lack of international consensus on the legal basis of the right and that political recognition did not have legal effect.^{cxl} At the same time, the European Union “welcomed the adoption of this important resolution on the human right to a clean, healthy and sustainable environment, which is important for the enjoyment of all human rights”.^{cxli}

Page 14 - § 38

The UNGA ~~r~~Resolution uses similar wording to the HRC ~~r~~Resolution 48/13 and recognises the right to a clean, healthy and sustainable environment as a human right and that the right is related to other rights and existing international law. Likewise, its preambular paragraphs also recognise that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment. The entire text of UNGA ~~r~~Resolution 76/300 can be found in Appendix IV of this report.

Page 15 - § 41

On 29 March 2023, the UNGA adopted by consensus a resolution formally requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States in respect of climate change.^{cxlii} In particular, this request asked the following questions: (a) what are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; and (b) what are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to States, including, in particular, small island developing States [...] and Peoples and individuals of the present and future generations affected by the adverse effects of climate change? ~~By-The request referred ring explicitly to~~ international human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

Page 16 - § 45

UN treaty bodies are increasingly being asked to decide on issues concerning environmental degradation.^{cxliii} In *Portillo Cáceres and others v. Paraguay*, ~~t~~The UN Human Rights Committee in 2019 held that Paraguay had violated its obligations under the right to life and the right to private and family life, when it failed to adequately regulate large-scale spraying with toxic agrochemicals and investigate the death of an agricultural worker exposed to such chemicals.^{cxliii} In the 2020 case of *Teitiota v. New Zealand*, the author alleged that the rejection of his application for refugee

Commented [A256]: UK
Edits needed for sentence to make sense following revision made in last round of comments (to end sentence at ICESCR).

status in New Zealand violated his right to life under the Covenant by removing him in September 2015 to Kiribati, which climate change would ultimately render uninhabitable. The UN Human Rights Committee found the complaint admissible on the basis that "for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of Kiribati and on the security situation on the islands, he faced a real risk of impairment to his right to life under article 6 of the Covenant".^{cxlv} After considering the merits of the complaint, **however**, the Committee concluded that "without prejudice to the continuing responsibility of the State party to take into account in future deportation cases the situation at the time in Kiribati and new and updated data on the effects of climate change and rising sea levels thereupon, the Committee is not in a position to hold that the author's rights under article 6 of the Covenant were violated upon his deportation to Kiribati in 2015".^{cxlvi} In *Sacchi et al. v Argentina, Brazil, France, Germany and Turkey*, the UN Committee on the Rights of the Child, the applicants alleged that the respondents had violated children's rights under the UN Convention on the Rights of the Child by making insufficient cuts to greenhouse gas emissions and failing to use available tools to protect children from the adverse effects of climate change. The complaint was found inadmissible for failure to exhaust local remedies, though the Committee made extensive obiter remarks, including on extraterritorial jurisdiction and reasonably foreseeable harm.^{cxlvii} In September 2022, the UN Human Rights Committee found that Australia's failure to adequately protect Indigenous Peoples in the Torres Islands against adverse impacts of climate change amounted to a breach of Article 17 (right to respect for private, family and home life) and 27 (rights of ethnic, religious or linguistic minorities) of the ICCPR **but found no violation of the right to life**.^{cxlviii}

Commented [A257]: UK
Please provide complete finding here for accuracy.

Page 17 - §§ 47, 48

UN special procedures have addressed human rights and environmental concerns^{cxlix}. The HRC established the mandate for the Independent Expert on human rights and the environment in 2012^{cl} which was subsequently extended and converted to a Special Rapporteur in 2015.^{cli} The mandate of the UN Special Rapporteur on human rights and the environment is to "examine the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; promote best practices of the use of human rights in environmental policymaking; identify challenges and obstacles to the global recognition and implementation of the right to a safe, clean, healthy and sustainable environment; and conduct country visits and respond to human rights violations".^{clii} In 2018, the Special Rapporteur presented **the** Framework Principles on Human Rights and the Environment, which set out the Special Rapporteur's understanding of "basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment"^{cliii} and considers "the next steps in the evolving relationship between human rights and the environment".^{cliv} A series of reports have also been published by the current and former Special Rapporteur on human rights and the environment.

Commented [A258]: UK
Typographical suggestions

The United Nations Guiding Principles (UNGPs) can be considered the milestone document on the responsibility of businesses to respect human rights. The UNGPs **ss** rest on three pillars: (1) States' existing obligation to respect, protect and fulfil human rights and fundamental freedoms ("the State duty to protect human rights"); (2) corporate responsibility to respect human rights, including the exercise of due diligence ("the corporate responsibility to respect human rights"); and (3) the responsibility of States and business enterprises to ensure those affected by human rights abuses have access to effective remedy ("access to remedy"). The UNGPs and the OECD Guidelines on Multinational Enterprises on Responsible Business Conduct^{clv} are the main international standards for responsible business conduct. The OECD Guidelines, updated in 2023, recommend that enterprises conduct due diligence to assess and address adverse human rights and environmental impacts associated with their operations, products and services. Chapter VI on the environment is aligned with the business responsibility to respect human rights established in the UN Guiding Principles on Business and Human Rights, and sets out the

expectation that enterprises conduct due diligence on environmental impacts, including in relation to climate change and biodiversity. Moreover, adherent States to the OECD Guidelines are obliged to establish a National Contact Point to serve as a non-judicial grievance mechanism in cases of alleged violations

Page 18 - §§ 51, 52, 53

Under Article 2 (the right to life) and Article 3 (prohibition of inhuman or degrading treatment), the Court has examined situations concerning dangerous industrial activities; exposure to nuclear radiation; industrial emissions, natural disasters and passive smoking in prison. Under Article 6(1) (right to a fair trial), the Court has addressed the issue of access to court concerning environmental matters and the failure to enforce final judicial decision on those matters. The Court's caselaw under Article 8 (right to respect for private and family life and home) concerns issues such as environmental risk and access to information; industrial pollution; noise pollution; mobile phone antennas; emission from diesel vehicles; soil and water contamination; urban development; or waste collection, management, treatment and disposal. Under Article 10 (freedom of expression), the Court has examined issues concerning the freedom to receive and impart information on environmental matters and under Article 11, (freedom of assembly and association) it has dealt with the freedom of assembly and association to pursue collective action in environmental matters. The Court's caselaw on Article 1 of Protocol No.1 to the Convention (protection of property) covers issues from the obligation to tolerate hunting on the land owned by those who object to hunting on ideological grounds to States' positive obligations concerning the protection of property in case of natural disasters. Under Article 13 (the right to an effective remedy), the Court has examined the issue of the right to an effective remedy for alleged violations of the substantive rights listed above.

It should be noted that the Court develops its interpretation of the text of the Convention and its Protocols in response to legal, social, ethical or scientific developments, by application of the "living instrument doctrine" according to which "the Convention [...] must be interpreted in the light of present-day conditions".^{clvi} This ~~could allow~~ the Court to respond to evolving standards, new challenges if their subject-matter falls within the scope of the Convention.^{clvii}

As demonstrated above, the Convention protects the environment only insofar as it has an impact on Convention rights.^{clviii} ~~The operation of the procedural requirements and the application of the substantive standards for bringing a case before the Court limit the extent of indirect protection.~~ The following section will examine the operation of the procedural requirements and substantive standards in environmental cases. The scope and application of some of these procedural requirements and substantive standards is currently at issue in climate litigation before the Court.^{clix}

Page 19

b) Operation in Environmental Cases of the Court's Procedural Requirements in Environmental Cases

Commented [A259]: UK

This paragraph would benefit from footnotes to the relevant case law.

Commented [A260]: UK

This paraphrases the case law footnoted, for greater precision.

Commented [A261]: Suggest leaving this analysis out of this paragraph - it is dealt with below. The report should also set out the reasons for these safeguards, if it is to point out the disadvantages of them. We have provided comments on this previously, should you need assistance on those points.

Commented [A262]: UK

This is presumably what is intended here so tidying up for sense.

§ 55

The first procedural requirement for introducing an application before the Court concerns jurisdiction. Article 1 of the Convention states that a Contracting Party must 'secure' the protected rights and freedoms to persons within its "jurisdiction". National jurisdiction under Article 1 is primarily territorial, i.e. the victim is within the national territory of the State. If the victim is outside a State's territory, extraterritorial jurisdiction may exceptionally be established if (i) the State exercises power (or control) over the victim (personal concept of jurisdiction), or (ii) the State exercises effective control over the territory in which the alleged violation occurs (spatial concept of jurisdiction).^{clx} The Convention's jurisdictional requirements ~~may limit its competence to address environmental cases, in particular are currently at issue~~ in cases of transboundary environmental harm, where pollution originating in one state has an impact on individuals in another.

Commented [A263]: UK

Please keep this section neutral / factual, rather than assume the position of one party in ongoing litigation.

- c) ~~Application to Environmental Cases of Substantive Convention Standards to Environmental Cases~~^{clxi}

Commented [A264]: UK

As above.

§ 58

The first substantive standard concerns the **applicability** of Convention rights. In the case of *Kyrtatos v. Greece*, the Court rejected claims arising from the destruction of a wetland adjacent to the property of the applicants, on the ground that "neither Article 8 nor any of the other Articles of the Convention are specifically designed to provide general protection of the environment as such".^{clxii} The Court recalled "its established case-law, that severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health."^{clxiii} It stated that, "even assuming that the environment has been severely damaged by the urban development of the area, the applicants have not brought forward any convincing arguments showing that the alleged damage to the birds and other protected species living in the swamp was of such a nature as to directly affect their own rights".^{clxiv} Article 8 of the Convention is thus not applicable every time environmental harm or the risk thereof occurs.^{clxv} This jurisprudence is an expression of the general principle that Convention rights are only applicable if individuals are directly affected. The applicant must demonstrate a risk of an actual or imminent violation of their rights under the Convention that would cause them actual or potential harm. In the environmental context, individuals are considered to be "personally affected" by the measure in question if they find themselves in a situation "of high environmental risk", in which the environmental threat "becomes potentially dangerous for the health and well-being of those who are exposed to it".^{clxvi}

Page 20 - §§ 59, 60

The second substantive standard concerns the **establishment of a Convention violation**. It is argued that in environmental cases in general, and pollution cases in particular, evidentiary difficulties arise due to the complex interlinkages between environmental harm and the health risks or effects that an applicant must demonstrate. These challenges have been recognised by the Court in, for example, cases of pollution when it stated that "severe pollution adversely affect public health in general, [...] it is often impossible to quantify its effects in each individual case, and distinguish them from the influence of other relevant factors, such as age, profession, etc."^{clxvii} For the Court, in assessing evidence, the general principle has been to apply the standard of proof "beyond reasonable doubt"; such proof may follow from "the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact."^{clxviii} The Court may not always apply the principle that the party making an allegation must prove that allegation, however, notably in circumstances where only the respondent Government has access

to information capable of corroborating or refuting the applicant's allegations.^{clxix} While the Court has emphasised the importance of the precautionary principle in Tatar,^{clxx} in newer cases the Court has not developed further its use of this principle.^{clxxi}

A third substantive consideration is the weight given to environmental matters in **the “fair balance” review** of the Court. The Court considers that the protection of the environment, nature, forests, the coastline, threatened species, biological resources, the heritage and public health are matters of public interest. Therefore, an environmental argument can be used to justify interference with certain rights^{clxxii} for example the right to respect for property.

Page 20 - § 62

As to the Charter, while it does not explicitly contain a right to a healthy environment as such, the European Committee on Social Rights (ECSR) through its activity of monitoring and interpreting the Charter, has been able to clarify and put into practice the relationship between environmental protection and social rights, in particular, with regard to the application and interpretation of the right to protection of health, which is enshrined in Article 11 of the Charter. That article obliges States to take appropriate measures to remove as far as possible the causes of ill health, and to prevent epidemic, endemic and other diseases. According to the ECSR, this means that public health systems must respond appropriately to avoidable health risks, i.e. risks that can be controlled by human action which include environmental threats. Consequently, the ECSR has interpreted the right to protection of health to include the right to a healthy environment.

Page 22 - § 67

The Charter protects the environment only insofar as it has an impact on Charter rights. ~~The procedural and substantive requirements for bringing a case before the Committee limit the extent of indirect protection.~~ The following section will examine the operation of these requirements in environmental cases as far as it is possible considering the limited number of cases on the issue.

Commented [A265]: If this sentence is included, then the report should also set out why these safeguards are in place to provide balance to the analysis. Failing that, suggest deletion.

Page 23 - § 71

Building on the UNGPs, within the Council of Europe, the CM/Rec(2016)3 on human rights and business expresses commitment to the national implementation of the UN Guiding Principles on Business and Human Rights, by aiming to provide specific guidance so as to assist member States in preventing and remedying human rights violations abuses by business enterprises and also insists on measures to induce business to respect human rights. The Recommendation elaborates on access to judicial remedy and puts special emphasis on the additional protection needs of workers, children, Indigenous Peoples and human rights defenders.

Commented [A266]: UK
The consensus term used for businesses is "abuses" since only States (as duty bearers) can commit "violations".

Page 24 - § 75

Significant (upcoming) EU instruments include the Non-Financial Reporting Directive (NFRD), the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDDD). The aim of the latter Directive is to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance and will aim to ensure that businesses address adverse impacts of their actions, including in their value chains inside and outside Europe.

Commented [A267]: UK
The Rapporteur notes that the CSDD is still not adopted and it is unclear at this stage whether it will ever be adopted.

Page 25 - § 79 – split in two §

The right to a healthy environment also appears in certain environmental agreements regulating rights of access to environmental information, public participation in environmental decision-making, and access to justice in environmental matters: the Aarhus Convention^{clxxiii} at the European level^{clxxiv}, and, more recently, the Escazú Agreement^{clxxv} at the Latin American and Caribbean level.

The aim of the Aarhus Convention is to contribute to the protection of “the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” by each Party guaranteeing “the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention (art. 1). There are divergent views on whether the Aarhus Convention codifies procedural components of the right to a healthy environment.

Commented [A268]: UK
Separate paragraphs for readability.

Page 26 - §§ 80, 82

Resolutions of international and regional organisations have also recognised some form of the right. The beginning of the debate on a right to a healthy environment in the UN political process is generally traced back to the Stockholm Declaration on Environment of 1972.^{clxxxvi} In 2021 “the right to a clean, healthy and sustainable environment” was politically recognised at the level of the United Nations,^{clxxxvii} in the Human Rights Council Resolution 48/13 of October 2021 (HRC Res 48/13),^{clxxxviii} which was followed by General Assembly Resolution 76/300 in July 2022 (GA Res 76/300).^{clxxxix} HRC Res 48/13 recognises the right to a clean, healthy and sustainable environment as a human right that is “important for the enjoyment of human rights”; notes that is “related to other rights and existing international law”,^{clxxx} and affirms that the promotion of the right requires the full implementation of the multilateral environmental agreements under the principles of international environmental law. In its essential elements^{clxxxxi}, GA Res 76/300 – co-sponsored by more than 100 States and adopted with 161 votes in favour to none against with eight abstentions – differs only marginally from the wording of the HRC Res 48/13.

Commented [A269]: UK
There has clearly been evolution in thinking since Stockholm so we suggest we should recognise that nuance here.

Decisions adopted in the context of certain environmental agreements also refer to the right to a healthy environment. In the Sharm el-Sheikh Implementation Plan adopted by consensus at the 27th Conference of the Parties to the UN Framework Convention on Climate Change (COP-27), and the UAE Consensus, which has, at its heart, the first Global Stocktake (GST), adopted by consensus at the 28th meeting of the Conference of the Parties to the UN Framework Convention on Climate Change (COP-28)^{clxxxii}, the States reiterated their acknowledgement that “[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on [...] the right to a clean, healthy and sustainable environment [...]”.^{clxxxiii} Similarly, the Parties to the Convention on Biological Diversity (CBD), in the Kunming-Montreal Global Biodiversity Framework adopted at the 15th Conference of the Parties to the CBD, explicitly acknowledged the right as adopted-set out in UNGA Res 76/300 and stressed that the Framework should “follow a human rights-based approach respecting, protecting, promoting and fulfilling human rights”.^{clxxxiv}

Commented [A270]: UK
For linguistic precision (one adopts a resolution perhaps but this refers to the right) / to reflect the fact that the framework “acknowledges” the human right to a clean, healthy and sustainable environment and then a footnote simply gives the reference to the UNGA

Page 29 - §§ 90, 91

Although ~~the~~ right to a clean, healthy and sustainable environment has been recognised politically at global level in UN General Assembly Resolution 76/300, However, this right is not yet protected as such in a treaty either at global or European level.^{clxxxv} This means that there is not yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”^{clxxxvi} of the right.

Commented [A271]: For sense

There are some commonalities in substance between instruments. These comparisons can be found in the table under appendix III, with reference to ~~contain the suggested~~ elements listed in the UN SR’s Framework Principles. However, the constituent elements of the right have not yet been the subject of international negotiations.

Commented [A272]: For sense.

Page 30 - § 95

~~Some form of t~~The right to a healthy environment is recognised at national level as a human right^{clxxxvii} in multiple Council of Europe member States.^{clxxxviii} Most of them qualify the right by including a reference to human well-being and/or human quality of life in the relative provisions, using formulae such as a “healthy environment”^{clxxxix} or an environment “favorable/conducive to health”^{cxc}. Other member States use adjectives such as “benevolent”^{cxcI} or “habitable”^{cxcii} in relation to the environment and “decent”^{cxciii} or “enjoyable”^{cxciv} in relation to the quality of life. Rights holders are always human beings; no member State defines the environment or nature itself as a legal subject entitled to protection. In almost all of these member States, the Supreme and/or Constitutional Courts play an important role in applying and developing the right to a healthy environment.

Commented [A273]: UK

Practice / formulations diverge, as the section sets out.

Page 32 - §§ 102, 104

There is no explicit legally binding recognition of the right to a healthy environment in international law generally and, in particular, within the Council of Europe’s framework. As explained above, unlike Europe, other regional human rights systems have already recognised the right to a healthy environment (see paragraphs 89 – 97 above). ~~Establishing a clear i legal recognition of basis for the right would clarify the relationship between environmental protection and human rights and would reinforce the understanding that human rights norms require can be enhanced by the protection of the environment, and that environmental protection aligns with the protection depends on the exercise of human rights.~~

Commented [A274]: UK

More commonly used terminology

Commented [A275]: UK

For consistency: this relates to the indirect protection points made above.

Commented [A276]: UK

Environmental protection does not depend on human rights protections (this is why Paris Agreement specifically states that any climate action must adhere to human rights obligations).

Another line of argumentation focuses on ~~perceived limitations~~ in the human rights’ system and in particular the system of the Convention and the Charter.

Commented [A277]: UK

As set out above, not everyone views these as limitations.

Page 33 - §§ 106, 107

There are different instruments on business and human rights, such as the UNGPs, the OECD Guidelines for Multinational Enterprises or CM/Rec(2016)3 on human rights and business. Further environmental and human rights due diligence standards for business enterprises ~~are still undercould be developed~~ ~~ment at en~~ international, regional and national levels.^{cxcv} It has been argued that a new instrument containing comprehensive environmental human rights due diligence standards for companies and in particular provisions on access to remedies could enhance the responsibility or accountability of businesses. An international ~~legally binding~~ mechanism that could provide victims of corporate environmental human rights violations with access to a remedy, such as some form of alternative dispute resolution, does not yet exist. It has been argued that these elements could potentially be addressed by the Council of Europe, while emphasizing and strengthening synergies with existing systems and instruments such as the UNGPs, the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Business Conduct, applicable regional agreements, existing legislation at national and EU level and sectoral approaches, taking into account developments at international level such as the work of the UN Open-Ended Working Group on transnational corporations and other business enterprises with respect to human ~~rights~~.

Commented [A278]: UK

It may be useful to include the Working Group on Business and Human Rights info note on climate change and the UNGPs: [Climate change and the UNGPs | OHCHR](#).

- v. ~~Ensuring Improving accountability measures for that rights’ holders receive greater protection of their rights against the impacts of environmental degradation and the effects of the triple planetary crisis~~

Commented [A279]: UK

As written, it implies there are rights against environmental degradation. Using the language from the explanation below (greater accountability). This is what we are talking about when evaluating instruments against this rationale.

Another rationale that has been put forward is to ensure that rights holders can seek ~~greater~~ accountability for violations of the right to a healthy environment. A new instrument or instruments on human rights and the environment could create a legal framework that provides rights holders

with procedural tools to enforce the right to a healthy environment, thereby providing accountability for States' actions or inactions that violate the right which in turn could contribute to preventing violations of this right. These preventative and protective aspects of the right are particularly important for those who are most at risk from environmental harm, including women, children, young people, Indigenous Peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other groups in vulnerable situations.

Page 34 - § 110

Despite the legal protection offered by different human rights systems, ~~environmental human rights-defenders~~ are a ~~group at particularly high-risk from killings, threats, and intimidation - group of human rights defenders in the world.~~^{cxvii} Many human rights bodies and organisations, including the Council of Europe Commissioner for Human Rights,^{cxviii} have issued recommendations as to how stakeholders might better protect and support their work.^{cxviii} The Meeting of the Parties to the Aarhus Convention decided in 2021 to establish a rapid response mechanism to protect environmental defenders, and decided in June 2022 to elect Michel Forst, the former UN Special Rapporteur on human rights defenders, to be the first special rapporteur in this new system. Recognising the right to a healthy environment could serve as a catalyst for establishing a safe and enabling environment for environmental ~~human rights-defenders~~ as human rights defenders. This could have many tangible impacts in policymaking, in practice for example, by allowing bringing environmental ~~human rights-defenders~~ into the scope of policies and to access programmes designed for human rights defenders.

Page 37 - § 120

- (i) **Model I (basic model): a protocol to the Convention establishing codifying the right to a healthy environment in general terms**

This proposal would simply set out ~~codify~~ the right to a healthy environment in general terms. It would not specify its constituent elements or involve additional elements relating to the operation of procedural requirements and the application of substantive standards.

Page 38 - § 123

This model would also allow member States actively and directly to shape the content of the right. The further development by the Court of its jurisprudence on the application of existing Convention rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of a new Convention right to a healthy environment.

Page 39 - § 126

By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. Under the current understanding of territorial jurisdiction, the potential transboundary causes of some environmental harm may leave victims unable to bring these applications before the Court.^{cxix} Amendments to the rules on jurisdiction addressing such issues could be envisaged, so as to make more effective the protection of individuals' right to a healthy environment more comprehensive. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive

Commented [A280]: UK

The report referenced also uses 'environmental defenders'

Commented [A281]: UK

The Global Witness papers don't actually say this (although other documents do (Frontline Defenders) - these instead/as well could be referenced).

Rather, the Global Witness papers examine the high rates of threat, killing and intimidation to environmental defenders and provides recommendations that would promote and enable environmental defenders to do their work more safely. One way to do this is to afford them the recognition/status of human rights defenders (this could be achieved through a right to a healthy environment).

This makes the argument stronger for why there may be a need for a right to a healthy environment (and what it would change)

Commented [A282]: UK

Footnote needs updating with the latest report from 2023 (Standing Firm).

Commented [A283]: Suggest establishing here because there is no agreed form of the right (as set out above).

Commented [A284]: UK

May be helpful to point to precedents for this or lack thereof if none exist.

Commented [A285]: UK

This understates the scope and reach a right to a healthy environment could have without any changes to territorial jurisdiction.

Commented [A286]: UK

The right to a healthy environment could offer effective protection without changes to territorial jurisdiction. These changes however could make the right more comprehensive.

obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 39

[NEW PARA AFTER § 128] Furthermore, Court jurisdiction may not be politically viable in some States and this is particularly likely in the case of a Protocol that is unprecedented in its scope. The number of States who ratify the Additional Protocol may limit its effectiveness. A 'softer' instrument may in the end have more impact as more States will ratify and incorporate into State legislation and State practice.

- Formatted: Font: 11 pt
- Formatted: Font: Not Bold
- Formatted: Normal
- Formatted: Font: 11 pt

Page 42 - § 135

This proposal would ~~codify~~ establish/set out the right to a healthy environment including its possible constituent elements (see paragraphs 83-90) without any additional elements.

- Commented [A287]: UK
Request to add further argument as better state adoption supports wider norm setting. If an instrument is not adopted across Council of Europe member states, then this could damage its effectiveness.
- Formatted: Font: 11 pt

Page 43

✗ Enhancing protection for human rights defenders working on environmental matters

- Commented [A288]: UK
Global change.

Page 44

✗ Enhancing protection for human rights defenders working on environmental matters

- Commented [A289]: UK
Suggest this is a yellow tick. By codifying the right to a healthy environment, it would make the case that environmental defenders are human rights defenders. Yellow because the accountability/effectiveness could be challenged.

Page 45 - § 141

Finally, the process of adopting a new protocol, and its entry into force, can be lengthy.^{cc}

- Commented [A290]: UK
As above, could be yellow / orange

Page 46

✗ Addressing the operation of procedural requirements and substantive standards European human rights law

- Commented [A291]: UK
Could include considerations re breadth of ratifications here too.

✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities

- Commented [A292]: UK
This could be orange at least.

✗ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis

- Commented [A293]: UK
This should be orange / green - by defining the right, individuals have greater certainty about what they can expect and governments have greater clarity about what they should domesticate in national law. Above the report says there is a correlation between international law and domestication after all.

✓ Enhancing protection for human rights defenders working on environmental matters

✓ Improving national protection of the right to a clean, healthy and sustainable environment

✗ Responding to the expectations of civil society

- Commented [A294]: UK
This could be orange. It is a partial response at least

Page 47

✗ Addressing the operation of procedural requirements and substantive standards European human rights law

- Commented [A295]: UK
In theory it could address both at least partially, as the introduction sets out. This should be green / orange.

§ 149, 150

A new convention is not subject to the ECHR or ESC systems and would provide the opportunity for States to create an instrument that States would deem feasible. For States for which an Additional Protocol with Court jurisdiction is not politically viable, the Convention offers a strong alternative with an extensive range of negotiable options to determine an effective yet workable mechanism. A new convention could be opened for signature and ratification by Council of

Europe member States, as well as non-Council of Europe member States. Thereby its standards could have influence beyond Europe. This would make its potential geographic reach broader than a Protocol.

In case of option (iii), if a compliance mechanism is included (which would arguably be important for the effective protection of human rights and the environment), member States would have to fund such a body and its activities. The establishment of a new convention with new institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. ~~However, without a compliance mechanism, the new convention would be in addition to the many existing international instruments that lack the authoritative force of a binding control mechanism such as the Court, resulting in a loss of effectivity for the new convention.~~ Finally, the process of adopting a convention, and its entry into force, can be lengthy.

Commented [A296]: They are still international legal obligations and e.g. an inter-State / State monitoring mechanism is not toothless.

Page 48 - § 156

However, while monitoring based on dialogue may encourage governments to take the necessary action to address the triple planetary crisis, it would not be able to provide accountability for human rights violations and ensure better protection of human rights impacted by that rights' holders are not deprived of their fundamental rights due to the effects of environmental degradation and the triple planetary crisis.

Commented [A297]: UK
To match the rationale this corresponds to.

Page 49 - § 157

Non-binding monitoring may be ~~considered~~ more easily introduced in an area where complex domestic policy choices need to be made, such as allocation of economic cost for reduction measures or the appropriate level of environmental protection. To that end, a standalone monitoring mechanism whose work is based on dialogue could provide technical advice and support to member States on cross-cutting issues such as human rights and the environment. Either type of mechanism (ECRI-type or Commissioner-type) would also enable dialogue and engagement to begin much more rapidly than would occur through negotiation of new legal instruments. It is important to note, however, that without an associated normative instrument, it may be uncertain which substantive standards would be monitored by the new body.

Commented [A298]: UK
Could it complement another instrument?

Page 50 - § 164

~~While including~~ environmental protection in the ~~Court's~~ preamble of the Convention would provide additional legitimacy to ~~its~~ the Court's environmental jurisprudence and could encourage its further development in accordance with the existing procedural requirements and substantive standards. However, this option – even with an explanatory memorandum clarifying the aim of the addition – would leave States with no possibility to shape the way the Court will use the addition to the preamble, other than pleading in favour of certain interpretations as a respondent or third party.

- × Ensuring that rights' holders are not deprived of their fundamental human rights due to environmental degradation and the triple planetary crisis
- × Enhancing protection for human rights defenders working on environmental matters
- × Improving national protection of the right to a clean, healthy and sustainable environment
- × Responding to the expectations of civil society

✗ Fulfilling the Council of Europe's mandate

Commented [A299]: UK

We question whether a number of these should be red / could be at least orange.

Page 52

✗ Ensuring that rights' holders are not deprived of their fundamental human rights due to environmental degradation and the triple planetary crisis

✗ Enhancing protection for human rights defenders working on environmental matters

✗ Improving national protection of the right to a clean, healthy and sustainable environment

✗ Responding to the expectations of civil society

✗ Fulfilling the Council of Europe's mandate

Commented [A300]: UK

As above - we question whether all of these need to be red.

Page 53

✓ Enhancing protection for human rights defenders working on environmental matters

Commented [A301]: UK

Here it's a yellow tick, but in the next option (which is the same plus specifics on its definition) is a red cross. Suggest this is changed to a red X.

Unless the RHE is codified on the same level as other human rights in the European system, those defending the environment (i.e. their right to a healthy environment) are not necessarily human rights defenders.

§ 176

A new Council of Europe recommendation could also detail constituent elements of the right to a healthy environment. Moreover, it could serve as a catalyst for future binding codification work. Such an instrument could give States an opportunity to negotiate and determine a common understanding of the definition, scope and content of the right and subsequently harmonise their implementation of the right at national levels. This process is likely to be quicker and more consensual than elaborating a treaty.

Page 54

✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis

Commented [A302]: UK

Should this be a yellow tick (as above)?

✗ Addressing the operation of procedural requirements and the application of substantive standards in European Human Rights Law

Commented [A303]: UK

Query whether this should be a red cross. It could at least consider the requirements in the environmental context in more detail.

✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [A304]: UK

Again, this could be a yellow tick - it could expand on the UNGPs / elaborate expectations for business.

✗ Ensuring that rights' holders are not deprived of their fundamental human rights due to environmental degradation and the triple planetary crisis

Commented [A305]: UK

This denies the power of soft law.. Could be a yellow tick.

✗ Enhancing protection for human rights defenders working on environmental matters

✗ Improving national protection of the right to a clean, healthy and sustainable environment

Commented [A306]: UK

As above.

§ 178

Recommendations are not subject to ratification; they are adopted by consensus. The process of negotiating and adopting a recommendation is usually less labour and resource intensive than the adoption of binding instruments. Soft law norm building can help to build momentum in novel and / or contentious areas.

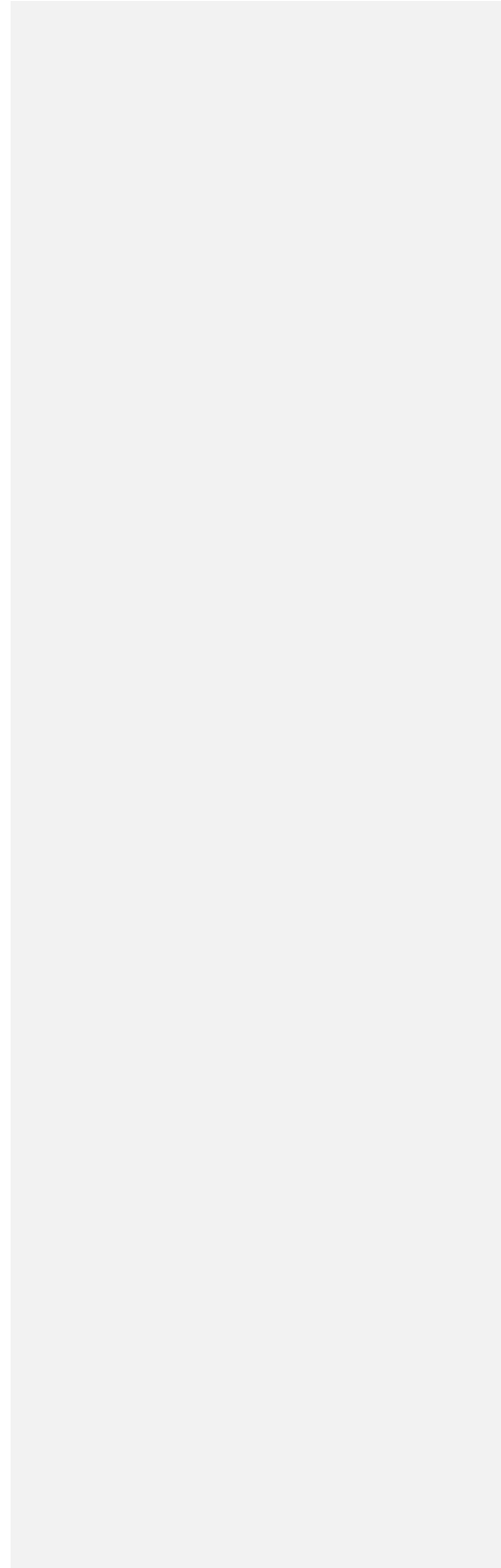
Page 56 - § 188, 190

This approach would ~~also~~ be time and resource intensive. Furthermore, the practical challenge of establishing clear delineations between the two systems may impede on the effectiveness of this approach.

This approach would also be time and cost ~~intensive~~sensitive due to the need to harmonise on various levels as explained above concerning the option to adopt additional protocols to both the ECHR and ESC.

PARLIAMENTARY ASSEMBLY / ASSEMBLÉE PARLEMENTAIRE

1. L'Assemblée rappelle que l'enjeu post-Reykjavik réside dans la formalisation d'un droit à un environnement sain sur le plan juridique et féliciter le CDDH-ENV pour sa contribution substantielle à cette formalisation malgré les termes très limités de son mandat. Cela étant dit, l'Assemblée regrette que le mandat du CDDH-ENV ait glissé au cours de ses travaux d'une « étude de faisabilité » vers une « étude de nécessité », ce qui biaise la neutralité apparente du rapport.
2. L'Assemblée regrette que la posture du rapport final reflète la composition intergouvernementale du groupe de rédaction et de la méthode de consultation par les délégations d'une multitude d'acteurs au niveau national. D'une part, la lecture du rapport laisse transparaître, malgré la volonté affichée de neutralité, un réel self-restraint face à ce que pourraient représenter de nouveaux standards. D'autre part, l'architecture du rapport est très compliquée, ce qui rend sa lecture difficile.
3. L'Assemblée remarque que les conclusions ressemblent plus à un résumé introductif qu'à de réelles conclusions et propose qu'un paragraphe plus assertif soit rajouté. Celui-ci pourrait être formulé comme suit : « Le Comité rappelle que les chefs d'État et de gouvernement du Conseil de l'Europe ont appelé, dans la Déclaration finale de Reykjavík, à la reconnaissance *politique* du droit à un environnement propre, sain et durable en tant que droit de l'homme. Le présent rapport dépasse cet appel en analysant plusieurs scénarios en vue de formaliser la reconnaissance *juridique* de ce droit. A cet égard, l'approche des délégués pourrait se donner un cap consistant à ne jamais perdre de vue que tous les Etats membres du Conseil de l'Europe ont voté la Résolution 76/300 de l'Assemblée générale des Nations Unies « Droit à un environnement propre, sain et durable » et qu'il n'est à tout le moins pas opportun que le Conseil de l'Europe en réécrive le contenu sous une forme non-contraignante.
4. L'Assemblée rappelle qu'entre 2021 et 2022, le Conseil des droits de l'homme et l'Assemblée générale des Nations unies ont adopté des résolutions reconnaissant explicitement le « droit à un environnement propre, sain et durable ». Cette reconnaissance s'aligne sur l'évolution des instruments régionaux des humains qui consacrent déjà ce droit. Dans le sillage de ces évolutions, le Conseil de l'Europe fait figure d'exception : il est le seul système régional des droits humains qui n'a pas encore formellement reconnu ce droit. Dans la foulée de la Résolution 2396(2021) et la Recommandation 2211(2021) « Ancrer le droit à un environnement sain : la nécessité d'une action renforcée du Conseil de l'Europe », l'Assemblée adoptera prochainement son rapport d'étape sur la mise en œuvre des engagements pris à Reykjavik en matière environnementale, y compris ses attentes par rapport au suivi des travaux du CDDH-ENV. Ce sera une occasion de marteler son (r)appel à combler le retard du Conseil de l'Europe.



**CONGRESS OF LOCAL AND REGIONAL AUTHORITIES / CONGRÈS DES POUVOIRS
LOCAUX ET RÉGIONAUX**

Version EN:

In 2022, the Congress of Local and Regional Authorities adopted a report^[1] encouraging local authorities to abide by their existing human rights and environmental obligations by developing specific local strategies. The report recognising that "adopting a human rights-based approach to the protection of the environment and sustainable development and delivering a resilient and sustainable ecosystem is [...] a shared responsibility of local, regional and national authorities" also calls on national governments to strengthen awareness among local authorities of their role in environmental protection. **It also proposes to take steps towards the preparation of a draft additional protocol to the European Charter on Local Self-Government in order to guarantee the commitment of member States to ensure local governance that protects environmental rights by increasing awareness of local and regional authorities on those issues.**

Version FR :

En 2022, le Congrès des pouvoirs locaux et régionaux a adopté un rapport^[2] encourageant les autorités locales à se soumettre à leurs responsabilités existantes en matière de droits humains et d'environnement en développant des stratégies spécifiques sur le plan local. Le rapport reconnaît qu'« en adoptant une stratégie de protection de l'environnement et de développement durable fondée sur les droits de l'homme, ainsi qu'en mettant en place un écosystème résilient et durable, il en va [...] d'une responsabilité partagée des autorités locales, régionales et nationales », et recommande également aux autorités nationales de sensibiliser les autorités locales à leur rôle en matière de protection de l'environnement. **Il propose également de prendre des mesures en vue de l'élaboration d'un protocole additionnel à la Charte européenne de l'autonomie locale afin de garantir l'engagement des États membres à assurer une gouvernance locale qui protège les droits environnementaux en sensibilisant les autorités locales et régionales à ces questions.**

SOCIAL RIGHTS / DROITS SOCIAUX

Page 7 - § 12

- added wording for accuracy because it was not clear from initial text that PACE

In 1970, with subsequent efforts in 1990, 1999, 2003 and 2009, the Parliamentary Assembly of the Council of Europe attempted to address the relationship between human rights and the environment by proposing an additional protocol to the European Convention on Human Rights. The Parliamentary Assembly has adopted a number of relevant resolutions and recommendations, in particular: Resolution 2286 (2019) on "Air pollution: a challenge for public health in Europe", Resolution 2415 (2022) and Recommendation 2219 (2022) on "Inaction on climate change – A violation of children's rights", Resolution 2398 (2021) and Recommendation 2213 (2021) on "Addressing issues of criminal and civil liability in the context of climate change", Resolution 2477 (2023) and Recommendation 2246 (2023) on the "Environmental impact of armed conflicts", in addition to Resolution 2396 (2021) and Recommendation 2211 (2021) on "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe". Recommendation 2211 (2021), contains four proposals for strengthening the Council of Europe legal instruments, namely: to simultaneously draw up (1) additional protocols to the Convention and (2) to the Charter, (3) to prepare a feasibility study for a convention on environmental threats and technological hazards threatening human health, dignity and life and^(c)(4) to revise Recommendation CM/Rec(2016)3 on human rights and business with a view

to strengthening corporate environmental responsibility for the adequate protection of the human right to a safe, clean, healthy and sustainable environment.^{ccii} It is important to note that PACE Recommendation 2211 (2021) includes a proposed text for an additional protocol to the Convention, concerning the right to a “safe, clean, healthy and sustainable environment”.^{cciii} The Parliamentary Assembly of the Council of Europe has also established a Network of Contact Parliamentarians for a healthy environment,^{cciv} which aims to anchor the right to a clean, healthy and sustainable environment in law, policy, practice and public awareness in Europe and beyond. The Assembly advocates the right to a “safe, clean, healthy and sustainable environment”. Adherence to the four adjectives was renewed on the occasion of the adoption of Resolution 2493 (2023) and Recommendation 2251 (2023) on “Policy strategies for preventing, preparing for and responding to natural disasters”. Through the latter Recommendation, the Assembly firmly reiterates its previous call from Recommendation 2211 (2021) and asks the Committee of Ministers to draw up additional protocols to the Convention and to the Charter on the right to a “safe, clean, healthy and sustainable environment”.

- Recommendation 2251(2023) calls for additional Protocols to the Convention and the Charter on the RHE which we believe it is more important than just the reference to the 4 adjectives.

Page 22 - § 69

- changed the wording to reflect the exact clause in Article 1 of the Appendix to the Charter as the previous wording was inaccurate.

The second procedural requirement concerns personal scope. According to the Appendix to the Charter,^{ccv} the persons covered by the Charter include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. The States Parties are not obliged to apply the provisions of the Charter to persons who are not their own nationals, nationals of other States Parties to the Charter or to those who do not regularly work or legally reside in the territories of the States Parties. However, the ECSR has considered, for example, that the restriction on the personal scope should not be read in such a way as to deprive foreigners coming within the category of irregularly present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity.

Commented [A307]: Social Rights: this wording reflects the exact wording of the Appendix to the Charter (the previous wording was inaccurate).

Page 44 - § 140

- some drafting suggestions to reflect the authoritative value of the decisions of the ECSR. Subject to national constitutional arrangements providing otherwise, dDecisions of the European Committee on Social Rights cannot be regarded as directly binding in a strict sense are non-binding on member States, therefore there is a higher risk of non-implementation as compared to binding judgments by a body such as the Court. The additional protocol to optional collective complaints procedure under the ESC would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment, with no requirement for the complainant to have exhausted domestic remedies or itself to be a victim of the alleged violation. A non-binding monitoring mechanism, combining a reporting procedure and a complaints procedure, may arguably be more appropriate in an area where difficult policy choices need to be made. In addition, rights already protected under the Charter reflect both positive and negative obligations, which would be suitable for the protection of the right to a healthy environment. In addition, the introduction of the right to a healthy environment to the Charter system may result in an increase of the caseload of the ECSR, which may as a result need additional financial resources.

Commented [A308]: Social Rights: This term is an oversimplification and even misleading. Insofar as they refer to binding legal provisions and are adopted by a monitoring body established by the Charter, the conclusions and decisions of the ECSR represent an authoritative interpretation of the Charter’s provisions. Please see suggested text.

Page 45 - § 142

- re. fragmentation of treatment of cases – this would not be an issue for the ECSR; in any case, under the Charter, the States can choose whether to accept certain substantive provisions and procedural mechanisms like the collective complaints procedure.

It is important to note, that a Model III additional protocol would require the ECSR to apply different standards in cases based on the right to a healthy environment. ~~This could potentially lead to fragmentation of the ECSR's treatment of cases, depending on the right involved.~~

Page 52 - § 173

- amendments to the Preamble to the ESC require the acceptance of all Parties through the simplified amendment procedure specified in Article J (4) of the Charter as it is explained in the suggested text.

Although the Charter is silent on the process of amending the preamble, ~~general rules of treaty law suggest that an amending protocol would be required and that it would have to be ratified by all States Parties to enter into force. amendments to the Charter are considered under Article J of the Charter which provides for a simplified procedure.~~^{ccvii} Because the preamble does not concern the extension of rights which can be accepted individually by the Parties, it could be amended similarly as Parts III to VI of the Charter which requires the acceptance by all Parties. Therefore, the amendment to the preamble does not necessarily require the adoption of an amending protocol.

~~The process of adopting an amending protocol to the Charter would be time consuming and costly~~

- Appendix II – corrected some language/typos in the table re. the Charter.

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONNER FOR HUMAN RIGHTS / HAUT COMMISSARIAT AUX DROITS DE L'HOMME DES NATIONS UNIES

Page 5 - § 4

As regards human rights and the environment, the European Convention on Human Rights (ECHR or the Convention) and the European Social Charter (ESC or the Charter), while not directly including environmental protection, have been applied with a view to guarantee the protection, the respect and the fulfilment of various rights in the context of environmental damage, as demonstrated respectively by the case law of the European Court of Human Rights (ECtHR or the Court) and the conclusions and decisions of the European Committee of Social Rights (ECSR).^{ccviii} These instruments have been applied in such a way as to ensure protection, respect and fulfilment of numerous rights against harm that emerges in the environmental context (often referred to as the “greening of human rights”). In the case of the Convention, applicants ~~rely~~ have relied on the right to life, the prohibition of inhuman and degrading treatment, the right to respect for private and family life and the home, right to property, and so-called participatory and procedural rights such as freedom of expression (including access to information), freedom of assembly, right to a fair trial (including access to a court) and the right to an effective remedy. In the case of the Charter, relevant provisions include the rights to just conditions of work, to safe and healthy working conditions, to protection of health, and to housing.

Page 6 - §§ 8, 9, 10

The Council of Europe's recent engagement with the issue of human rights and the environment has also been demonstrated through a series of high-level events, including two high-level conferences on environmental protection and human rights, one organised by the Georgian Presidency of the Committee of Ministers in February 2020 and the other by the Ministry of

Commented [A309]: Social Rights: This does not apply to the case law of the ECSR; the ECSR would develop the existing case law on the RHE, with no risks of fragmentation. Under the Charter, the States can choose whether to accept certain substantive provisions and procedural mechanisms like the collective complaints procedure.

Commented [A310]: Social Rights: This is in line with the interpretation of Article J of the Charter under treaty law. Nothing in Article J prevents Parties from using this Article to amend the preamble of the Charter, but the acceptance of the amendment by all the Parties would be necessary as for the amendment of Parts III to VI. This is confirmed by a legal opinion of DLAPIL.

Commented [BS311]: Past tense seems more appropriate as it does not preclude that applicants might rely on other rights in the future.

Foreign Affairs of Georgia and the European Court of Human Rights in October 2020. In April 2021, a high-level workshop was organised by the German Presidency of the Committee of Ministers in cooperation with the CDDH, on the topic "Environment, Human Rights and Business: a framework for addressing environmental protection challenges". This workshop stimulated dialogue on possible actions by the Council of Europe, including standard-setting work and greater engagement with private business actors, to support an enhanced understanding and full protection of human rights and the environment by businesses. On 3 May 2023, the Icelandic Presidency of the Committee of Ministers held a high-level conference on "The Right to a Clean, Healthy and Sustainable Environment in Practice". The conference provided important input for the work of the CDDH-ENV by presenting [examples of](#) the practical application of the right to a clean, healthy and sustainable environment in the domestic legal context both in Europe and globally.

In 2022, the Congress of Local and Regional Authorities adopted a report^{ccviii} encouraging local authorities to abide by their existing human rights and environmental obligations by developing specific local strategies. The report recognising that "adopting a human rights-based approach to the protection of the environment and sustainable development and delivering a resilient and sustainable ecosystem is [...] a shared responsibility of local, regional and national authorities" also calls on national governments to strengthen awareness among local authorities of their role in environmental protection. It also proposes to take steps towards the preparation of a draft additional protocol to the European Charter on Local Self-Government in order to guarantee the commitment of member States dealing specifically with [environmental rights](#) [the right to a healthy environment](#) at local level.

The 9th edition of the Council of Europe's World Forum for Democracy in November 2020 explored the question, "Can Democracy Save the Environment?" by discussing differing answers to the question of how to stop and reverse the damage done to the environment. recommendations were made to introduce the right to a clean, healthy and safe environment among the list of human rights protected by the Council of Europe, along with the inclusion of crimes against [such this](#) right in the criminal codes of the member States.

Page 7 - §§ 11, 12, 14

In February 2022, the Committee of Ministers held a thematic discussion on the issue of human rights and the environment [during its exchange of views with the United Nations \(human rights questions\)](#), with the participation of Mr David R. Boyd, UN Special Rapporteur on human rights and the environment. The same issue was the focus of an informal meeting of the Committee of Ministers organised by the Irish Presidency in October 2022.

In 1970, with subsequent efforts in 1990, 1999, 2003 and 2009, the Parliamentary Assembly of the Council of Europe attempted to address the relationship between human rights and the environment by proposing an additional protocol to the European Convention on Human Rights. The Parliamentary Assembly has adopted a number of relevant resolutions and recommendations, in particular: Resolution 2286 (2019) on "Air pollution: a challenge for public health in Europe", Resolution 2415 (2022) and Recommendation 2219 (2022) on "Inaction on climate change – A violation of children's rights", Resolution 2398 (2021) and Recommendation 2213 (2021) on "Addressing issues of criminal and civil liability in the context of climate change", Resolution 2477 (2023) and Recommendation 2246 (2023) on the "Environmental impact of armed conflicts", in addition to Resolution 2396 (2021) and Recommendation 2211 (2021) on "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe". Recommendation 2211 (2021), contains four proposals for strengthening the Council of Europe legal instruments, namely: to simultaneously draw up (1) additional protocols to the

Commented [BS312]: The title of the referenced report does not mention "environmental rights"

Commented [BS313]: Please double-check the reference. If only SR is present then this is not an exchange of views with the UN but rather with the UN SR, an independent expert appointed by the HRC.

Convention and (2) to the Charter, (3) to prepare a feasibility study for a convention on environmental threats and technological hazards threatening human health, dignity and life and^{ccix}(4) to revise Recommendation CM/Rec(2016)3 on human rights and business with a view to strengthening corporate environmental responsibility for the adequate protection of the human right to a safe, clean, healthy and sustainable environment.^{ccx} It is important to note that PACE Recommendation 2211 (2021) includes a proposed text for an additional protocol to the Convention, concerning the right to a "safe, clean, healthy and sustainable environment".^{ccxi} The Parliamentary Assembly of the Council of Europe has also established a Network of Contact Parliamentarians for a healthy environment,^{ccxii} which aims to anchor the right to a safe, clean, healthy and sustainable environment in law, policy, practice and public awareness in Europe and beyond. The Assembly advocates the right to a "safe, clean, healthy and sustainable environment". Adherence to the four adjectives was renewed on the occasion of the adoption of Resolution 2493 (2023) and Recommendation 2251 (2023) on "Policy strategies for preventing, preparing for and responding to natural disasters".

Against this institutional background, and the wider background of European and international law generally, the present report will address the need for and feasibility of a further binding and/or non-binding Council of Europe instrument or instruments on human rights and the environment. The Report aims to provide all-relevant factual and legal information so as to allow policy makers to take an informed decision on the need for and feasibility of a further instrument or instruments.

Page 8 - §§ 17, 18

On 3 May 2023, members of the CDDH-ENV participated in the High-level Conference on the right to a clean, healthy and sustainable environment in practice, organised by the Icelandic Presidency of the Committee of Ministers, with the support of the Council of Europe Secretariat.

This report will analyse the possible need and feasibility of one or more additional instruments on the protection of human rights and the environment as follows. Firstly, it will describe the current environmental challenges that raise the question of fr the possible need for one or more new instruments (see paragraphs 18-23). Second, it will explore the relationship between human rights and these environmental challenges (see paragraphs 24-74). Third, the report will examine the way in which existing instruments address the human rights aspects of these environmental challenges (see paragraphs 75-99). Fourth, it will identify various rationales for a new instrument or instruments on human rights and the environment that have been brought forward in discussions on the need for a new instrument (see paragraphs 100-112). Finally, the report, based on the mandate of the CDDH, will analyse the feasibility of various instruments proposed (see paragraphs 113-192).

Page 9 - § 20

The climate crisis has been identified as the greatest threat to human rights by the former United Nations High Commissioner for Human Rights.^{ccxiii} According to the report published by the Intergovernmental Panel on Climate Change (IPCC), which was politically endorsed approved by all States Parties to the Council of Europe, adaptation and mitigation actions that prioritise equity, social justice, climate justice, rights-based approaches, and inclusivity, lead to more sustainable outcomes, reduce trade-offs, support transformative change and advance climate resilient development.^{ccxiv} The decline in biodiversity,^{ccxv} coupled with air, soil, and water pollution's detrimental impact on human well-being,^{ccxvi} further underscores the potential need for enhanced environmental protection to ensure the full enjoyment of human rights of human rights and the environment.

Page 10 - §§ 21, 22, 23

Commented [BS314]: This is the second reference to the Conference but neither one contains a citation. Can a link be added for those who might want more information about it?

Commented [BS315]: The IPCC approves the synthesis report which is subject to detailed line by line negotiations.

The ~~possible~~ consequences of these environmental issues for human rights are common and urgent concerns that need to be further addressed, including as a matter of inter-generational equity and solidarity.^{ccxxvii}

The acknowledgment of the relationship between human rights and the environment has grown significantly in recent years, including by the Parliamentary Assembly^{ccxxviii} and the Committee of Ministers^{ccxxix} of the Council of Europe. There is also an increasing recognition – at the national^{ccxxx}, regional^{ccxxxi} and international^{ccxxxii} levels – of a right to a clean, healthy and sustainable environment. However, this right is not yet protected as such in a treaty either at global or European level.^{ccxxxiii} ~~This means that t~~here is not yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”^{ccxxxiv} of the right.

The urgency of addressing the impact of environmental degradation, ~~and including~~ the triple planetary crisis, on human rights is also voiced by civil society. The Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe, on the issue of climate change, demanded that international negotiations go beyond the strict context of greenhouse gas reductions and include the protection of the fundamental rights of all human beings, taking into account the impact of all phenomena related to climate change on the enjoyment of these rights.^{ccxxxv} At the high-level Conference on environmental protection and human rights, organised by the Georgian Presidency of the Committee of Ministers of the Council of Europe in February 2020, the President of the Conference of INGOs called upon the Committee of Ministers to define environmental issues as a priority.^{ccxxxvi} More recently, in March 2023, as an outcome of the Civil Society “Shadow” Summit, the Conference of INGOs together with the CURE Campaign^{ccxxxvii} issued the Hague Civil Society Declaration on Council of Europe Reform, calling on the Council of Europe to “address the triple planetary crisis of climate change, biodiversity loss and pollution as a supreme human rights crisis” and more specifically to “recognise and protect a legally binding, autonomous right to a clean, healthy and sustainable environment through an additional protocol to the European Convention on Human Rights.”^{ccxxxviii}

Page 11 - §§ 25, 26

~~International Human Rights Law (IHRL) and International Environmental Law (IEL) have developed as separate regimes. IEL International Environmental Law (IEL) primarily aims to address the negative impacts on the environment, with the objective of protecting and conserving the environment, whilst IHRL International human rights law (IHRL) is principally concerned with the protection of human rights. Although they are two different branches of international law, it is recognised that they complement one another on some issues. To that end, GA Res 76/300 affirmed “the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights,” and recognised “that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment”.~~^{ccxxxix}

As per the current state of law, while certain IEL instruments grant limited directly actionable rights to individuals or groups that can be invoked before national courts or international monitoring mechanisms,^{ccxxx} IEL does not grant any general, directly actionable right to individuals or groups to an environment of a certain standard.^{ccxxxi} IHRL usually grants directly actionable rights to individuals and groups, including oversight at the international level by courts and treaty bodies.^{ccxxxii} However, where IEL sets rules to which States must adhere in relation to the natural environment,^{ccxxxiii} IHRL does not grant direct protection to the environment.^{ccxxxiv}

Page 12 - §§ 27, 28, 29

Commented [BS316]: What about the right to water and sanitation, Rio Principle 10, Escazu, Aarhus, integration of rights in environmental agreements, work of human rights mechanisms on environmental issues. The two areas of law are deeply interlinked in theory and in practice and have been for decades.

Commented [BS317]: This is debatable. Regional instruments directly protect the and are considered part of the body of IHRL. The right to water and sanitation could also be argued to grant direct protection to the environment.

A pertinent issue with regard to human rights and the environment is the issue of business and human rights, and thus the responsibilities of businesses. To effectively prevent further environmental degradation and to respond to the triple planetary crisis, the involvement, effective regulation and accountability of businesses is key.

Exploration of the relationship between human rights and the environment has not only taken place at the Council of Europe level, but also at the international level, notably at multilateral institutions. The table under appendix II represents an overview of existing Council of Europe and, non-exhaustively, some of the other international instruments that address human rights and/or the environment. The following section reviews the evolution of developments in the recognition and articulation of the relationship between human rights and the environmental protection at the international level.

i. Human rights ~~and environmental protection in~~ select, relevant UN treaties ~~multilateral environmental agreements~~

The relationship between human rights and the environment has been addressed, directly or indirectly, in a number of UN ~~treaties~~ multilateral environmental agreements.

Page 13 - §§ 35, 37

(ii) Examples of efforts to address h ~~Human rights and environmental protection~~ the environment in the work of relevant ~~by~~ UN bodies and special procedures ~~human rights mechanisms~~

A milestone is Resolution 48/13 on “[t]he human right to a clean, healthy and sustainable environment”, adopted by the Human Rights Council (HRC) on 8 October 2021.^{ccxxxv} The resolution politically recognised the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights, while simultaneously encouraging States to cooperate ~~in~~ the implementation of this right. The text of HRC Resolution 48/13 was proposed by, among others, two Council of Europe member States, Slovenia and Switzerland. It was passed with 43 votes in favour and 4 abstentions. All Council of Europe member States which voted were in favour. The HRC also established on the same day, via Resolution 48/14, a Special Rapporteur on the promotion and protection of human rights in the context of climate change. This Special Rapporteur, among other things, studies the impact of climate change on human rights, provides recommendations to address it, promotes human rights integration in climate policies, and raises awareness.

Based on ~~in follow-up to~~ the text adopted by the HRC, the UN General Assembly, on 28 July 2022, with a record of 161 States (including all Council of Europe member States) voting in favour, zero against and eight abstentions, adopted resolution 76/300 recognising the right to a clean, healthy and sustainable environment as a human right (UNGA Resolution).^{ccxxxvi} Among the co-sponsors of the UNGA Resolution were 38 Council of Europe member States.^{ccxxxvii} The UNGA Resolution was also accompanied by a number of Explanations of Votes, including from Council of Europe member States, some noting the lack of international consensus on the legal basis of the right and that political recognition did not have legal effect.^{ccxxxviii} At the same time, the European Union “welcomed the adoption of this important resolution on the human right to a clean, healthy and sustainable environment, which is important for the enjoyment of all human rights”.^{ccxxxix}

Page 15 - §§ 41, 42, 43

Commented [BS318]: This term is not used anywhere in the resolution. OP 1 of the resolution "Recognizes the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights". It does not "politically recognize". Qualifying the direct language of the resolution is not appropriate.

Commented [BS319]: There are differences in the language in some places. Maybe better to say "in follow-up" or something along these lines.

On 29 March 2023, the UNGA adopted by consensus a resolution formally requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States in respect to ef climate change.^{ccxi} In particular, this request asked the following questions: (a) what are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; and (b) what are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to States, including, in particular, small island developing States [...] and Peoples and individuals of the present and future generations affected by the adverse effects of climate change? By referring The request referred explicitly to international human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

In their oversight of States' compliance with the core human rights treaties, such as the ICESCR,^{ccxlii} the ICCPR,^{ccxliii} the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), United Nations human rights treaty bodies have applied human rights to environmental issues addressed issues related to human rights and the environment.

The UN Committee on Economic, Social, and Cultural Rights (CESCR) has interpreted the right of everyone to the enjoyment of the highest possible standard of health (Article 12)^{ccxliv} and the right to an adequate standard of living (Article 11)^{ccxlv} under the ICESCR to include "the requirement to ensure an adequate supply of safe and potable water and basic sanitation; [and] the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health."^{ccxlv} The CESCR General Comment on land, economic, social and cultural rights states "The sustainable use of land is essential to ensure the right to a clean, healthy and sustainable environment." In its General Recommendation 39 on the rights of Indigenous women and girls the Committee for the Elimination of all forms of Discrimination Against Women elaborates on the obligations of States with respect to the right to a clean, healthy and sustainable environment.

Commented [BS320]: <https://documents.un.org/doc/undoct/gen/a23/000/35/pdf/a2300035.pdf?token=U8AkkGEc83oOnOlic9&fe=true>

Page 16 - § 45

UN treaty bodies are increasingly being asked to decide on issues concerning environmental degradation.^{ccxli} In *Portillo Cáceres and others v. Paraguay*, The UN Human Rights Committee in 2019 held that Paraguay had violated its obligations under the right to life and the right to private and family life, when it failed to adequately regulate large-scale spraying with toxic agrochemicals and investigate the death of an agricultural worker exposed to such chemicals.^{ccxlii} In the 2020 case of *Teitiota v. New Zealand*, the author alleged that the rejection of his application for refugee status in New Zealand violated his right to life under the Covenant by removing him in September 2015 to Kiribati, which climate change would ultimately render uninhabitable. The UN Human Rights Committee found the complaint admissible on the basis that "for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of Kiribati and on the security situation on the islands, he faced a real risk of impairment to his right to life under article 6 of the Covenant".^{ccxliii} After considering the merits of the complaint, the Committee concluded that "without prejudice to the continuing responsibility of the State party to take into account in future deportation cases the situation at the time in Kiribati and new and updated data on the effects of climate change and rising sea levels thereupon, the Committee is not in a position to hold that the author's rights under article 6 of the Covenant were violated upon his deportation to Kiribati in 2015".^{ccxliv} In *Sacchi et al. v. Argentina, Brazil, France,*

Germany and Turkey, [a petition before](#) the UN Committee on the Rights of the Child, the applicants alleged that the respondents had violated children's rights under the UN Convention on the Rights of the Child by making insufficient cuts to greenhouse gas emissions and failing to use available tools to protect children from the adverse effects of climate change. The complaint was found inadmissible for failure to exhaust local remedies, though the Committee made extensive obiter remarks, including on extraterritorial jurisdiction and reasonably foreseeable harm.^{cc1} In September 2022, the UN Human Rights Committee found that Australia's failure to adequately protect Indigenous Peoples in the Torres Islands against adverse impacts of climate change amounted to a breach of Article 17 (right to respect for private, family and home life) and 27 (rights of ethnic, religious or linguistic minorities) of the ICCPR.

Page 17 - §§ 48, 49

The United Nations Guiding Principles (UNGPs) can be considered the milestone document on the responsibility of businesses to respect human rights. The UNGPs rest on three pillars: (1) States' existing obligation to respect, protect and fulfil human rights and fundamental freedoms ("the State duty to protect human rights"); (2) corporate responsibility to respect human rights, including the exercise of due diligence ("the corporate responsibility to respect human rights"); and (3) the responsibility of States and business enterprises to ensure those affected by human rights abuses have access to effective remedy ("access to remedy").^{cc1} The UNGPs and the OECD Guidelines on Multinational Enterprises on Responsible Business Conduct^{cc1} are the main international standards for responsible business conduct. The OECD Guidelines, updated in 2023, recommend that enterprises conduct due diligence to assess and address adverse human rights and environmental impacts associated with their operations, products and services. Chapter VI on the environment is aligned with the business responsibility to respect human rights established in the UN Guiding Principles on Business and Human Rights, and sets out the expectation that enterprises conduct due diligence on environmental impacts, including in relation to climate change and biodiversity. Moreover, adherent States to the OECD Guidelines are obliged to establish a National Contact Point to serve as a non-judicial grievance mechanism in cases of alleged violations.

As can be seen from the list above, UN treaty bodies and special procedures are engaged on a wide scale with the examination of the relationship between human rights and the [protection of the environment](#) with a special focus on environmental degradation and the triple planetary crisis.^{cc1ii} It should be noted, however, that, these mechanisms do not adopt legally binding decisions.

Page 24 - § 75

Significant (upcoming) EU instruments include the Non-Financial Reporting Directive (NFRD), the Corporate Sustainability Reporting Directive (CSRD), and the Corporate Sustainability Due Diligence Directive (CSDD).^{cc1} The aim of the latter Directive is to foster sustainable and responsible corporate behavior and to anchor human rights and environmental considerations in companies' operations and corporate governance and will aim to ensure that businesses address adverse impacts of their actions, including in their value chains inside and outside Europe.

Page 25 - § 77

The right to a healthy environment appears in certain (i) regional human rights instruments, (ii) environmental agreements; (iii) resolutions of international and regional organisations; (iv) judicial pronouncements (advisory opinions and judgments); and (v) [other](#) soft law documents.

Page 26 - §§ 80, 81, 82

Commented [BS321]: Not clear what a milestone document is. The following is from the OHCHR website: The UNGPs are the global standard for preventing and addressing the risk of adverse impacts on human rights involving business activity, and they provide the internationally-accepted framework for enhancing standards and practices with regard to business and human rights. The Human Rights Council unanimously endorsed the Guiding Principles in its [resolution 17/4 of 16 June 2011](#).

Commented [OHCHR322]: To provide a more complete picture, we propose adding here that adverse human rights impacts resulting from environmental degradation are also concerned by the corporate responsibility to respect human rights because:

1. that the right to a healthy environment is covered as an internationally recognised human right
2. ILO's Declaration of Fundamental Principles and Rights at Work was amended in 2022 and now includes a safe and healthy working environment among the fundamental principles.
3. Adverse human rights impacts resulting from environmental degradation fall under the scope of other internationally recognised human rights, including those explicitly included in the International Bill of Human Rights.

This is in line with GP 12, according to which: 'The responsibility of business enterprises to respect human rights refers to **internationally recognized human rights** – understood, **at a minimum**, as those expressed in the **International Bill of Human Rights** and the principles concerning fundamental rights set out in the **International Labour Organization's Declaration on Fundamental Principles and Rights at Work**'.

See also, e.g., [Information Note on Climate Change and the Guiding Principles on Business and Human Rights](#), Working Group on the issue of human rights and transnational corporations and other business enterprises, Section II.

Commented [BS323]: Both the title of this section and this sentence are inconsistent with the full scope of the section which includes HRC resolutions, work of special procedures, work of human rights treaty-bodies, the UNGPs and the OECD Guidelines.

Commented [A324]: The Rapporteur notes that the CSDD is still not adopted and it is unclear at this stage whether it will ever be adopted.

Commented [BS325]: The preceding items in the list are not all soft law. Other should be deleted to avoid this implication.

Resolutions of international and regional organisations have also recognised the right. The beginning of the debate on a right to a healthy environment in the UN political process is generally traced back to the Stockholm Declaration on Environment of 1972.^{ccliii} In 2021 “the right to a clean, healthy and sustainable environment” was ~~politically~~ recognised ~~by at the level of the United Nations,~~^{ccliv} in the Human Rights Council Resolution 48/13 of October 2021 (HRC Res 48/13),^{cclv} which was followed by General Assembly Resolution 76/300 in July 2022 (GA Res 76/300).^{cclvi} HRC Res 48/13 recognises the right to a clean, healthy and sustainable environment as a human right that is “important for the enjoyment of human rights”; notes that it is “related to other rights and existing international law”^{cclvii} and affirms that the promotion of the right requires the full implementation of the multilateral environmental agreements under the principles of international environmental law. In its essential elements^{cclviii}, GA Res 76/300 – co-sponsored by more than 100 States and adopted with 161 votes in favour to none against with eight abstentions – differs only marginally from the wording of the HRC Res 48/13.

The Committee of Ministers of the Council of Europe in Recommendation CM/Rec(2022)20 calls on member States to “reflect on the nature, content and implications of the right to a clean, healthy and sustainable environment and, on that basis, actively consider recognising at the national level this right as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law”. ~~The Recommendation implies a need for further clarification of the right, by inviting States to reflect on its nature, content and implications. In other respects,~~ Recommendation CM/Rec(2022)20 uses the same language as HRC Resolution 48/13 (rather than GA Resolution 76/300), since it was drafted after the former had been adopted but before the latter had.

Decisions adopted in the context of certain environmental agreements also refer to the right to a healthy environment. In the Sharm el-Sheikh Implementation Plan adopted by consensus at the 27th Conference of the Parties to the UN Framework Convention on Climate Change (COP-27), and the UAE Consensus, which has, at its heart, the first Global Stocktake (GST), adopted by consensus at the 28th meeting of the Conference of the Parties to the UN Framework Convention on Climate Change (COP-28)^{cclix}, ~~the~~ States reiterated their acknowledgement that “[p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on [...] the right to a clean, healthy and sustainable environment [...]”.^{cclx} Similarly, the Parties to the Convention on Biological Diversity (CBD), in the Kunming-Montreal Global Biodiversity Framework adopted at the 15th Conference of the Parties to the CBD, explicitly acknowledged the right as adopted in UNGA Res 76/300 and stressed that the Framework should “follow a human rights-based approach respecting, protecting, promoting and fulfilling human rights”.^{cclxi} The Global Framework on Chemicals as well as five resolutions adopted during the Sixth United Nations Environment Assembly reference the right to a clean, healthy and sustainable environment.

Page 29 - §§ 90, 91, 92

~~Although~~ ~~the~~ right to a clean, healthy and sustainable environment has been recognised ~~politically at global level~~ ~~by~~ UN General Assembly Resolution 76/300, ~~How~~ever, ~~this right~~ is not yet protected as such in a treaty either at global or European level.^{cclxii} ~~This means~~ ~~it can be argued~~ that ~~this means~~ there is not yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”^{cclxiii} of the right.

There are some commonalities in substance between instruments. These comparisons can be found in the table under appendix III, ~~with reference to~~, contain the suggested elements listed in the UN SR’s Framework Principles. However, the constituent elements of the right have not yet been the subject of international negotiations.

Commented [BS326]: There is a drafting issue here. The phrase is grammatically incorrect and it is not clear what it means.

The following section describes the state of national laws with respect to the right of a healthy environment on the basis of the answers to a questionnaire addressed by the expert group to member States. The 27 member States that replied to this questionnaire are: Andorra, Armenia, Austria, Azerbaijan, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Italy, Latvia, Malta, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Sweden, Switzerland, Türkiye, and the United Kingdom.

The following [analysis of responses to survey which is based on](#) the questionnaire does not draw an exhaustive picture. Rather, it provides a broad overview and identifies general trends [based on the answers to the questionnaire](#).

Page 31 - §§ 98, 99, 100

A number of member States that do not recognise a human right to a healthy environment have codified environmental protection as a constitutional principle or objective.^{cclxiv} These States describe environmental protection as an objective for the national well-being, which, by virtue of the relevant constitutional provisions, must be promoted and taken into consideration in the relevant legislative, administrative and judicial decision-making processes.^{cclxv} Some constitutions even accord primacy of environmental protection over other (constitutional) principles^{cclxvi} or otherwise visibly prioritise environmental protection as a leading principle within their national constitutional framework.^{cclxvii} This objective guarantee of environmental protection is open to judicial interpretation and is, as demonstrated by the answers to the questionnaire, shaped in the jurisprudence of the domestic courts. Member States that follow this objective model of environmental protection have reported substantial jurisprudential evolutions.^{cclxviii}

[The combination of traditional fundamental/ human rights with a constitutional principle of environmental protection has been seen to generate results that are comparable to the effects of the protection of the human right to a healthy environment.](#)^{cclxix}

As to justiciability, in most member States that [provide for](#) recognize the human right to a healthy environment [as a human right](#) in their national law, the right is justiciable in the same way as other human rights. This means that notably the admission of annulment actions against administrative decisions^{cclxx} and – if generally permitted in the domestic judicial system – the constitutional review of legislative acts is possible.^{cclxxi} Some member States give a right of action to non-governmental organisations and/or local and regional public territorial bodies^{cclxxii}, others provide for the possibility of *actio popularis*^{cclxxiii}. Other member States which recognise [a the](#) right to a healthy environment in their national law, however, do not conceive of the right as being justiciable.^{cclxxiv}

Conclusions

[At this point in time, while it appears that m](#)Multiple Council of Europe member States have legally recognised the right [to a healthy environment](#) in some form and [that their](#) domestic courts have produced extensive jurisprudence on it, [however](#), there is not yet a universal understanding amongst Council of Europe member States of the “nature, content and implications”^{cclxxv} of the right.

Page 32 - §§ 101, 102, 103, 105

D. Possible rationales for a further instrument or instruments

In discussions on the need for a new instrument in academic literature, among the experts heard by the working group and in statements by civil society, [several](#)-recurring lines of arguments for a new instrument can be identified. The following section sets out [some of](#) these rationales and analyses their underlying assumptions without endorsing them.

Commented [BS327]: This is subjective assessment supported by a narrow example.

Commented [A328]: The Secretariat suggests adding two specific rationales, for the following reasons. The current analytical approach in Chapter III gives little visibility to the fundamental reasons for distinguishing between the different types of binding instrument (variants of the two protocols and the standalone convention). There are perceived needs – amounting to separate rationales – for international oversight of States’ implementation of the right to a healthy environment in both its individual and collective forms and with respect to its civil/ political and economic/ social nature that are distinct and separate from both simple international legal protection of the right and enhanced protection of human rights generally against environmental impact.

Proposed rationales:

i. Providing international judicial oversight of national implementation of the right to a healthy environment

5. It has been argued that an international judicial oversight mechanism, accepting applications from persons claiming to be victims of violations of the right to a healthy environment and issuing binding judgments in their cases, is necessary to ensure effective and harmonious protection of the right to a healthy environment by States. For those, including the Parliamentary Assembly and civil society organisations, that have made such proposals, the urgency of the triple planetary crisis, the severity of its impact on human rights, and the need for an effective response by governments make this highest level of protection a necessity.

ii. Providing for a system of collective complaints alleging unsatisfactory realisation of the right to a healthy environment

2. It has been argued that the partially collective (or economic/ social) character of the right to a healthy environment and the often-widespread effects of environmental degradation may be best addressed through a monitoring mechanism that allows for collective complaints, rather than one that relies on individual applications whose scope may not reflect the full extent and context of the cause of the complaint.

Commented [OHCHR329R328]: 1. The reference to an economic and social character right after ‘collective’ is confusing because it:

- i. Implies a false correlation between economic and social rights and collective rights without any explanation.
- ii. Assumes that the Convention system cannot protect economic, social, and cultural rights, which is untrue - see, e.g., Article 2 of Protocol No 1 to the Convention anchoring the right to education, otherwise protected under the International Covenant on Economic, Social, and Cultural Rights. See also, e.g., Airey v Ireland (App No 6289/73), para 26. Such assumption would also be in conflict with the interdependence, interrelatedness and indivisibility of human rights.

Commented [BS330R328]: It also neglects the procedural elements of the r2he protected under the ICCPR.

i. Establishing legal recognition of the right to a healthy environment in the Council of Europe framework

There is no explicit ~~universal~~, legally binding recognition of the right to a healthy environment ~~in international law generally and, in particular,~~ within the Council of Europe's framework. ~~As explained above,~~ Unlike Europe, other regional human rights systems have already recognised the right to a healthy environment (see paragraphs 89 – 97 above). ~~Establishing legal recognition of the right~~ ~~Recognising the right in a binding instrument at the level of the Council of Europe~~ ~~recognition of the right~~ would ~~clarify the relationship between environmental protection and human rights and~~ would reinforce the understanding that human rights norms require protection of the environment, and that environmental protection depends on the exercise of human rights.

Commented [BS331]: Para number will need to be fixed

Commented [OHCHR332]: The phrase 'Establishing a legal recognition' is incorrect because the right is already recognised. A more precise formulation would be 'Recognising the right in a binding instrument at the level of the Council of Europe (...)':

ii. Shaping the content of the right to a healthy environment

~~As demonstrated above,~~ There is no universal understanding of the material content of the right to a healthy environment amongst Council of Europe member States. In line with the recommendations under CM Rec 2022(20), it has been argued that a new ~~binding~~ instrument or instruments legally recognising the right to a healthy environment could ~~possibly~~ clarify the understanding amongst Council of Europe member States of the scope and content of the right to a healthy environment and inspire corresponding national legislation. In addition, should the material content of the right be spelled out in a ~~possible~~ new instrument it would allow member States to influence ~~possible~~ further developments related to the right to a healthy environment on the international level. Considering the increasing number of binding and non-binding instruments that refer to the relationship between human rights and the environment, or actively address the issue, it could be argued that now is an optimal time for member States to shape the content of right and its function in a European context. This would contribute greatly to legal certainty, an important consideration.

As noted in paragraphs 52–77, ~~there is no explicit~~ the right to a healthy environment ~~is not explicitly recognized~~ in the Convention or the Charter; ~~however,~~ the environment is ~~only~~ indirectly protected to the extent that environmental degradation results in a breach of human rights obligations stemming from the current provisions of the Convention. The current jurisprudence of the Court and the ECSR on the procedural requirements and the application of substantive standards that need to be met when litigating human rights cases relating to the environment before the Court and the ESCR limit the reach of the Convention and the Charter in environmental matters. It has been argued that ~~these limits constitute gaps in a new instrument could reinforce~~ the protection of ~~human rights that could be addressed by a new instrument protecting~~ the right to a healthy environment in a way that was not subject to the same procedural requirements and substantive standards. For example, cases involving the right to a healthy environment could be subject to different rules concerning territorial jurisdiction, NGO standing to bring public interest cases, and/or evidence, which, it is argued, would allow ~~the Court to provide~~ more effective overall protection to rights-holders.

Page 33 - §§ 106, 107, 108

There are different instruments on business and human rights such as the UNGPs, the OECD Guidelines for Multinational Enterprises ~~under~~ CM/Rec(2016)3 on human rights and business. ~~Further~~ ~~e~~ Environmental and human rights due diligence standards for business enterprises are ~~still~~ under development ~~on at the international global,~~ regional and national levels.^{clxxvi} It has been argued that a new instrument containing comprehensive environmental human rights due diligence standards for companies and in particular provisions on access to remedies could

enhance the responsibility ~~and~~ accountability of businesses. An international [legally binding] mechanism that could provide victims of corporate environmental human rights violations with access to a remedy, such as some form of alternative dispute resolution, does not yet exist. It has been argued that these elements could potentially be addressed by the Council of Europe, while emphasizing and strengthening synergies with existing systems and instruments such as the UNGPs, the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Business Conduct, applicable regional agreements, existing legislation at national and EU level and sectoral approaches, taking into account developments at international level such as the work of the UN Open-Ended Working Group on transnational corporations and other business enterprises with respect to human rights.

iii. Ensuring ~~that rights' holders receive~~ greater protection of ~~their human~~ rights against environmental degradation and the effects of the triple planetary crisis

Another rationale that has been put forward is to ensure that rights holders can seek accountability for violations of the right to a healthy environment. A new instrument or instruments on human rights and the environment could create a legal framework that provides rights holders with ~~procedural-better~~ tools to enforce the right to a healthy environment, thereby providing accountability for States' actions or inactions that violate the right which in turn could contribute to preventing violations of this right. These preventative and protective aspects of the right are particularly important for those who are most at risk from environmental harm, including women, children, young people, Indigenous Peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other groups in vulnerable situations.

It has been argued that a new instrument or instruments on human rights and the environment could contribute to a clear normative framework for the Court and/or the ECSR to tackle environmental issues by allowing their environment-related jurisprudence to develop and to address more efficiently the issue of environmental degradation and the triple planetary crisis in relation to human rights.^{cclxxvii} ~~In a nutshell, t~~his rationale for a new instrument centres on providing clarity and coherence for the further development of the Court's jurisprudence and the decisions and conclusions of the ECSR on environmental protection and consequently contributes to legal certainty.

Page 34 - §§ 110, 111

Despite the legal protection offered by different human rights systems, environmental human rights defenders are a particularly ~~high~~-risk group of human rights defenders in the world.^{cclxxviii} Many human rights bodies and organisations, including the Council of Europe Commissioner for Human Rights,^{cclxxix} have issued recommendations as to how stakeholders might better protect and support their work.^{cclxxx} The Meeting of the Parties to the Aarhus Convention decided in 2021 to establish a rapid response mechanism to protect environmental defenders, and decided in June 2022 to elect Michel Forst, the former UN Special Rapporteur on human rights defenders, to be the first special rapporteur in this new system. Recognising the right to a healthy environment could serve as a catalyst for establishing a safe and enabling environment for environmental human rights defenders in practice for example by allowing environmental human rights defenders to access programmes designed for human rights defenders.^{cclxxxi}

Some Council of Europe member States do not recognise a constitutional or legislative right to a healthy environment. It is argued that the effects of the recognition of the right to a healthy environment ~~at the international level have been shown to indirectly affect national constitutional, environmental, and human rights law and~~ produce the following legal and environmental benefits:

(i) stronger environmental laws and policies; (ii) improved implementation and enforcement; (iii) greater citizen participation in environmental decision making; (iv) increased accountability; (v) reduction in environmental injustices; (vi) a level playing field with social and economic rights; and (vii) better environmental performance.^{cclxxxii} ~~It has been argued that a~~ new instrument or instruments on human rights and the environment could encourage States that have not yet adopted the right to do so and encourage those States that have already adopted the right to take further active measures to implement it.

Page 35 - § 113

It has been argued that a new instrument on human rights and the environment would directly respond to the mandate that was given to the Council of Europe in its Statute.^{cclxxxiii} Article 1 of the Statute states that “[t]he aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress” and that “[t]his aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms”. Moreover, it would be ~~one possible~~ way to follow—up on the Reykjavík Declaration.^{cclxxxiv} As explained in paras 19–24, environmental degradation and the triple planetary [crisis](#) can directly impact the enjoyment of human rights. A new instrument on human rights and the environment under the aegis of the Council of Europe would be in line with the aims of the organisation as it would contribute to greater unity between its member States in their responses to this common threat and to the fulfillment of the Council of Europe’s mandate to ensure that rights are protected in a coherent, consistent manner across member States, and to thereby facilitate their economic and social progress.

Page 36 - §§ 115, 117

III. **The feasibility of a further instrument or instruments**

The following section sets out possible further Council of Europe instruments and how they may address the relationship between human rights and the environment. The proposals reflected here emanate from Council of Europe bodies, experts heard by the working group, and discussions within the working group. For each instrument, the report briefly examines its possible material content. It also ~~sets out~~assesses which of the rationales identified in Chapter II could be covered by the respective instrument. This ~~may~~could allow member States to focus on those options that respond to rationales they consider to be particularly relevant. Finally, it sets out further considerations for each of the instruments. The compilation does not imply an endorsement of any ~~consideration~~particular option or options by the CDDH. The proposals examined are as follows:

An additional protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement mechanism. It is also ~~one of the options that is~~ directly responsive to civil society expectations that the Council of Europe will adopt an instrument establishing binding legal protection of the right to a healthy environment.

Page 37 - § 121

This proposal could cover almost all rationales, with the following (partial) exceptions. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the development of the Court's jurisprudence. It would also not address the operation of procedural requirements. Finally, while it could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for businesses nor a right that is directly actionable against businesses. To summarise:

- ✘ **Shaping the content of the right to a healthy environment**
- ✘ **Enhancing the international responsibilities of businesses for the environmental impact of their activities**

Page 38 - § 123

This model would ~~also~~allow member States ~~actively and directly to shape to negotiate~~ the content of the right. The further development by the Court of its jurisprudence on the application of existing Convention rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of ~~a new Convention~~the right to a healthy environment.

- ✘ **Enhancing the international responsibilities of businesses for the environmental impact of their activities**

Page 39 - § 126

By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. ~~Under the current understanding of territorial jurisdiction, the potential transboundary causes of environmental harm may leave~~

Commented [A333]: Rapporteur's note: the Group will need to decide whether to include a list of rationales under each option or present it another way.

Commented [BS334]: Narrative text should be revised in accordance with comments below.

Commented [BS335]: This should be checked green. Member states are part of the process. They can and are sometimes required to participate in litigation before the Court and they also select the judges. By recognizing r2he in an additional protocol States would be delegating power to the Court to shape the right.

Commented [OHCHR336]: Even though the instrument would not *directly* enhance the access to justice for corporate human rights abuses resulting from adverse environmental impacts, it would enhance their international responsibilities through the States' obligation to protect. A yellow 'check' sign would therefore be more precise.

Commented [OHCHR337]: Even though the instrument would not *directly* enhance the access to justice for corporate human rights abuses resulting from adverse environmental impacts, it would enhance their international responsibilities through the States' obligation to protect - as mentioned para 122, especially considering the Court's 'robust enforcement mechanism' mentioned in para 125. A yellow 'check' sign would therefore be more precise.

victims unable to bring applications before the Court.^{cclxxxv} Amendments to the rules on jurisdiction addressing ~~such issues~~ transboundary environmental harm could be envisaged, so as to ~~make more effective the protection of individuals~~ enhance protection of the human right to a healthy environment. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 40 - § 128

✘ Enhancing the international responsibilities of businesses for the environmental impact of their activities

However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. Some of these, such as the allocation of economic cost for environmental impact reduction measures or the level of environmental protection to be achieved involve policy choices that are arguably better made and implemented through the democratic process. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. The introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court^{cclxxxvi} which may need additional financial resources.

Page 41 - §§ 130, 132, 136

It is important to note, that a Model III additional protocol would require the Court to apply different standards (see paragraphs [x]-[x]) in cases based on the right to a healthy environment. This could potentially lead to fragmentation of the Court's treatment of cases, depending on the right involved.

It is important to note, that the ESCR has already interpreted Article 11 (the right to protection of health) of the ESC to include the right to a healthy environment. All of the proposals involving an additional protocol to the ESC therefore involve the recognition of the right to a healthy environment as a standalone right. They vary, however, in the extent to which they include additional elements relating to the effectiveness of the Charter system in protecting this right. Consequently, three options may be considered: (i) codification of the right to a healthy environment in general terms; (i) codification of the right to a healthy environment including its possible constituent elements; and (iii) codification of the right to a healthy environment (including its constituent elements) and removing the restriction on the personal scope of the Charter and extending the reach of rights either for the Charter as a whole or solely for an additional protocol on the right to a healthy environment,^{cclxxxvii} coupled with an option to accept the collective complaints procedure only in relation to the additional protocol (together referred to as "additional elements").

~~As indicated below, this model could cover most of the~~ This model would cover more than half of the rationales. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the subsequent decisions/interpretations of the ESCR. It would also not address the

Commented [OHCHR338]: Same as above: Even though the instrument would not *directly* enhance the access to justice for corporate human rights abuses resulting from adverse environmental impacts, it would enhance their international responsibilities through the States' obligation to protect - as mentioned para 124, especially considering the Court's 'robust enforcement mechanism' mentioned in para 125. A yellow 'check' sign would therefore be more precise.

Commented [BS339]: These are all human rights issues within the purview of the court. the court already addresses and/or has tools, precedents and practices for addressing issues like these. Suggest to delete.

Commented [OHCHR340]: As this statement is inaccurate and goes against the independence of the judiciary, we propose removing it.

It is important to note that it is the role of the Court, within the mandate given to it by the Convention, to decide on human rights cases and not political questions, and there is therefore no ground to question its legitimacy. The whole body of the Court's case-law on human rights impacts stemming from environmental harm under the existing provisions of the Convention demonstrates that.

In addition, when it comes to questions which are better decided by Member States, the Court applies the doctrine of the margin of appreciation, in line with the principle of subsidiarity.

Commented [OHCHR341]: This argument appears unsubstantiated and imbalanced.

- Applications alleging human rights violations stemming from environmental harm are already being brought before the Court (i.e., already included in its caseload), but are either handled under other rights or rejected.

- It has been argued that some of the modalities for a protocol proposed above, in particular broadened NGO standing, could in fact prevent a high caseload as ENGO applications could replace high numbers of individual ones and be of a higher quality due to the expertise of ENGOs.

See *Keller H & Gurash V, Expanding NGO standing: climate justice through access to the ECHR*, p 216.

Commented [OHCHR342]: This argument also appears imbalanced/one-sided. It could just as easily say here that this is a great and practical idea to deal with particular circumstances of environmental cases.

operation of procedural requirements. While it could, through positive obligations of States, enhance the accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 42 - § 136

✗ Shaping the content of the right to a healthy environment

Commented [BS343]: Same as comments re: protocol to the Convention. This should not be red.

✗ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [BS344]: Per assessment above should be yellow

✓ Responding to the expectations of civil society

Commented [BS345]: Should be red. Civil society has clearly called for Protocol to the Convention.

~~This proposal could cover all rationales to an even larger extent than the first option.~~ By specifying the constituent elements of the right to a healthy environment, member States could actively shape the content of the right and give further guidance on the nature, content and implications of the right. The further development by the ESCR of its jurisprudence on the application of existing Charter rights in environmental contexts would presumably be influenced by the way in which an additional protocol specified the constituent elements of ~~a newly codified Charter~~ the human right to a healthy environment.

Page 43

✓ Responding to the expectations of civil society

Commented [BS346]: Should be red.

Page 44 - § 140

✓ Responding to the expectations of civil society

Commented [BS347]: Should be red

Decisions of the European Committee on Social Rights are non-binding on member States, therefore there is a higher risk of non-implementation as compared to binding judgments by a body such as the Court. The optional collective complaints procedure under the ESC would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment, with no requirement for the complainant to have exhausted domestic remedies or itself to be a victim of the alleged violation. ~~A non binding monitoring mechanism, combining a reporting procedure and a complaints procedure, may arguably be more appropriate in an area where difficult policy choices need to be made. In addition, rights already protected under the Charter reflect both positive and negative obligations, which would be suitable for the protection of the right to a healthy environment. In addition, the~~ introduction of the right to a healthy environment to the Charter system ~~may~~ could result in an increase of the caseload of the ECSR, which may as a result need additional financial resource.

Commented [BS348]: Subjective assessments.

Commented [BS349]: This is speculative and not the most important policy consideration given it should be weighed against the more effective implementation of r2he.

Page 45 - § 141, 142, 143, 145

Finally, the process of adopting a new protocol, and its entry into force, can be lengthy.^{cclxxxviii}

Commented [BS350]: This depends entirely on States and could be said of any of the options. Given the urgency of the triple planetary crisis COE States could and should act quickly. We would suggest that references like this be removed throughout the document.

It is important to note, that a Model III additional protocol would require the ESCR to apply different standards in cases based on the right to a healthy environment. This could potentially lead to fragmentation of the ESCR's treatment of cases, depending on the right involved.

Commented [BS351]: This just as easily say that this is a great and practical idea to deal with particular circumstances of environmental cases.

~~To address the linkages between human rights and the environment through robust standard setting, the drawing up of a standalone Council of Europe Convention on Human Rights and the Environment has been proposed.~~ All of the current proposals involving a standalone convention include the recognition of the right to a healthy environment as a standalone right. They vary,

however, in the extent to which they include additional elements relating to the effectiveness of protecting this right. Consequently, two options may be considered: (i) codification of the right to a healthy environment including its possible constituent elements; and (ii) codification of the right to a healthy environment (including its constituent elements) coupled with additional elements as described below.

This model would allow member States actively and directly to shape the content of the right. It would also contribute to the fulfillment of the Council of Europe's mandate to ensure that rights are protected in a coherent, consistent manner across member States.

Commented [BS352]: How?

Page 47 - §§ 149, 150

✓ Responding to the expectations of civil society

~~A new convention is not subject to the ECHR or ESC systems and would provide the opportunity for States to create an instrument that States would deem feasible. For States for which an Additional Protocol with Court jurisdiction is not politically viable, the Convention offers a strong alternative with an extensive range of negotiable options to determine an effective yet workable mechanism.~~—A new convention could be opened for signature and ratification by Council of Europe member States, as well as non-Council of Europe member States. Thereby its standards could have influence beyond Europe.

Commented [BS353]: This should be red. All of the others with the exception of the first two should be yellow at best as they would entirely depend on what was actually included in the treaty.

Commented [BS354]: States could deem any of the instruments feasible and negotiate the content of any of them. Suggest deleting these sentences as they don't reflect unique considerations.

~~In case of option (iii), if a compliance mechanism is included (which would arguably be important for the effective protection of human rights and the environment), member States would have to fund such a body and its activities.~~The establishment of a new convention with new institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. ~~However, w/without a compliance mechanism, the impact of a new convention would be in addition to the many existing international instruments that lack the authoritative force of a binding control mechanism such as the Court, resulting in a loss of effectivity for the new convention could be limited.~~ Finally, the process of adopting a convention, and its entry into force, can be lengthy.

Page 48 - §§ 153, 155

Its tasks could be organised around three pillars: country monitoring, thematic work and outreach. Country monitoring could consist in an ongoing dialogue between the body and the authorities of Council of Europe member States with a view to identifying solutions to environmental human rights problems and promoting examples of good practice. Country visits could be organised on a regular basis. Thematic work could be done through policy recommendations addressed to member States. These recommendations could serve as guidance for policy makers and would contribute to standard-setting in the area of human rights and the environment. Finally, an important aspect of the body's work could be reaching out to society at large. The body could become a forum for dialogue with civil society in general and young people in particular. ~~But And~~ it could also reach out to business entities.

A standalone monitoring mechanism would be relevant to a number of rationales.. Through dialogue with national authorities and business, it could, to a certain extent, provide improved national protection of the right to healthy environment and advance enhanced international responsibilities for businesses for the environmental impact of their activities. Through its thematic work it could indirectly encourage the development of further jurisprudence on environmental degradation and the triple planetary crisis. ~~At the same time, the material content of the human right to a healthy environment is under development.~~ A standalone monitoring mechanism that acts through dialogue and recommendations ~~can better adapt to developments in international~~

~~law, therefore, in a limited way, it may could~~ contribute to member States' understanding of the content of the right to a healthy environment.

Page 49 - § 157

Non-binding monitoring may be considered more easily introduced in an area where complex domestic policy choices need to be made, such as allocation of economic cost for reduction measures or the appropriate level of environmental protection. To that end, a standalone monitoring mechanism whose work is based on dialogue could provide technical advice and support to member States on cross-cutting issues such as human rights and the environment. Either type of mechanism (ECRI-type or Commissioner-type) ~~would also enable dialogue and engagement to begin much more rapidly than would occur through negotiation of new legal instruments could be operationalized quickly~~. It is important to note, however, that without an associated normative instrument, it may be uncertain which substantive standards would be monitored by the new body.

Page 53 - § 175

As all Council of Europe member States voted in favour of UNGA Res 76/300, recreating the content of that resolution within the Council of Europe's framework would not ~~result in any contribute further to~~ the fulfillment of any rationale other than establishing (non-binding) legal recognition of the right to a healthy environment in the Council of Europe framework. Given that all Council of Europe member States voted in favour of UNGA Res 76/300, the practical effects of such recognition are debatable; the instrument could appear as purely symbolic. At the same time, it could bring the Council of Europe's *acquis* in line with international law.

Page 54 - § 177

~~However, while a~~ Council of Europe non-binding instrument recognising the right to a healthy environment would be in line with the organisation's mandate, would allow member States to actively shape the understanding of the right by defining its content in more detail, and could influence the development of the Court's and the ESCR's jurisprudence. ~~It~~ would not meet ~~the~~ any other rationales.

Page 55 - §§ 182, 184

The Charter and the Convention are two complementary and interdependent systems, each with its own specific features. Adopting additional protocols to both could protect the right to a healthy environment through systems that correspond to the suggested nature of the right as including both civil and political, and social and economic elements as well as individual and collective elements. The Convention would allow for enhanced protection for individual rights while the Charter, which optionally enables non-governmental organisations to lodge collective complaints on environmental issues, could allow for the protection of collective interests. This combined approach could require less change in the respective systems in order to achieve effective protection of the right to a healthy environment than would be the case under either system alone.

Including the right to a healthy environment in both instruments could generate an unprecedented substantive overlap in terms of the rights each instrument protects. This could result in a potential conflict between the standards of the ECHR and the ESC. This would especially be the case if the additional protocols would codify the right to a healthy environment in general terms, leaving the clarification on the constituent elements entirely to the respective monitoring bodies.

Page 56 - §§ 186, 187, 190

- (ii) *Standalone convention and inclusion of environmental protection in the preamble of the ECHR and/or the ESC*

~~18. This option would allow to retain the flexibility offered by a standalone Convention on human rights and the environment coupled with enhanced protection for human rights and the environment under the ECHR/ESC systems through the amendment to the respective preambles. It would draw on the strengths of both a specialised and general human rights framework.~~

For the standalone convention, as referred to above, three options may be considered: (i) codification of the right to a healthy environment in general terms; (ii) codification of the right to a healthy environment including its possible constituent elements; and (iii) codification of the right to a healthy environment (including its constituent elements) coupled with additional elements as described above.

This approach would also be time and cost sensitive due to the need to harmonise on various levels as explained above concerning the option to adopt additional protocols to both the ECHR and ESC.

- (iv) *Standalone convention on human rights and the environment combined with a commissioner type mechanism*

Page 57 - §§ 193, 196

In Recommendation 2211(2021), PACE, concerned by the speed and extent of environmental degradation that directly impacts human health, dignity and life and noting that harmful environmental impacts are increasingly affecting the enjoyment of first and second generation human rights by individuals and society at large, considered that the Council of Europe should

Commented [OHCHR355]: Wording proposed for clarity to avoid equalling civil and political with individual rights and economic, social, and cultural rights with collective rights (issue also raised in an earlier comment above).

Commented [BS356]: A court is more than simply a monitoring body

Commented [BS357]: This is inconsistent with the analysis of standalone convention above which includes two options only.

Commented [BS358]: Meaning here is not clear to me. The case could be made that the likely sequencing of the combined instruments would be positive permitting fast action and ultimately ending with the outcome of a legally binding instrument.

Commented [BS359]: The combinations section is long and could potentially be cut and replace with a para or two indicating that different combinations are possible and options could potentially be packaged for stronger outcomes.

show ambition and strategic vision for the future by facing up to this major transformative challenge for human rights and secure their enhanced protection in the era of systemic environmental threats to the present and future generations.

The present report ~~sets out~~[addresses](#) the institutional and wider European and international background on the protection of human rights and the environment. It has identified a growing recognition of the interdependence of human rights and ~~the environmental protection~~ in international law. This is shown by, amongst other things, the CDDH's Manual on human rights and the environment, which describes the relevant jurisprudence of the European Court of Human Rights and the European Committee on Social Rights within their respective competences, by the ~~political~~ recognition of the right to a healthy environment through UNGA Resolution 76/300 and by the fact that many member States within the Council of Europe recognise in a legally binding manner (some form of) the right to a healthy environment in their legal systems.

Page 58 - §§ 197, 198, 199

~~At the same time, w~~[While](#) substantive and procedural elements of the right to a healthy environment have been identified ~~in other regional legal systems and various international binding and non-binding instruments in a number of contexts~~, there is no universally agreed definition of the right to a healthy environment and no universal understanding of its implications and content among Council of Europe member States.

Against this backdrop, it has been argued that a further instrument or instruments on environment and human rights is required. The present report has set out a number of recurring lines of arguments, so-called rationales, that have been brought forward in academic literature, among the experts heard by the working group and in statements by civil society to explain the need for a new instrument. ~~Consideration of the extent to which these rationales are satisfied and relevant can inform an assessment of the need for and feasibility of different potential instruments on human rights and the environment. It will be necessary to consider the extent to which each rationale is relevant before it will be possible to draw conclusions on whether there is a need for any new instrument or instruments.~~

~~To consider feasibility, the~~[This](#) Report has examined different ~~proposals for new~~ Council of Europe instruments ~~that have been proposed to address a perceived need for a new instrument~~. The report has briefly examined their possible ~~material~~ content and has set out which of the rationales identified would be covered by the respective instrument. This allows to check which instruments address the rationale(s) that are considered relevant. The respective weight attached to the relevant rationales allows the narrowing down of options. Finally, the Report sets out key considerations for each of the instruments. The compilation of considerations aims to give an overview of the state of discussions and is intended to provide a meaningful basis for assessing the ~~need for and~~ feasibility of each instrument.

Commented [BS360]: The report can and should be clearer about need.

CONFERENCE OF INGOs OF THE COUNCIL OF EUROPE / CONFÉRENCE DES OING DU CONSEIL DE L'EUROPE

Page 5 - § 5

The way in which the Convention and the Charter have been applied in the environmental context is explored in detail in the [CDDH Manual on Human Rights and the Environment](#) (3rd edition, published in 2022~~adopted in 2024~~).

Page 15 - § 41

On 29 March 2023, the UNGA adopted by consensus a resolution formally requesting an advisory opinion from the International Court of Justice (ICJ) on the obligations of States in respect of climate change.^{cdlxxxix} In particular, this request asked the following questions: (a) what are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; and (b) what are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to States, including, in particular, small island developing States [...] and Peoples and individuals of the present and future generations affected by the adverse effects of climate change? By referring explicitly to international human rights instruments including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

Commented [F361]: CINGO
incomplete sentence

Page 20 - § 59

The second substantive standard concerns the establishment of a Convention violation. It is argued that in environmental cases in general, and pollution cases in particular, evidentiary difficulties arise due to the complex interlinkages between environmental harm and the health risks or effects that an applicant must demonstrate. These challenges have been recognised by the Court in, for example, cases of pollution when it stated that “severe pollution adversely affect public health in general, [...] it is often impossible to quantify its effects in each individual case, and distinguish them from the influence of other relevant factors, such as age, profession, etc.”^{ccxg} For the Court, in assessing evidence, the general principle has been to apply the standard of proof “beyond reasonable doubt”; such proof may follow from “the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.”^{ccxci} The Court may not always apply the principle that the party making an allegation must prove that allegation, however, notably in circumstances where only the respondent Government has access to information capable of corroborating or refuting the applicant's allegations.^{ccxcii} While the Court has emphasised the importance of the precautionary principle in Tatar,^{ccxciii} in newer cases the Court has not developed further its use of this principle.^{ccxciv}

Commented [F362]: CINGO
Footnote missing

Commented [F363]: CINGO
Why the footnote then?

Page 29 - § 91

There are some commonalities in substance between instruments. These comparisons can be found in the table under appendix III, with reference to, ~~contain~~ the suggested elements listed in the UN SR's Framework Principles. However, the constituent elements of the right have not yet been the subject of international negotiations.

Commented [F364]: CINGO
except for the instruments that already include this right, clearly!

Page 33 - §§ 102, 103, 105

There is no explicit legally binding recognition of the right to a healthy environment ~~in international law generally and, in particular, within the Council of Europe's framework.~~ As explained above, unlike Europe, other regional human rights systems have already recognised the right to a healthy environment (see paragraphs 89 – 97 above). Establishing legal recognition of the right would clarify the relationship between environmental protection and human rights and would reinforce the understanding that human rights norms require protection of the environment, and that environmental protection depends on the exercise of human rights.

Commented [F365]: CINGO
This is confusing and is not needed here. Removing this clause makes the point clearer.

As demonstrated above, there is no universal understanding of the material content of the right to a healthy environment amongst Council of Europe member States. In line with the recommendations under CM Rec 2022(20), it has been argued that a new instrument or instruments legally recognising the right to a healthy environment could ~~possibly~~ clarify the

understanding amongst Council of Europe member States of the scope and content of the right to a healthy environment and inspire corresponding national legislation. In addition, should the material content of the right be spelled out in a ~~possible~~ new instrument it would allow member States to influence ~~possible~~ further developments related to the right to a healthy environment ~~at~~ the international level. Considering the increasing number of binding and non-binding instruments that refer to the relationship between human rights and the environment, or actively address the issue, it could be argued that now is an optimal time for member States to shape the content of right and its function in a European context. This would contribute greatly to legal certainty, an important consideration.

As noted in paragraphs 52–77, there is no explicit right to a healthy environment in the Convention or the Charter; the environment is only indirectly protected to the extent that environmental degradation results in a breach of human rights obligations stemming from the current provisions of the Convention. The current jurisprudence of the Court and the ECSR on the procedural requirements and the application of substantive standards that need to be met when litigating human rights cases relating to the environment before the Court and the ESCR limit the reach of the Convention and the Charter in environmental matters. It has been argued that these limits constitute gaps in the protection of human rights that could be addressed by a new instrument protecting the right to a healthy environment in a way that was not subject to the same procedural requirements and substantive standards. For example, cases involving the right to a healthy environment could be subject to different rules concerning territorial jurisdiction, NGO standing to bring public interest cases, and/ or evidence, which, it is argued, would allow the Court to provide more effective overall protection to rights-holders.

Page 33

- v. **Ensuring that rights' holders ~~receive~~ have an enforceable right allowing them greater protection of their rights against environmental degradation and the effects of the triple planetary crisis**

Page 34 - § 111

Some Council of Europe member States do not recognise a constitutional or legislative right to a healthy environment. It is argued that the effects of the recognition of the right to a healthy environment ~~at the international level have been shown to indirectly affect national constitutional, environmental, and human rights law and~~ produce the following legal and environmental benefits: (i) stronger environmental laws and policies; (ii) improved implementation and enforcement; (iii) greater citizen participation in environmental decision making; (iv) increased accountability; (v) reduction in environmental injustices; (vi) a level playing field with social and economic rights; and (vii) better environmental performance.^{ccxcv} It has been argued that a new instrument or instruments on human rights and the environment could encourage States that have not yet adopted the right to do so and encourage those States that have already adopted the right to take further active measures to implement it.

Page 35 - § 112

105. Europe has a history of environmental activism and climate action in a variety of forms including youth climate movements.^{ccxcvi} In particular, as noted above, civil society organisations have called on the Council of Europe to "address the triple planetary crisis of climate change, biodiversity loss and pollution as a supreme human rights crisis" and more specifically to "recognise and protect a legally binding, autonomous right to a clean, healthy and sustainable environment through an additional protocol to the European Convention on Human Rights."^{ccxcvii} The European Network of National Human Rights Institutions (ENNHRI) has also expressed its support for a binding instrument on the right to a healthy environment.^{ccxcviii} Such an instrument would respond to the expectation of these organisations.

Commented [F366]: CINGO

There has been substantial discussion about avoiding this terminology.

Commented [F367]: CINGO

This cannot be said about all of the topics that are covered above in the cited paragraphs. E.g., currently the description above of "limits" includes "the applicability of Convention rights". No one is suggesting that this would not still be a "limitation"

Commented [F368]: CINGO

These findings are based on recognition at national levels not only indirect impacts of international recognition

Commented [F369]: CINGO

It could also prevent backsliding and ensure a level playing field.

Commented [F370]: CINGO

Cite Appendix

Page 36 - § 116

An additional protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement mechanism. It is also ~~one of the~~ only options that is directly responsive to civil society expectations that the Council of Europe will adopt an instrument establishing binding legal protection of the right to a healthy environment.

Commented [F371]: CINGO
cite Appendix

Page 37**A. Considerations related to the identified rationales****§ 121**

This proposal could cover almost all rationales, with the following (partial) exceptions. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the development of the Court's jurisprudence. It would also not address the operation of procedural requirements. Finally, while it could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for businesses nor a right that is directly actionable against businesses. To summarise:

- ✓ Establishing legal recognition of the right to a healthy environment in the Council of Europe framework
- Shaping the content of the right to a healthy environment
- ✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis
- ✓ Addressing the operation of procedural requirements and the application of substantive standards in European human rights law
- Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [F372]: CINGO
Add here overarching argument before going into the various models.

Commented [F373]: CINGO
This is not true. Member states would be parties to all of the cases before the Court. and would have the opportunity, thus, to shape the content, albeit indirectly via the Court.

Commented [F374]: CINGO
This should be green. The rationale, as explained above, says "a new instrument or instruments legally recognising the right to a healthy environment could possibly clarify the understanding amongst Council of Europe member States of the scope and content of the right to a healthy environment and inspire corresponding national legislation" : surely this would result from an additional protocol, as compared to the current "political" recognition and repeated claims throughout this drafting process that states do not know what the right entails.

Commented [F375R374]: The specific sub-point about member states potential role in influencing the result here is noted "In addition"

Commented [F376]: CINGO
These would be addressed via the continued jurisprudence of the Court.

Commented [F377R376]: This should also be green because the primary "limitation" is that application is only indirect : As explained in the accompanying rationale above: "As noted in paragraphs 52–77, there is no explicit right to a healthy environment in the Convention or the Charter; the environment is only indirectly protected to the extent that environmental degradation results in a breach of human rights obligations stemming from the current provisions of the Convention."

Page 38

- Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [F378]: CINGO
This should at least be yellow. An additional protocol would be expected to positively impact accountability for businesses via state obligations, as noted below. The rationale, as described above, is not so narrow as to only concern the creation of comprehensive environmental due diligence standards for companies or direct actionability against businesses, so limit the application of the rationale in that way is problematic.

Commented [F379]: CINGO
This would clearly depend on what is written in the protocol.

Commented [F380]: CINGO
This would also necessarily already be included in models I and II

Page 39 - §§ 125, 126

This model would codify the right to a healthy environment and specify its constituent elements and include also additional elements relating to the ECHR's operation of procedural requirements and the application of its substantive standards. Possible additional elements include provisions on the following: 1) the Court's territorial jurisdiction; 2) rules of evidence, to ease the burden of proof on applicants, 3) recognition of NGO standing, and 4) specific protection for environmental human rights defenders.

By addressing procedural requirements and the application of substantive standards, this model could provide for enhanced protection of the right to a healthy environment, beyond that which would be possible under existing rules and procedures. Under the current understanding of territorial jurisdiction, the potential transboundary causes of environmental harm may leave victims unable to bring applications before the Court.^{ccxcix} Amendments to the rules on jurisdiction addressing such issues could be envisaged, so as to make more effective the protection of individuals' right to a healthy environment. Furthermore, granting NGOs standing to bring public interest cases could improve access to justice for collective environmental interests. Easing the burden of proof on the applicants may also be considered as well as specific provisions on environmental human rights defenders to foster a safer and more enabling environment for them. Finally, whilst this model could, through positive obligations of States, indirectly enhance the international accountability of businesses for the environmental impact of their activities, including on a case-by-case basis concerning matters of due diligence, it would create neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 40

- Enhancing the international responsibilities of businesses for the environmental impact of their activities

§§ 127, 128

An additional Protocol to the Convention could allow individuals access to the Court to enforce their rights in relation to environmental issues, including its robust enforcement mechanism. It is also the only option that is directly responsive to the expectations of civil society, as expressed by observers in the CDDH-ENV drafting group.

However, some of the environmental issues, and particularly climate change issues, are multidimensional and involve issues of distributive justice potentially requiring a holistic approach. Some of these, such as the allocation of economic cost for environmental impact reduction measures or the level of environmental protection to be achieved involve policy choices that are arguably better made and implemented through the democratic process. There is a risk that the Court may not be considered legitimate to decide on such issues, which are widely considered to belong to the political sphere. Far-reaching Court judgments imposing policy choices on States based on the right to a healthy environment risk not being implemented. The introduction of the right to a healthy environment to the Convention system may result in an increased caseload for the Court^{ccc} which may need additional financial resources.

Page 41 - § 134

As indicated below, this model could cover most of the rationales. Without specifying the constituent elements of the right to a healthy environment, member States could not actively shape the content of the right. Instead, this would be shaped through the subsequent decisions/interpretations of the ESCR. It would also not address the operation of procedural requirements. While it could, through positive obligations of States, enhance the accountability of businesses for the environmental impact of their activities, it would establish neither comprehensive environmental due diligence standards for companies nor a right that is directly actionable against businesses.

Page 42

- ✓ Responding to the expectations of civil society

Commented [F381]: CINGO
The counter-arguments should also be included here.

Commented [F382]: CINGO
This would clearly depend on what is written in the protocol.

Commented [F383]: CINGO
also participants, like CINGOs

Commented [F384]: CINGO
This is a false comparison, since an Additional Protocol involves the democratic process

Commented [F385]: CINGO
This issue does not arise specifically due to an Additional Protocol; rather, it is more of a general problem. Arguably, there is more of a risk in the absence of recognition as the Court is increasingly being called upon to address infringements on the right to a healthy environment indirectly and there is no reason to think that these cases will subside.

Commented [F386]: CINGO
There is no basis to expect this consequence in light of the Court's well-established practice of not doing so.

Commented [F387]: CINGO
What is the basis for this claim? The footnote does not make sense. On the other hand, there is the counter-factual. See, e.g., John Knox, Extended Summary at p 33 "Many other courts have proven that they found a way. This right does not have to blow up your case load or reorganize your environmental regulatory system. We have seen it work repeatedly in national courts. There is no reason to think this would not work here." Also, given the reality of triple planetary crisis, it ought to be understood that these cases will come before the Court nonetheless. There are also ways to deal with large numbers of cases stemming from systemic or structural problems. The introduction of the pilot judgment procedure is one example of how this has been dealt with in the past.

Commented [F388]: CINGO
Confusing wording, since sounds like most comparative to other models: instead "half"?

Commented [F389]: CINGO
hence, it should not be red below

Commented [F390]: CINGO
that falls within the rationale as described above

Commented [F391]: CINGO
Why isn't this red? Here, it is being considered as a stand-alone solution.

Page 43

✓ Responding to the expectations of civil society

Commented [F392]: CINGO
Why isn't this red? Here, it is being considered as a stand-alone solution.

Page 44

✓ Responding to the expectations of civil society

Commented [F393]: CINGO
Why isn't this red? Here, it is being considered as a stand-alone solution.

§ 140

Decisions of the European Committee on Social Rights are non-binding on member States, therefore there is a higher risk of non-implementation as compared to binding judgments by a body such as the Court. The optional collective complaints procedure under the ESC would provide a way for non-governmental organisations and social partners to lodge complaints with respect to the right to a healthy environment, with no requirement for the complainant to have exhausted domestic remedies or itself to be a victim of the alleged violation. A non-binding monitoring mechanism, combining a reporting procedure and a complaints procedure, may arguably be more appropriate in an area where difficult policy choices need to be made. In addition, rights already protected under the Charter reflect both positive and negative obligations, which would be suitable for the protection of the right to a healthy environment. In addition, the introduction of the right to a healthy environment to the Charter system may result in an increase of the caseload of the ECSR, which may as a result need additional financial resource

Commented [F394]: CINGO
it is limited to social rights, which is to say, does not cover the full scope of the right. This warrants mention. . .

Commented [F395]: CINGO
Various rights in the ECHR also feature both positive and negative obligations. So it's not clear why this is highlighted only here.

Page 46

✓ Enhancing protection for human rights defenders working on environmental matters

Commented [F396]: CINGO
Shouldn't this at least be yellow?

§ 148

This proposal, due to its flexibility and depending on its content, could cover most of the rationales. It could indirectly encourage the development of further jurisprudence as the ECHR should be interpreted in harmony with other rules of international law of which it forms part. It could not address, however, the operation of procedural requirements and substantive standards of European Human Rights Law (as described in paragraphs 49-69).^{ccci}

Commented [F397]: CINGO
Or very few of them, depending on how ultimately formulated. If, for the purposes of this check-listing, the idea is to take outset in the most expansive possibility, it's important for that to be clear.

Page 47

✓ Encouraging the development of further jurisprudence on environmental degradation and the triple planetary crisis

Commented [F398]: CINGO
It has to be noted that this is very uncertain because it's not imperative that this option even includes jurisprudence

□ Addressing the operation of procedural requirements and substantive standards European human rights law

✓ Enhancing the international responsibilities of businesses for the environmental impact of their activities

Commented [F399]: CINGO
uncertain

✓ Ensuring that rights' holders receive greater protection of their rights against environmental degradation and the effects of the triple planetary crisis

Commented [F400]: CINGO
uncertain

✓ Enhancing protection for human rights defenders working on environmental matters

- ✓ Improving national protection of the right to a clean, healthy and sustainable environment
- ✓ Responding to the expectations of civil society
- ✓ Fulfilling the Council of Europe's mandate

Commented [F401]: CINGO uncertain

Commented [F402]: CINGO what is this based on?

§§ 149, 150, 151

A new convention is not subject to the ECHR or ESC systems and would provide the opportunity for States to create an instrument that States would deem feasible. For States for which an Additional Protocol with Court jurisdiction is not politically viable, the Convention offers a strong alternative with an extensive range of negotiable options to determine an effective yet workable mechanism. A new convention could be opened for signature and ratification by Council of Europe member States, as well as non-Council of Europe member States. Thereby its standards could have influence beyond Europe.

Commented [F403]: CINGO Who is this referring to? On what basis is this prospect assumed? What is "politically viable"? This suggestion is HIGHLY problematic and risks being seen as a conclusion about infeasibility.

In case of option (iii), if a compliance mechanism is included (which would arguably be important for the effective protection of human rights and the environment), member States would have to fund such a body and its activities. The establishment of a new convention with new institutions would require adequate resources. It would also entail questions of overlapping competences in relation to the ECHR and ESC systems which would have to be resolved. However, without a compliance mechanism, the new convention would be in addition to the many existing international instruments that lack the authoritative force of a binding control mechanism such as the Court, resulting in a loss of effectivity for the new convention. Finally, the process of adopting a convention, and its entry into force, can be lengthy.

Commented [F404]: CINGO The risk here should be made clearer for policy makers. There is a risk of competing, duplicative, and contradictory systems. This option does not limit the likelihood that cases related to and concerning the right to a healthy environment will continue to be brought to the Court in hoards.

Another option that has been raised in the course of the working group's discussions is the creation of a standalone monitoring mechanism within the Council of Europe to deal with issues of human rights and the environment. Such a mechanism could be established as or within the Reykjavik Committee envisaged in the Reykjavik Declaration of May 2023

Commented [F405]: CINGO It warrants noting here that the COE has a demonstrably poor track record in adopting environmental instruments. The instruments on civil and criminal liability it has negotiated have not entered into force due to lack of ratification: See e.g. 1993 Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment, Lugano 21 June 1993, ETS No. 150 (not in force), 1998 Convention on the Protection of the Environment through Criminal Law, Strasbourg, 4 November 1998, ETS No. 172, (not in force)

Page 48 - §§ 152, 153

The mechanism could be a committee, similar to the European Commission against Racism and Intolerance (ECRI) that includes independent experts from member states, with a mandate to develop policy recommendations and monitor their implementation at national level through country reports. The presence of these independent experts would not only bring expertise but could engender greater public confidence in the work of the committee. But it could also take the form of an individual Commissioner with a mandate wider than just monitoring, similar to the Council of Europe's Commissioner for Human Rights, or indeed some other form.

Its tasks could be organised around three pillars: country monitoring, thematic work and outreach. Country monitoring could consist in an ongoing dialogue between the body and the authorities of Council of Europe member States with a view to identifying solutions to existing and emerging environmental human rights problems and promoting examples of good practice. Country visits could be organised on a regular basis. Thematic work could be done through policy recommendations addressed to member States. These recommendations could serve as guidance for policy makers and would contribute to standard-setting in the area of human rights and the environment. Finally, an important aspect of the body's work could be reaching out to

society at large. The body could become a forum for dialogue with civil society in general and young people in particular. But it could also reach out to business entities.

Page 49 - § 157

Non-binding monitoring may be considered more easily introduced in an area where complex domestic policy choices need to be made, such as allocation of economic cost for reduction measures or the appropriate level of environmental protection. To that end, a standalone monitoring mechanism whose work is based on dialogue could provide technical advice and support to member States on cross-cutting issues such as human rights and the environment. Either type of mechanism (ECRI-type or Commissioner-type) would also enable dialogue and engagement to begin much more rapidly than would occur through negotiation of new legal instruments. It is important to note, however, that without an associated normative instrument, it may be uncertain which substantive standards would be monitored by the new body although if the new body were to operate as the "Reykjavik Committee", it would meet an existing mandate to reflect on the nature, content and implications of the right to a clean, healthy and sustainable environment and could make policy recommendations to States.

Page 54

✓ Shaping the content of the right to a healthy environment

§ 179

Finally, the following combinations of instruments have been discussed: (i) additional protocols to both the ECHR and the ESC; (ii) a standalone convention on human rights and the environment plus inclusion of environmental protection in the preamble of the ECHR; (iii) additional protocol to the ECHR and/or the ESC combined with an ECRI-style committee or commissioner type mechanism; and (iv) a standalone convention on human rights and the environment combined with a standalone monitoring mechanism; (v) as proposed in Parliamentary Assembly Recommendation 2211 (2021), additional Protocols to both the ECHR and the ESC, coupled with a "Five P's Convention", and the revision of Recommendation CM/Rec(2016)3 on human rights and business.

Page 56, §§ 188, 189, 190, 191

This approach would also be time and resource intensive. Furthermore, the practical challenge of establishing clear delineations between the two systems may impede on the effectiveness of this approach.

This option would combine the aforementioned strengths of additional protocols to both the Convention and the Charter, coupled with an ECRI-style committee or a commissioner type mechanism which could further aid in the political process of the protection of the right to a healthy environment through the proposed activities laid out in paragraphs 149- 151 above. In terms of the combination of the ECHR and/or the ESC the considerations are the same as above.

This approach would also be time and cost sensitive due to the need to harmonise on various levels as explained above concerning the option to adopt additional protocols to both the ECHR and ESC.

- (i) Standalone convention on human rights and the environment combined with a commissioner type mechanism

This option would retain the flexibility offered by a standalone convention and would establish a standard against which an ECRI-style committee or a commissioner on human rights and the

Commented [F406]: CINGO

It's really odd that this report reaches the conclusion that another non-binding recommendation would meet this rationale, but not an Additional Protocol to the ECHR.

Commented [F407]: CINGO

Also, as this combination highlights, there is a significant risk of substantive overlap and conflict.

Commented [F408]: CINGO

Doesn't this depend on whether "and/or" are chosen? If just the protocol to ECHR and monitoring mechanism, it seems this point would not be applicable.

Commented [F409]: CINGO

Why above is "standalone" language used but here "commissioner type", but vice versa in list at para 176 above. Suggest to be consistent to avoid confusion.

environment could function which could further aid in the political process of the protection of the right to a healthy environment through the proposed activities laid out in paragraphs 149-151 above.

Page 57, §§ 192, 196

This option would allow the most flexibility as the Convention and Charter systems would remain intact while retaining the possibility to create a new judicial enforcement mechanism under a standalone convention and strengthen the political framework.

The present report sets out the institutional and wider European and international background on the protection of human rights and the environment. It has identified a growing recognition of the interdependence of human rights and environmental protection in international law. This is shown by, amongst other things, the CDDH's Manual on human rights and the environment, which describes the relevant jurisprudence of the European Court of Human Rights and the European Committee on Social Rights within their respective competences, by the political recognition of the right to a healthy environment through UNGA Resolution 76/300 and by the fact that many member States within the Council of Europe recognise in a legally binding manner (some form of) the right to a healthy environment in their legal systems.

Page 58, §§ 197, 199

At the same time, while substantive and procedural elements of the right to a healthy environment have been identified in other regional legal systems and various international binding and non-binding instruments, there is no universally agreed definition of the right to a healthy environment and no universal understanding of its implications and content among Council of Europe member States.

To consider feasibility, the Report has examined different Council of Europe instruments that have been proposed to address a perceived need for a new instrument. The report has briefly examined their possible material content and has set out which of the rationales identified would be covered by the respective instrument. This allows to check which instruments address the rationale(s) that are considered relevant. The respective weight attached to the relevant rationales allows the narrowing down of options. Finally, the Report sets out key considerations for each of the instruments. The compilation of considerations aims to give an overview of the state of discussions and is intended to provide a meaningful basis for assessing the feasibility of each instrument.

Commented [F410]: CINGO

What about all the downsides re: conflict and cost and uncertainty?

Commented [F411]: CINGO

This falsely suggests that these systems would otherwise not remain intact.

Commented [F412]: CINGO

an unequivocal

Commented [F413]: CINGO

This point is vastly overstated, especially in light of all the practice that is discussed above and in the appendix, and the number of rights where you'd struggle to find a "universal understanding of its implications and content"

Commented [F414]: CINGO

has the potential to address? depends on how graded because some are very uncertain on whether or to what extent they might.

ⁱ There is no universally agreed definition on "triple planetary crisis"; however, see <https://www.unep.org/news-and-stories/speech/triple-planetary-crisis-forging-new-relationship-between-people-and-earth>

ⁱⁱ IPCC, 2022: Summary for Policymakers [H.-O. Pörtner, D.C. Roberts, E.S. Poloczanska, K. Mintenbeck, M. Tignor, A. Alegria, M. Craig, S. Langsdorf, S. Lösche, V. Möller, A. Okem (eds.)]. In: *Climate Change 2022: Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegria, M. Craig, S. Langsdorf, S. Lösche, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press [IPCC 2022 Report]; for a definition of climate change see United Nations Framework Convention on Climate Change (UNFCCC) (1992), UNTS vol. 1771, Art. 1(2)

ⁱⁱⁱ Report of the Special Rapporteur on human rights and the environment, 2017, A/HRC/34/49, <https://undocs.org/A/HRC/34/49>; and IPBES (2019): Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). IPBES secretariat, Bonn, Germany, 11.

^{iv} United Nations Environment Program, Implementation plan "Towards a Pollution-Free Planet", UNEP/EA.4/3; Landrigan, Philip J., and others (2017), The Lancet Commission on Pollution and Health. Available at [https://doi.org/10.1016/S0140-6736\(17\)32345-0](https://doi.org/10.1016/S0140-6736(17)32345-0).

^v It is important to note that human rights consequences do not necessarily entail violations of human rights.

^{vi} See HRC, Report of the Secretary-General, The impacts of climate change on the human rights of people in vulnerable situations, A/HRC/50/57 (2022).

^{vii} CDDH-ENV(2023)10 - Summary of the exchange of views with external independent experts and representatives of the Parliamentary Assembly and the European Committee on Social Rights (13-15 September 2022) (CDDH (Summary), Keller, p. 2.

^{viii} Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39-40 of this report.

^{ix} CM/Rec(2022)20, point 1.

^x Armenia, Austria, Germany, Switzerland.

^{xi} Also Sweden.

^{xii} The Croatian Constitution for example in its Article 3 ranks the protection of the environment among „the highest values of the constitutional order of the Republic“ and declares it a „basis for interpreting the Constitution.“

^{xiii} Austria, Armenia, Switzerland.

^{xiv} Austria, Germany, Switzerland.

^{xv} The German Federal Constitutional Court for example has derived a doctrine of so-called intergenerational equality from the objective to environmental protection in Art. 20a of the German Basic Law that is justiciable under the traditional fundamental rights guarantees.

^{xvi} CM/Rec(2022)20, para. 1.

^{xvii} See for example, the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>)

^{xviii} See Summary, Keller, p.3. and Moutquin, p. 7.

^{xix} R Spano – Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.

^{xx} Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

^{xxi} R Spano – Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.

^{xxii} Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

^{xxiii} UN General Assembly resolution A/RES/77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023; see also <http://www.qil-qdi.org/an-advisory-opinion-on-climate-emergency-and-human-rights-before-the-inter-american-court-of-human-rights/>

^{xxiv} Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39-40 of this report.

^{xxv} CM/Rec(2022)20, point 1.

^{xxvi} R Spano – Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.

^{xxvii} Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

^{xxviii} Adopted in 2013, Protocol No. 15 has been ratified by all the member States of the Council of Europe on 1 August 2021.

^{xxix} Résolution 2396 (2021) para 13 : « grâce à la prévention et à la poursuite des atteintes au droit à un environnement sûr, propre, sain et durable et à la protection des victimes, les États contractants adopteraient et appliqueraient sur tout leur territoire des 'politiques intégrées' efficaces et offriraient une réponse globale aux menaces environnementales et aux risques technologiques, les parlements étant chargés de demander des comptes aux gouvernements quant à la mise en œuvre effective de politiques en faveur des droits humains qui soient respectueuses de l'environnement ».

^{xxx} Voir doc. CM/Del/Dec(2021)1416/3.1, 3 novembre 2021.

^{xxxi} Voir l'annexe à la Recommandation de l'APCE 2211(2021) « Ancrer le droit à un environnement sain : la nécessité d'une action renforcée du Conseil de l'Europe ».

^{xxxii} La page web du réseau contient des liens vers tous les travaux de l'Assemblée sur l'environnement, y compris les textes de référence de toutes les recommandations et résolutions de l'Assemblée sur l'environnement et le changement climatique.

^{xxxiii} Déclaration de Reykjavík, p. 7.

^{xxxiv} Déclaration de Reykjavík, Annexe V, point (i).

^{xxxv} Michelle Bachelet, ancienne Haut-Commissaire des Nations Unies aux droits de l'homme (septembre 2019), disponible à l'adresse <https://www.theguardian.com/law/2019/sep/09/climate-crisis-human-rights-un-michelle-bachelet-united-nations> ; voir également Ian Fry, rapporteur spécial sur la promotion et la protection des droits de l'homme dans le contexte du changement climatique, *Climate change the greatest threat the world has ever faced*, communiqué de presse (octobre 2022), disponible à l'adresse <https://www.ohchr.org/en/press-releases/2022/10/climate-change-greatest-threat-world-has-ever-faced-un-expert-warns>.

^{xxxvi} GIEC, Changements climatiques 2023 : Rapport de synthèse. Rapport du Groupe d'experts intergouvernemental sur l'évolution du climat. Contribution des groupes de travail I, II et III au sixième rapport d'évaluation du groupe d'experts intergouvernemental sur l'évolution du climat [équipe de rédaction principale, H. Lee et J. Romero (eds.)], GIEC, Genève, Suisse [IPCC AR6 SYR], Section 4.4, p. 101.

^{xxxvii} PNUE, *Droits de l'homme et biodiversité : Key Messages*, 2021 ; voir également IPBES, *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, 2019, IPBES secretariat, Bonn, Germany at key messages A and B ; Ch. 4, section 4.4.1.1. ; voir également Ch. 5, section 5.4.1.5.

^{xxxviii} Organisation mondiale de la santé, *Pollution de l'air à l'intérieur des habitations et santé*, 28 novembre 2022, disponible sur <https://www.who.int/fr/news-room/fact-sheets/detail/household-air-pollution-and-health> ; Agence européenne pour l'environnement (AEE), *Air quality in Europe 2021*, disponible sur <https://www.eea.europa.eu/publications/air-quality-in-europe-2021/health-impacts-of-air-pollution> ; AEE, *Air quality in Europe 2022*, disponible sur <https://www.eea.europa.eu/publications/air-quality-in-europe-2022> ; AEE, *Air pollution levels across Europe still not safe, especially for children*, avril 2023 <https://www.eea.europa.eu/en/newsroom/news/air-pollution-levels-across-europe> ; et Rapporteur spécial chargé d'examiner la question des obligations relatives aux droits humains se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable, *Human rights and the global water crisis : water pollution, water scarcity and water-related disasters*, 19 janvier 2021, UN Doc. ONU A/HRC/46/28. Voir également Haut-Commissariat aux droits de l'homme, *Selon un expert, la crise de l'eau a « une incidence majeure sur les droits de l'homme »*, 2021, disponible à l'adresse <https://www.ohchr.org/fr/stories/2021/03/water-crisis-has-major-impact-human-rights-expert-says>.

^{xxxix} AGNU Resolution 76/300.

^{xl} Résolution de l'Assemblée générale des Nations Unies A/RES/77/276, Demande d'avis consultatif de la Cour internationale de justice sur les obligations des États en matière de changement climatique, 29 mars 2023.

^{xli} Comité des droits de l'homme, *Teitiota c. Nouvelle-Zélande*, Doc. ONU CCPR/C/127/D/2728/2016 (2020) ; Comité des droits de l'enfant, *Sacchi et al c. Argentine et al*, Doc. N.U. CRC/C/88/D/107/2019 (2021).

^{xlii} *Portillo Cáceres et autres c. Paraguay*, n° 2751/2016 (2019), para. 7.5.

^{xliii} *Teitiota c. Nouvelle Zélande, Comité des droits de l'homme, 24 octobre 2019, para. 8.6.*

^{xliv} *Ibid*, paras. 9.14-10.

^{xlv} Comité des droits de l'homme, constatations adoptées par le Comité au titre du paragraphe 4 de l'article 5 du Protocole facultatif, concernant la communication n° 3624/2019, CCPR/C/135/D/3624/2019.

^{xlvi} Des circonstances spécifiques de nature procédurale ont également été invoquées pour justifier l'application de la Convention à des événements survenus en dehors du territoire de l'État défendeur, mais cela n'est pas pertinent dans ce contexte, voir *M.N. et autres c. Belgique* (déc.) [GC], n° 3599/18, 5 mai 2020 § 107.

^{xlvii} Résumé, Raible, p. 5-6.

^{xlviii} Voir Article 35(1) de la Convention.

^{xlix} *Kyrtatos c. Grèce*, requête n° 41666/98, arrêt du 22 mai 2003, § 52.

^l *Ibid*, paragraphe 52.

^{li} *Ibid*, para. 53.

^{lii} *Jugheli et autres c. Géorgie*, no. 38342/05, § 62, 13 juillet 2017 ; et *Çiçek et autres c. Turquie*, (déc.), no 44837/07, § 22, 4 février 2020

^{liii}

^{liv} *Fadeyeva c. Russie* § 79.

^{lv} *Ibid*..

^{lvi} *Tătar c. Roumanie*, no 67021/01, arrêt du 27 janvier 2009, § 120 ; d'autres références au principe de précaution se trouvent dans la jurisprudence de la Cour dans le cadre de l'article 6 dans les affaires *Folkman et autres c. République tchèque* (déc.), 2006 ; dans le cadre de l'article 8, *Asselbourg et autres c. Luxembourg* (déc.), 1999 ; *Aly Bernard et 47 autres personnes physiques ainsi que l'association Greenpeace-Luxembourg, c. Luxembourg* (déc.), 1999 ; *Sdružení Jihočeské Matky c. République tchèque* (déc.), 2006.

^{lvii} *Thibaut c. France* (déc.), 2022, § 40-48.

^{lviii} Guide sur la jurisprudence de la Convention – Environnement, § 163.

^{lix} Guide sur la jurisprudence de la Convention – Environnement, § 165 et *Hamer c. Belgique*, requête n° 1861/03, 27 novembre 2007, §79.

^{lx} Guide sur la jurisprudence de la Convention – Environnement, § 166 et *Hamer c. Belgique*, 2007, §78 ; *Depalle c. France* [GC], 2010, §§ 84 et 87 ; *Matczyński c. Pologne*, 2015, §§ 105-106 ; *S.C. Fiercolect Impex S.R.L. c. Roumanie*, 2016, § 67 ; *Tumeliai c. Lituanie*, 2018, § 72.

^{lxi} Guide sur la jurisprudence de la Convention – Environnement, § 166 et *Depalle c. France* [GC], 2010, §§ 84 et 87 ; *Malfatto et Mielle c. France*, 2016, § 64 ; *Barcza et Autres c. Hongrie*, 2016, § 46 ; *O'Sullivan McCarthy Mussel Development Ltd c. Irlande*, 2018, § 124 ; *Bērziņš et Autres c. Lettonie*, 2021, § 90.

^{lxii} Organisations habilitées à déposer des réclamations : syndicats et organisations d'employeurs (nationales et internationales), organisations internationales non gouvernementales (OING) et organisations nationales non gouvernementales (ONG) dans certaines circonstances, conformément aux articles 1 et 2 du protocole additionnel à la CSE prévoyant un système de réclamations collectives.

^{lxiii} En vertu de l'article 4 du protocole additionnel, « les réclamations doivent être présentées par écrit, porter sur une disposition de la charte acceptée par la partie contractante concernée et indiquer en quoi cette dernière n'a pas assuré une application satisfaisante de cette disposition ».

^{lxiv} À ce jour, seuls 16 États ont ratifié le protocole additionnel de 1995.

^{lxv} Annexe à la Charte sociale européenne (révisée), STCE 163, § 1.

^{lxvi} Article 37 de la Charte des droits fondamentaux.

^{lxvii} Directive 2003/4/CE du Parlement européen et du Conseil du 28 janvier 2003 concernant l'accès du public à l'information en matière d'environnement et abrogeant la directive 90/313/CEE du Conseil, disponible à l'adresse suivante : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0004&qid=1615481237607> ; et directive 2003/35/CE du Parlement européen et du Conseil du 26 mai 2003 prévoyant la participation du public lors de l'élaboration de certains plans et programmes relatifs à l'environnement, et modifiant, en ce qui concerne la participation du public et l'accès à la justice, les directives 85/337/CEE et 96/61/CE du Conseil (JO L 156 du 25.6.2003, p. 17), disponible à l'adresse suivante :

<https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=celex%3A32003L0035>.

^{lxviii} Règlement (CE) n° 1367/2006 du Parlement européen et du Conseil du 6 septembre 2006 concernant l'application aux institutions et organes de la Communauté européenne des dispositions de la Convention d'Aarhus sur l'accès à l'information, la participation du public au processus décisionnel et l'accès à la justice en matière d'environnement (JO L 264 du 25.9.2006, p. 13), disponible à l'adresse suivante : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R1367>.

^{lxix} C-431/92 Grosskrotzenburg (1995), C-72/95 Kraaijeveld (1996), C-435/97 WWF (1999) et C-201/02 Delena Wells (2004).

^{lxx} C-237/07 Janecek (2008), C-75/08 Mellor (2009), C-263/09 Djurgården (2010), C-240/09 LZ ou Slovak Brown Bear (2011), C-115/09 Trianel (2011), C-128/09 Boxus, C-182/10 Solvay (2012), C-72/12 Altrip (2014), C-404/13 ClientEarth (2014), et C-243/15 Slovak Brown Bear II (2016).

^{lxxi} Voir Centre pour le développement du droit international de l'environnement, « Interprétation du sens de « sûr », « propre », « sain » et « durable » dans le droit de l'environnement, 21 mai 2020.

^{lxxii} Convention d'Aarhus de 1998 sur l'accès à l'information, la participation du public au processus décisionnel et l'accès à la justice en matière d'environnement, 2161 UNTS 447, 38 ILM 517 (1999), voir cependant, l'interprétation exprimée par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord lors de la signature et confirmée lors de la ratification, selon laquelle l'Article 1 est compris comme "exprimant une aspiration", plutôt qu'un droit.

^{lxxiii} La Convention d'Aarhus a été ouverte à la ratification de tous les États et a déjà été ratifiée en dehors de l'UE par la Guinée-Bissau en 2023.

^{lxxiv} 2018 Accord régional sur l'accès à l'information, la participation du public et la justice en matière d'environnement en Amérique latine et dans les Caraïbes ; voir toutefois l'interprétation exprimée par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord lors de la signature et confirmée lors de la ratification, selon laquelle l'article 1 est compris comme « exprimant une aspiration », plutôt qu'un droit.

^{lxxv} Conseil des droits de l'homme, Rapport du rapporteur spécial sur la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable (30 décembre 2019) Doc. A/HRC/43/53.

^{lxxvi} Ibid. §64.

^{lxxvii} Ibid. §66.

^{lxxviii} CM/Rec(2022)20, §1.

^{lxxix} [Boyd, D. \(2018\) "Catalyst for Change : Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment" in J. Knox & R. Pejan \(Eds.\), The Human Right to a Healthy Environment \(pp. 17-41\). Cambridge : Cambridge University Press.](#)

^{lxxx} Statut du Conseil de l'Europe (STE n° 001)

^{lxxxi} Dans l'annexe V de la déclaration de Reykjavík, les chefs d'État et de gouvernement du Conseil de l'Europe se sont engagés à « renforcer [leurs] travaux au sein du Conseil de l'Europe sur les aspects de l'environnement liés aux droits de l'homme, sur la base de la reconnaissance politique du droit à un environnement propre, sain et durable en ligne avec la Résolution 76/300 de l'Assemblée générale des Nations Unies sur "Les droits de l'homme à un environnement propre, sain et durable ».

^{lxxxii} Voir Résumé, Keller, page 3 et Moutquin, page 7.

^{lxxxiv} R. Spano – Discours liminaire, Actes de la Conférence de haut niveau sur le droit à un environnement propre, sain et durable dans la pratique, 3 mai 2023, p. 27.

^{lxxxv}

^{lxxxvi} Voir l'annexe à la Charte sociale européenne, §1, deuxième phrase : « *La présente interprétation n'exclut pas l'extension de droits analogues à d'autres personnes par l'une quelconque des Parties contractantes* ».

^{lxxxvii} Voir par exemple, *Al-Adsani c. Royaume-Uni*, n° 35763/97, § 55, 21 novembre 2001.

^{lxxxviii} Specific circumstances of a procedural nature have also been used to justify the application of the Convention in relation to events which occurred outside the respondent State's territory, however, this is not relevant in the present context, see *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, 5 May 2020 § 107.

^{lxxxix} Summary, Raible, p. 5-6.

^{xc} PACE. 1999. Recommendation 1431: Future action to be taken by the Council of Europe in the field of environmental protection; PACE. 2003. Recommendation 1614: Environment and human rights; PACE 2009. Recommendation 1885: Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment.

^{xc1} See Summary, Keller, p.3. and Moutquin, p. 7.

^{xcii} R Spano – Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.

^{xciii} Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

^{xciv} See the Appendix to the European Social Charter, paragraph 1 second sentence: "*This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.*"

^{xcv} R Spano – Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.

^{xcvii} Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

^{xcviii} [Summary of the exchange of views with independent experts and representatives from the Parliamentary Assembly and the European Committee of Social Rights \(13-15 September 2022\), presentation given by Prof. Helen Keller, former Judge at the European Court of Human Rights, Chair for Public Law and European and Public International Law, page 3.](#)

^{xcix} [Ibid. page 4](#)

^c [Summary of the exchange of views with independent experts and representatives from the Parliamentary Assembly and the European Committee of Social Rights \(13-15 September 2022\), presentation given by Dr. Lea Raible, lecturer in Public Law at the University of Glasgow, page 3 – 4.](#)

^{ci} [Ibid. page 4](#)

^{cii} [Summary of the exchange of views with independent experts and representatives from the Parliamentary Assembly and the European Committee of Social Rights \(13-15 September 2022\), presentation given by Giuseppe Palmisano, Former President of the European Committee of Social Rights, Department of Law, Roma Tre University, page 2-3](#)

^{ciii} Some Council of Europe member States use different terminology such as fundamental rights.

^{civ} Andorra, Azerbaijan, Belgium, Croatia, Czech Republic, Finland, France, Georgia, Greece, Italy, Latvia, Malta, Netherlands, Norway, Poland, Portugal, Slovak republic, Slovenia, Türkiye.

^{cv} Belgium, Croatia, Finland, Georgia, Portugal, Slovenia, Türkiye.

^{cv1} Azerbaijan, Czech Republic, Norway, Slovak republic.

^{cvii} Latvia

^{cviii} Netherlands.

^{cix} Croatia.

^{cx} Finland, Georgia.

^{cx1} GA Resolution 76/300.

^{cxii} Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

^{cxiii} <https://mnequidelines.oecd.org/mnequidelines/>

^{cxiv} Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39-40 of this report.

^{cxv} CM/Rec(2022)20, point 1.

^{cxvi} See for example, the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>)

^{cxvii} See, for instance, *Al-Adsani v. the United Kingdom*, no. 35763/97, § 55, 21 November 2001.

Formatted: Font: 9 pt

Field Code Changed

^{cxviii} CM/Rec(2022)20; on solidarity see *Vavříčka and Others v. The Czech Republic [GC]*, app. nos. 47621/13-3867/14 and others, Judgment of 8 April 2021, § 279 and § 306.

^{cxix} [PACE Recommendation 2211\(2021\)](#), *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe* (September 2021).

^{cxx} Committee of Ministers Recommendation CM/Rec(2022)20, *Recommendation of the Committee of Ministers to member States on human rights and the protection of the environment* (September 2022).

^{cxixi} According to the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, some form of the right to a healthy environment is recognized in domestic law by more than 80 percent (156 out of 193) of States Members of the United Nations. See, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, HRC, 30 December 2019, A/HRC/43/53. According to information received by the CDDH-ENV from the aforementioned Special Rapporteur on 10 November 2023, the following States have legally recognised the right to a healthy environment: Antigua and Barbuda, Belize, Canada, Grenada, and Saint Lucia. This raises the number to 83 percent (161 out of 193) of States Members of the United Nations.

^{cxixii} See for instance African Charter on Human and Peoples' Rights, adopted June 27, 1981 – entered into force on October 21, 1986, 1520 UNTS 217 at Art. 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol), adopted November 17, 1988 – entered into force on November 16, 1999, at Article 11; Arab Charter on Human Rights, adopted May 22, 2004 – entered into force on March 15, 2008, at Article 38; ASEAN Human Rights Declaration, adopted on 18 November 2012, at Article 28 (f); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), adopted on March 4, 2018 – entered into force on April 22, 2021, at Article 1.

^{cxixiii} See UN General Assembly, *The human right to a clean, healthy and sustainable environment*, July 2022, UN Doc. No. A/RES/76/300; Human Rights Council, *The human right to a clean, healthy and sustainable environment*, October 2021, UN Doc. no. A/HRC/RES/48/13; Human Rights Council, *The human right to a clean, healthy and sustainable environment*, April 2023, UN Doc. No. A/HRC/RES/52/23.

^{cxixiv} Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39-40 of this report.

^{cxixv} CM/Rec(2022)20, point 1.

^{cxixvi} Recommendation on 'climate change and human rights' for the United Nations Climate Change Conference (COP24) to be held in Katowice, Poland, from 3 to 14 December 2018 Adopted by the Standing Committee on behalf of the Conference of INGOs, CONF/PLE(2018)REC3.

^{cxixvii} Intervention by Anna Rurka, President of the Conference of INGOs of the Council of Europe, high-level Conference on Environmental Protection and Human Rights, CONF/PRES/SPEECH(2020)1.

^{cxixviii} Campaign to Uphold Rights in Europe is an initiative of civil society organisations from across the European continent that was launched on 26 January 2022 in Strasbourg.

^{cxixix} See <https://cure-campaign.org/wp-content/uploads/CSSDeclarationFinal.pdf> (at point 6).

^{cxixx} Notable exception exists under the Aarhus Convention and the Escazú Agreement.

^{cxixxi} Report of the Secretary-General, Gaps in international environmental law and environment-related instruments: towards a global pact for the environment, 30 November 2018, UN doc. A/73/419, §92.

^{cxixxii} See, for example, the Right of individual application to the European Court of Human Rights (art. 34 ECHR).

^{cxixxiii} See, for example, Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972 A/CONF.48/14/Rev.1, Principle 2; The World Charter for Nature, 28 October 1982, A/RES/37/3, general principles.

^{cxixxiv} Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818 (entered into force Dec. 29, 1993).

^{cxixxv} The Agreements include the Rio Declaration, Convention on Climate Change, Convention on Biological Diversity and Statement of Principles on Forests.

^{cxixxvi} Convention on Biological Diversity, Preamble.

^{cxixxvii} According to the core group president (Costa Rica), the word "safe" had been removed from the draft text of Resolution 48/13 so that it refers to a right to a clean, healthy and sustainable environment more faithfully capturing the results of the consultations and dialogues, as the adjective "safe" was not clear enough for the parties involved, see the presentation of the draft resolution: <https://media.un.org/en/asset/k1g/k1g6cdjnxl>

^{cxixxviii} UN General Assembly resolution, The human right to a clean, healthy and sustainable environment, 26 July 2022, A/RES/76/300.

^{cxixxix} See Addendum to the draft resolution of the General Assembly on the human right to a clean, healthy and sustainable environment (28 July 2022), UN Doc. A/76/L.51/Add.1 (2022) Albania, Andorra, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Monaco, Montenegro, Netherlands, Portugal, Republic of Moldova, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland and Ukraine.

^{cx} One Council of Europe member State noted that “there is no international consensus on the legal basis of the human right to a clean, healthy and sustainable environment”, that the right was recognized “without due consideration and a common understanding at an international level” of what the right comprises and expressed its understanding “that the right to a clean, healthy and sustainable environment derives from existing international economic and social rights law - as a component of the right to an adequate standard of living, or the right to the enjoyment of the highest attainable standard of physical and mental health”, see <https://www.gov.uk/government/speeches/explanation-of-vote-on-resolution-on-the-right-to-a-clean-healthy-and-sustainable-environment>; Another Council of Europe member State noted that “[p]olitical recognition does not have any legal effect” and that it would have liked to see “a reference to future discussions on a human right to a clean, healthy and sustainable environment”, and another that “the potential legal implications of the new right envisioned in the resolution remain to be determined”., see the explanation of Norway and Poland on the Right to a Clean, Healthy and Sustainable Environment Resolution, <https://press.un.org/en/2022/qa12437.doc.htm>.

^{cxii} See statement of the European Union, A/76/PV.97, p. 18.

^{cxiii} UN General Assembly resolution A/RES/77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023; see also <http://www.qil-qdi.org/an-advisory-opinion-on-climate-emergency-and-human-rights-before-the-inter-american-court-of-human-rights/>

^{cxiii} Human Rights Committee, *Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016 (2020); UN Committee on the Rights of the Child, *Sacchi et al v Argentina et al.*, UN Doc. CRC/C/88/D/107/2019 (2021).

^{cxliii} *Portillo Cáceres and others v. Paraguay*, No. 2751/2016 (2019), para. 7.5.

^{cxlv} *Teitiota v New Zealand*, Human Rights Committee, 24 October 2019, para. 8.6.

^{cxlvi} *Ibid.*, paras. 9.14-10.

^{cxlvii} UN Committee on the Rights of the Child, CRC/88/D/104/2018, paras. 8 and 7.

^{cxlviii} Human Rights Committee, views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, CCPR/C/135/D/3624/2019.

^{cxlix} See also the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes which was established in 1995. The UN Commission on Human Rights created the mandate to investigate the human rights consequences of hazardous substances and toxic waste. In 2011, the UN Human Rights Council recognized the danger of hazardous substances and waste to human rights. It expanded the mandate to cover the entire life-cycle of such products. The mandate was last renewed in 2020 through resolution A/HRC/RES/45/17

^{cl} HRC resolution 19/10.

^{cli} A/HRC/RES/46/7.

^{clii} Special Rapporteur on human rights and the environment, OHCHR.

^{cliii} Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/37/59 (2018), paragraph 1.

^{cliv} *Ibid.*

^{clv} <https://mnequidelines.oecd.org/mnequidelines/>

^{clvi} *Tyrer v. the United Kingdom*, application no. 5856/72, judgment of 25 April 1978, § 31.

^{clvii} *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 146, 12 November 2008. See also *Öcalan v. Turkey* [GC], no. 46221/99, § 163, 12 May 2005, and *Selmouni v. France* [GC], no. 25803/94, § 101, 28 July 1999.

^{clviii} CDDH-ENV(2023)10 - Summary of the exchange of views with external independent experts and representatives of the Parliamentary Assembly and the European Committee on Social Rights (13-15 September 2022) (CDDH (Summary), Keller, p. 2.

^{clix} For example, the scope and application of jurisdiction, victim status and/or exhaustion of domestic remedies are in question in three climate change cases pending before the Grand Chamber of the Court; see *Duarte Agostinho and Others v. Portugal and 32 Others*, application no. 39371/20, *Carême v. France*, application no 7189/21 and *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, application no. 53600/20.

^{clx} Specific circumstances of a procedural nature have also been used to justify the application of the Convention in relation to events which occurred outside the respondent State’s territory, however, this is not relevant in the present context, see *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, 5 May 2020 § 107.

^{clxi} See Article 35 (1) of the Convention.

^{clxii} *Kyrtatos v Greece*, application no. 41666/98, judgment of 22 May 2003, § 52.

^{clxiii} *Ibid.* para 52.

^{clxiv} *Ibid.* para. 53.

^{clxv} *Jugheli and Others v. Georgia*, no. 38342/05, § 62, 13 July 2017; and *Çiçek and Others v. Turkey*, (dec.), no. 44837/07, § 22, 4 February 2020

^{clxvi} *Cordella v Italy*, no. 54414/13, 54264/15, 24 January 2019, §104.

^{clxvii} *Fadeyeva v Russia* § 79.

^{clxix} *Ibid.*

^{clxx} *Tătar v. Romania*, no. 67021/01, judgment of 27 January 2009, § 120; further references to the precautionary principle in the Court’s case law may be found in the framework of Article 6 in *Folkman and Others v. Czech Republic*

Field Code Changed

(dec.), 2006; in the framework of Article 8, *Asselbourg and Others v. Luxembourg* (dec.), 1999; *Aly Bernard et 47 autres personnes physiques ainsi que l'association Greenpeace-Luxembourg, v. Luxembourg* (dec.), 1999; *Sdružení Jihočeské Matky v. Czech Republic* (dec.), 2006.

^{clxxi} *Thibaut v. France* (dec.), 2022, § 40-48.

^{clxxii} Guide on case-law of the Convention – Environment, para 163.

^{clxxiii} 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 2161 UNTS 447, 38 ILM 517 (1999), see, however, the understanding expressed by the United Kingdom of Great Britain and Northern Ireland upon signature and confirmed upon ratification that Article 1 is understood “to express an aspiration”, rather than a right.

^{clxxiv} The Aarhus Convention has been opened for ratification by any state and has been ratified already outside of Council of Europe member States by Guinea-Bissau in 2023.

^{clxxv} 2018 Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.

^{clxxvi} The Declaration states “Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, ...”

^{clxxvii} On the developments leading to the adoption of the resolutions in 2021 und 2022 see Peters, *Clean and Healthy Environment, Right to, International Protection*, Max Planck Encyclopedia of Public International Law (MPEPIL), January 2021.

^{clxxviii} UN Doc. A/HRC/RES/48/13 of 18 October 2021 (HRC Resolution).

^{clxxix} UN Doc. A/RES/76/300 of 1 August 2022 (GA Resolution).

^{clxxx} HRC Resolution, 2.

^{clxxxi} GA Resolution, 1 – 3.

^{clxxxii} Decision 1/CP.27: Sharm el-Sheikh Implementation Plan, Report of the Conference of the Parties on its twenty-seventh session, FCCC/CP/2022/10/Add.1, pp 8 and UAE Consensus Decision -/CM

^{clxxxiii} Decision 1/CP.27: Sharm el-Sheikh Implementation Plan, Report of the Conference of the Parties on its twenty-seventh session, FCCC/CP/2022/10/Add.1, pp 8.

^{clxxxiv} Decision 1/COP.15: Kunming-Montreal Global biodiversity framework, CBD/COP/15/L.25, Annex, para. 14.

^{clxxxv} Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39-40 of this report.

^{clxxxvi} CM/Rec(2022)20, point 1.

^{clxxxvii} Some Council of Europe member States use different terminology such as fundamental rights.

^{clxxxviii} Andorra, Azerbaijan, Belgium, Croatia, Czech Republic, Finland, France, Georgia, Greece, Italy, Latvia, Malta, Netherlands, Norway, Poland, Portugal, Slovak republic, Slovenia, Türkiye.

^{clxxxix} Belgium, Croatia, Finland, Georgia, Portugal, Slovenia, Türkiye.

^{cx} Azerbaijan, Czech Republic, Norway, Slovak republic.

^{cxci} Latvia

^{cxcii} Netherlands.

^{cxci} Croatia.

^{cxci} Finland, Georgia.

^{cxcv} See for example, the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>)

^{cxvii} Global Witness publishes an annual report on the number of killings of environmental defenders. The most recent report, entitled *Last line of Defence*, was published in September 2021 and is available at https://www.globalwitness.org/documents/20191/Last_line_of_defence_high_res_September_2021.pdf. [update to 2023].

^{cxvii} See the Commissioner’s Human Rights comment “Let us make Europe a safe place for environmental human rights defenders at <https://www.coe.int/en/web/commissioner/-/let-us-make-europe-a-safe-place-for-environmental-human-rights-defenders>.

^{cxviii} See, e.g., 2016 Report of the Special Rapporteur on human rights defenders, UN Doc. A/HRC/31/55; Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN Doc. A/HRC/25/55 (23 December 2013); Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/68/262, (5 August 2013). Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples, UN Doc. A/HRC/24/41 (1 July 2013); Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/29/25 (28 April 2015).

^{cxix} R Spano – Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.

^{cc} For example, it took eight years for the Protocol no. 16 to the Convention (CETS no. 214) to be drafted and adopted by the Committee of Ministers and three years for the Protocol no. 15 to the Convention (CETS no. 213) (see their explanatory reports, available on the ECHR website).

^[1] Report CG(2022)43-15final on “A fundamental right to the environment: a matter for local and regional authorities” adopted by the Congress of Local and Regional Authorities during its 43 Session on 26 October 2022.

^[2] [Rapport CG\(2022\)43-15final sur « Un droit fondamental à l'environnement : un enjeu pour les pouvoirs locaux et régionaux » adopté par le Congrès des pouvoirs locaux et régionaux, lors de sa 43^e Session, le 26 octobre 2022.](#)

^{ccd} Resolution 2396 (2021) para 13 „By preventing and prosecuting violations of the right to a safe, clean, healthy and sustainable environment, and protecting the victims, the contracting States would adopt and implement state-wide integrated policies that are effective and offer a comprehensive response to environmental threats and technological hazards, involving parliaments in holding governments to account for the effective implementation of environment-friendly pro-human rights policies.”

^{cccl} See doc. CM/Del/Dec(2021)1416/3.1, 3 November 2021.

^{ccclii} See the appendix of PACE Recommendation 2211 (2021) on “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”.

^{cccliv} The Network’s webpage includes links to all of the Assembly’s work on the environment, including the reference texts to all of the Assembly’s recommendations and resolutions on the environment and climate change.

^{ccclv} Appendix to the European Social Charter (Revised), CETS 163, § 1.

^{ccclvi} Article J “Amendments” of the Charter does not refer to the procedure of amending the Preamble specifically. Under Article J (4) of the Revised Charter: “Any amendment to Parts III to VI of this Charter shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.”

^{ccclvii} For the procedural requirements and application of substantive standards of the Convention and the Charter see paragraphs 49-69 of the present report.

^{ccclviii} 1 Report CG(2022)43-15final on “A fundamental right to the environment: a matter for local and regional authorities” adopted by the Congress of Local and Regional Authorities during its 43 Session on 26 October 2022.

^{ccclix} Resolution 2396 (2021) para 13 „By preventing and prosecuting violations of the right to a safe, clean, healthy and sustainable environment, and protecting the victims, the contracting States would adopt and implement state-wide integrated policies that are effective and offer a comprehensive response to environmental threats and technological hazards, involving parliaments in holding governments to account for the effective implementation of environment-friendly pro-human rights policies.”

^{ccclx} See doc. CM/Del/Dec(2021)1416/3.1, 3 November 2021.

^{ccclxi} See the appendix of PACE Recommendation 2211 (2021) on “Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe”.

^{ccclxii} The Network’s webpage includes links to all of the Assembly’s work on the environment, including the reference texts to all of the Assembly’s recommendations and resolutions on the environment and climate change.

^{ccclxiii} Michelle Bachelet, former UN High Commissioner for Human Rights (September 2019), available at <https://www.theguardian.com/law/2019/sep/09/climate-crisis-human-rights-un-michelle-bachelet-united-nations>; see also Ian Fry, Special Rapporteur on the promotion and protection of human rights in the context of climate change, *Climate change the greatest threat the world has ever faced*, press release (October 2022), available at <https://www.ohchr.org/en/press-releases/2022/10/climate-change-greatest-threat-world-has-ever-faced-un-expert-warns>

^{ccclxiv} IPCC, *Climate Change 2023: Synthesis Report. A Report of the Intergovernmental Panel on Climate Change. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)], IPCC, Geneva, Switzerland [IPCC AR6 SYR], Section 4.4, p. 101.

^{ccclxv} UNEP, *Human Rights and Biodiversity: Key Messages*, 2021; see also IPBES, *Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, 2019, IPBES secretariat, Bonn, Germany at key messages A and B; Ch. 4, section 4.4.1.1.; see also Ch. 5, section 5.4.1.5

^{ccclxvi} World Health Organization, Household air pollution, 28 November 2022, available at <https://www.who.int/news-room/fact-sheets/detail/household-air-pollution-and-health>; European Environment Agency (EEA), Air quality in Europe 2021, available at <https://www.eea.europa.eu/publications/air-quality-in-europe-2021/health-impacts-of-air-pollution>; EEA, Air quality in Europe 2022, available at <https://www.eea.europa.eu/publications/air-quality-in-europe-2022>; EEA, Air pollution levels across Europe still not safe, especially for children, April 2023 <https://www.eea.europa.eu/en/newsroom/news/air-pollution-levels-across-europe>; and Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human rights and the global water crisis: water pollution, water scarcity and water-related disasters, 19 January 2021, UN Doc. No. A/HRC/46/28. See also Office of the High Commissioner for Human Rights, The water crisis has a “major impact on human rights” expert say, 2021, available at <https://www.ohchr.org/en/stories/2021/03/water-crisis-has-major-impact-human-rights-expert-says>.

^{ccclxvii} CM/Rec(2022)20; on solidarity see *Vavříčka and Others v. The Czech Republic* [GC], app. nos. 47621/13 3867/14 and others, Judgment of 8 April 2021, § 279 and § 306.

^{ccclxviii} [PACE Recommendation 2211\(2021\)](#), *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe* (September 2021).

^{ccxix} Committee of Ministers Recommendation CM/Rec(2022)20, *Recommendation of the Committee of Ministers to member States on human rights and the protection of the environment* (September 2022).

^{ccxx} According to the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, some form of the right to a healthy environment is recognized in domestic law by more than 80 percent (156 out of 193) of States Members of the United Nations. See, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, HRC, 30 December 2019, A/HRC/43/53. According to information received by the CDDH-ENV from the aforementioned Special Rapporteur on 10 November 2023, the following additional States have now legally recognised the right to a healthy environment: Antigua and Barbuda, Belize, Canada, Grenada, and Saint Lucia. This raises the number to 83 percent (161 out of 193) of States Members of the United Nations.

^{ccxxi} See for instance African Charter on Human and Peoples' Rights, adopted June 27, 1981 – entered into force on October 21, 1986, 1520 UNTS 217 at Art. 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (San Salvador Protocol), adopted November 17, 1988 – entered into force on November 16, 1999, at Article 11; Arab Charter on Human Rights, adopted May 22, 2004 – entered into force on March 15, 2008, at Article 38; ASEAN Human Rights Declaration, adopted on 18 November 2012, at Article 28 (f); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), adopted on March 4, 2018 – entered into force on April 22, 2021, at Article 1.

^{ccxxii} See UN General Assembly, *The human right to a clean, healthy and sustainable environment*, July 2022, UN Doc. No. A/RES/76/300; Human Rights Council, *The human right to a clean, healthy and sustainable environment*, October 2021, UN Doc. no. A/HRC/RES/48/13; Human Rights Council, *The human right to a clean, healthy and sustainable environment*, April 2023, UN Doc. No. A/HRC/RES/52/23.

^{ccxxiii} Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39-40 of this report.

^{ccxxiv} CM/Rec(2022)20, point 1.

^{ccxxv} Recommendation on 'climate change and human rights' for the United Nations Climate Change Conference (COP24) to be held in Katowice, Poland, from 3 to 14 December 2018 Adopted by the Standing Committee on behalf of the Conference of INGOs, CONF/PLE(2018)REC3.

^{ccxxvi} Intervention by Anna Rurka, President of the Conference of INGOs of the Council of Europe, high-level Conference on Environmental Protection and Human Rights, CONF/PRES/SPEECH(2020)1.

^{ccxxvii} Campaign to Uphold Rights in Europe is an initiative of civil society organisations from across the European continent that was launched on 26 January 2022 in Strasbourg.

^{ccxxviii} See <https://cure-campaign.org/wp-content/uploads/CSSDeclarationFinal.pdf> (at point 6).

^{ccxxix} GA Resolution 76/300.

^{ccxxx} Notable exception exists under the Aarhus Convention and the Escazú Agreement.

^{ccxxxi} Report of the Secretary-General, Gaps in international environmental law and environment-related instruments: towards a global pact for the environment, 30 November 2018, UN doc. A/73/419, §92.

^{ccxxxii} See, for example, the Right of individual application to the European Court of Human Rights (art. 34 ECHR).

^{ccxxxiii} See, for example, Report of the United Nations Conference on the Human Environment, Stockholm, 5–16 June 1972 A/CONF.48/14/Rev.1, Principle 2; The World Charter for Nature, 28 October 1982, A/RES/37/3, general principles.

^{ccxxxiv} It only does so indirectly, through the application of certain human rights in an environmental context. See ECtHR, *López Ostra v. Spain*, app no. 16798/90, Judgment, 9 December 1994, §51.

^{ccxxxv} According to the core group president (Costa Rica), the word "safe" had been removed from the draft text of Resolution 48/13 so that it refers to a right to a clean, healthy and sustainable environment more faithfully capturing the results of the consultations and dialogues, as the adjective "safe" was not clear enough for the parties involved, see the presentation of the draft resolution: <https://media.un.org/en/asset/k1q/k1q6cdjnxl>

^{ccxxxvi} UN General Assembly resolution, The human right to a clean, healthy and sustainable environment, 26 July 2022, A/RES/76/300.

^{ccxxxvii} See Addendum to the draft resolution of the General Assembly on the human right to a clean, healthy and sustainable environment (28 July 2022), UN Doc. A/76/L.51/Add.1 (2022) Albania, Andorra, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Monaco, Montenegro, Netherlands, Portugal, Republic of Moldova, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland and Ukraine.

^{ccxxxviii} One Council of Europe member State noted that "there is no international consensus on the legal basis of the human right to a clean, healthy and sustainable environment", that the right was recognized "without due consideration and a common understanding at an international level" of what the right comprises and expressed its understanding "that the right to a clean, healthy and sustainable environment derives from existing international economic and social rights law - as a component of the right to an adequate standard of living, or the right to the enjoyment of the highest attainable standard of physical and mental health", see <https://www.gov.uk/government/speeches/explanation-of-vote->

[on-resolution-on-the-right-to-a-clean-healthy-and-sustainable-environment](#); Another Council of Europe member State noted that “[p]olitical recognition does not have any legal effect” and that it would have liked to see “a reference to future discussions on a human right to a clean, healthy and sustainable environment”; and another that “the potential legal implications of the new right envisioned in the resolution remain to be determined”. see the explanation of Norway and Poland on the Right to a Clean, Healthy and Sustainable Environment Resolution, <https://press.un.org/en/2022/ga12437.doc.htm>.

^{ccxxxix} See statement of the European Union, A/76/PV.97, p. 18.

^{ccxl} UN General Assembly resolution A/RES/77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023; see also <http://www.qil-qdi.org/an-advisory-opinion-on-climate-emergency-and-human-rights-before-the-inter-american-court-of-human-rights/>

^{ccxli} United Nations (General Assembly). “International Covenant on Economic, Social, and Cultural Rights.” Treaty Series, vol. 999, Dec. 1966.

^{ccxlii} United Nations (General Assembly). (1966). International Covenant on Civil and Political Rights. Treaty Series, 999, 171.

^{ccxliii} CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12).

^{ccxliv} CESCR General Comment No. 15: The Right to Water.

^{ccxlv} General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4 (2000), para. 15.

^{ccxli} Human Rights Committee, *Teitiota v. New Zealand*, UN Doc. CCPR/C/127/D/2728/2016 (2020); UN Committee on the Rights of the Child, *Sacchi et al v Argentina et al.*, UN Doc. CRC/C/88/D/107/2019 (2021).

^{ccxlvii} Portillo Cáceres and others v. Paraguay, No. 2751/2016 (2019), para. 7.5.

^{ccxlviii} *Teitiota v New Zealand*, Human Rights Committee, 24 October 2019, para. 8.6.

^{ccxlix} *Ibid*, paras. 9.14-10.

^{cccl} UN Committee on the Rights of the Child, CRC/88/D/104/2018, paras. 8 and 7.

^{cccli} <https://mnequidelines.oecd.org/mnequidelines/>

^{ccclii} Appendix III of the present report contains a comprehensive compilation of work on environment, climate change and human rights as prepared by the United Nations Human Rights Office.

^{cccliii} The Declaration states “Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, ...”

^{cccliv} ~~On the developments leading to the adoption of the resolutions in 2021 und 2022 see Peters, Clean and Healthy Environment, Right to, International Protection, Max Planck Encyclopedia of Public International Law (MPEPIL), January 2024.~~

^{ccclv} UN Doc. A/HRC/RES/48/13 of 18 October 2021 (HRC Resolution).

^{ccclvi} UN Doc. A/RES/76/300 of 1 August 2022 (GA Resolution).

^{ccclvii} HRC Resolution, 2.

^{ccclviii} GA Resolution, 1 – 3.

^{ccclix} Decision 1/CP.27: Sharm el-Sheikh Implementation Plan, Report of the Conference of the Parties on its twenty-seventh session, FCCC/CP/2022/10/Add.1, pp 8 and UAE Consensus Decision -/CM

^{ccclx} Decision 1/CP.27: Sharm el-Sheikh Implementation Plan, Report of the Conference of the Parties on its twenty-seventh session, FCCC/CP/2022/10/Add.1, pp 8.

^{ccclxi} Decision 1/COP.15: Kunming-Montreal Global biodiversity framework, CBD/COP/15/L.25, Annex, para. 14.

^{ccclxii} Divergent views exist on whether the Aarhus Convention protects a right to a healthy environment. It is important to note, however, that UN treaty bodies have already engaged with allegations of human rights violations in the context of environmental degradation as laid out in paragraphs 39-40 of this report.

^{ccclxiii} CM/Rec(2022)20, point 1.

^{ccclxiv} Armenia, Austria, Germany, Switzerland.

^{ccclxv} Also Sweden.

^{ccclxvi} The Croatian Constitution for example in its Article 3 ranks the protection of the environment among „the highest values of the constitutional order of the Republic” and declares it a „basis for interpreting the Constitution.”

^{ccclxvii} Austria, Armenia, Switzerland.

^{ccclxviii} Austria, Germany, Switzerland.

^{ccclxix} ~~The German Federal Constitutional Court for example has derived a doctrine of so-called intergenerational equality from the objective to environmental protection in Art. 20a of the German Basic Law that is justiciable under the traditional fundamental rights guarantees.~~

^{ccclxx} Azerbaijan, France, Georgia, Greece, Italy, Slovak republic.

^{ccclxxi} Czech Republic, Georgia, Italy, Latvia, Portugal, Slovak republic, Slovenia.

^{ccclxxii} Norway, Poland, Slovak Republic, Slovenia.

^{ccclxxiii} Latvia and Portugal.

^{ccclxxiv} Belgium, Malta, Netherlands.

^{ccclxxv} CM/Rec(2022)20, para. 1.

^{ccclxxvi} See for example, the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>)

Field Code Changed

^{ccxxxvii} See for e.g. PACE, Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment, report from Mr José MENDES BOTA, doc. 12003, 11 September 2009, §8-9.

^{ccxxxviii} Global Witness publishes an annual report on the number of killings of environmental defenders. The most recent report, entitled *Last line of Defence*, was published in September 2021 and is available at https://www.globalwitness.org/documents/20191/Last_line_of_defence_-_high_res_-_September_2021.pdf. [update to 2023].

^{ccxxxix} See the Commissioner's Human Rights comment "Let us make Europe a safe place for environmental human rights defenders at <https://www.coe.int/en/web/commissioner/-/let-us-make-europe-a-safe-place-for-environmental-human-rights-defenders>.

^{ccxxx} See, e.g., 2016 Report of the Special Rapporteur on human rights defenders, UN Doc. A/HRC/31/55; Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, UN Doc. A/HRC/25/55 (23 December 2013); Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/68/262, (5 August 2013). Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya: Extractive industries and indigenous peoples, UN Doc. A/HRC/24/41 (1 July 2013); Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/29/25 (28 April 2015).

^{ccxxxi} Summary, Knox, p 5.

^{ccxxxii} Boyd, D. (2018). *Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment*. In J. Knox & R. Pejan (Eds.), *The Human Right to a Healthy Environment* (pp. 17-41). Cambridge: Cambridge University Press.

^{ccxxxiii} Statute of the Council of Europe (ETS No. 001)

^{ccxxxiv} In Appendix V of the Reykjavik Declaration a commitment was by the Heads of State and Government of the Council of Europe to "strengthen [their] work at the Council of Europe on the human rights aspects of the environment based on the political recognition of the right to a clean, healthy and sustainable environment as a human right, in line with United Nations General Assembly Resolution 76/300 "The human right to a clean, healthy and sustainable environment".

^{ccxxxv} R. Spano—Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.

^{ccxxxvi} Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

^{ccxxxvii} See the Appendix to the European Social Charter, paragraph 1 second sentence: "This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties."

^{ccxxxviii} For example, it took eight years for the Protocol no. 16 to the Convention (CETS no. 214) to be drafted and adopted by the Committee of Ministers and three years for the Protocol no. 15 to the Convention (CETS no. 213) (see their explanatory reports, available on the ECHR website).

^{ccxxxix} UN General Assembly resolution A/RES/77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, 29 March 2023; see also <http://www.qil-qdi.org/an-advisory-opinion-on-climate-emergency-and-human-rights-before-the-inter-american-court-of-human-rights/>

^{ccxc}

^{ccxci} *Fadeyeva v Russia* § 79.

^{ccxcii} *Ibid.*

^{ccxciii} *Tătar v. Romania*, no. 67021/01, judgment of 27 January 2009, § 120; further references to the precautionary principle in the Court's case law may be found in the framework of Article 6 in *Folkman and Others v. Czech Republic* (dec.), 2006; in the framework of Article 8, *Asselbourg and Others v. Luxembourg* (dec.), 1999; *Aly Bernard et 47 autres personnes physiques ainsi que l'association Greenpeace-Luxembourg, v. Luxembourg* (dec.), 1999; *Sdružení Jihočeské Matky v. Czech Republic* (dec.), 2006.

^{ccxciv} *Thibaut v. France* (dec.), 2022, § 40-48.

^{ccxcv} Boyd, D. (2018). *Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment*. In J. Knox & R. Pejan (Eds.), *The Human Right to a Healthy Environment* (pp. 17-41). Cambridge: Cambridge University Press.

^{ccxcvi} See the CoE Commissioner's Report "Environmental Rights Activism and Advocacy in Europe: Issues, Threats, Opportunities" <https://rm.coe.int/environmental-rights-activism-and-advocacy-in-europe-issues-threats-op/1680a1e360>

^{ccxcvii} See <https://cure-campaign.org/wp-content/uploads/CSSDeclarationFinal.pdf> (at point 6).

^{ccxcviii} See <https://ennhri.org/wp-content/uploads/2021/11/ENNHRI-contribution-to-CDDH-ENV.pdf>

^{ccxcix} R. Spano – Keynote Speech, Proceedings of the Council of Europe High-level Conference on the Right to a Clean, Healthy and Sustainable Environment in Practice, 3 May 2023, p. 27.

^{ccc} Similar bodies include the European Commission for the efficiency of justice (CEPEJ) or the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

^{cccd} See, for instance, *Al-Adsani v. the United Kingdom*, no. 35763/97, § 55, 21 November 2001.