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Procedural challenges: ius standi and causality

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Abstract: Procedural aspects present a particular challenge in the case of international climate change litigation based on human rights. The complex nature of climate change and its global character pose the risk that a broad approach to victim status will call into question the functioning of these bodies and clearly complicate the establishment of causality. This should not mean abandoning international human rights-based climate litigation as a means of reacting to climate change, but it does require a proper assessment of what this instrument can contribute to the ultimate goal of sufficiently reducing GHG emissions.

Keywords: International Climate Change Litigation, Procedural Challenges, ius standi, causality

(A) INTRODUCTION

The relevance of procedural aspects in the functioning of any dispute settlement forum is magnified in the case of international human rights protection bodies. One of the reasons for the greater importance of these procedural issues is the access that the individual has to these bodies, which, together with the large number of potential *applicants*, poses a risk of work overload that threatens their proper functioning. The importance of these procedural aspects is even greater in the case of climate disputes brought before these international human rights protection bodies. The features of climate change, and in particular its global nature, open the door to a potential universalisation of access to these bodies, thus increasing the aforementioned risk of work overload. However, when addressing the approach of these bodies to the procedural aspects of climate litigation, a summa divisio can be established according to their nature, distinguishing between the committees on the one hand and the courts on the other.

In the following, the role of two of these procedural aspects will be explored in the context of international human rights-based climate litigation: ius standi and causality. In view of their importance from a procedural perspective, both are good examples of the particularities that these procedural aspects present in climate litigation compared to what arises in other types of cases.

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Moreover, they are procedural aspects that are situated at different stages of the procedure. The ius standi, as admissibility criteria of the claims or communications, is configured as a conditio sine qua non for the corresponding body to be able to rule on the merits. For its part, causality constitutes the essential element for the attribution of liability, by connecting the author of an action or omission with the damage caused as a consequence of the same. Therefore, this aspect comes into play in the proceedings once the claim has been admitted, having fulfilled the admissibility criteria, and is related to the examination of the merits.

(A) THE IUS STANDI IN CLIMATE LITIGATION BASED ON HUMAN RIGHTS

Jus standi entails the recognition of an applicant's right of access to a court, having met the conditions established for this purpose within the regulatory framework governing the functioning of the court. And as mentioned in the introduction, this element is included among the admissibility criteria that the court must analyse before entering into the merits of the case, giving rise to the inadmissibility of the claim or communication in the event that it is not fulfilled. This procedural aspect takes on special relevance in the functioning of international human rights protection bodies, and in particular in the case of the courts where, as noted above, in view of the large number of potential applicants or communicants, the implementation of filtering mechanisms is required in order to enable an adequate examination of the claims or communications that are directly related to the nature of the system[1].

(1) Different approach to the condition of victim from committees and courts

The approach of the international human rights protection bodies to this ius standi requirement is conditioned, as already mentioned, by their nature, being more restrictive in terms of compliance in the case of the courts than in that of committees. The explanation can be found in the different nature of the decisions made by each of these types of bodies, especially the legal binding nature of court judgments for the States parties in the proceedings.

However, this different approach has no obvious basis in the text of the conventions within which the various international human rights protection bodies operate. The description of these admissibility criteria in Article 34 of the ECHR is not very different from that included in Article 5 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure or in Article 1 of the Optional Protocol

[1] This logic of establishing some kind of filter to limit a potentially excessive volume of individual applications led the European Court of Human Rights (ECtHR) to take a small step backwards in recognising the individual's ability to have direct access to it. Indeed, a decade after reaching an equal footing with the States Parties, as a consequence of Protocol No 11 in 1994, an attempt was made to restrict the number of individual applications by amending Art.35(3)(b) of the European Convention on Human Rights (ECHR) by Protocol No 14 in 2004, which introduced a new admissibility criterion referring to the case where: 'the applicant has not suffered a significant disadvantage'.

to the International Covenant on Civil and Political Rights. All three cases refer to individuals, singly or collectively, claiming to be victims of a violation of a right protected in the relevant convention by a State party to the same.

This different approach is based rather on the case law of these bodies through which these admissibility criteria are interpreted and the requirements of ius standi are specified. In this study, we will focus our attention on this interpretation in relation to the possible attribution of the status of victim to an applicant or communicant; although it should be borne in mind that a complete analysis of this ius standi would require attention to other aspects, such as those relating to the interpretation of the scope of the jurisdiction of the States, in order to determine whether or not the applicant or communicant is subject to it.

The ECtHR can be mentioned as an example of the special care that is taken in the case of the courts with regard to the interpretation of the ius standi provided for in the respective human rights conventions. In this case, this interpretation refers to the provisions of Article 34 of the ECHR cited above, leading to a restrictive approach to the requirement of victim status. The ECtHR has established as a principle the need for a flexible approach to the applicant's status as a victim, taking into consideration the circumstances of the case and ruling out a rigid, mechanical and inflexible application of the provisions of the ECHR[2]. But this has not prevented it from establishing as an essential condition for assigning that status of victim to demonstrate that a sufficiently direct link exists between the applicant and the harm associated with the alleged breach of the ECHR, in such a way that the situation differentiates the applicant from other citizens, thus rejecting the possibility of actio popularis[3].

This relative ambivalence of the Court's approach to the status of victim is perceived in relation to its admission, in the context of the flexible stance referred to above, as a consequence of possible future damage[4] , even in the distant future, albeit exceptionally[5] . But once again, however, the restrictive approach appears by demanding the surpassing of a threshold in order to be able to take into account this future risk with a view to considering an applicant as a potential victim. Thus, the Strasbourg Judges require

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2 *Karner v. Austria*, judgment of 24 October 2003, Application no. 40016/98, 25 (ECLI:EC:ECHR:2003:0724JUD004001698). and *Micallef v. Malta* (GC), judgment of 15 October 2009, Application no. 17056/06, 45 (ECLI:EC:ECHR:2009:1015JUD001705606).

3 Vid. V. P. Tzevelekos, 'Standing Before the European Court of Human Rights' (2019), *Max Planck Encyclopedia of International Procedural Law* (2019), at 8. Available at: https://ssrn.com/abstract=3968200. As to the refusal to admit actio popularis the ECtHR has made clear that its function is not to review the relevant law and practice in the abstract, but to determine whether the manner in which they were applied or affected the applicant gave rise to a violation of the Convention. Vid. e.g. *Roman Zakharov v. Russia* (GC), judgment of 4 December 2015, Application no. 47143/06, 164 (ECLI:CE:ECHR:2015:1204JUD004714306).

4 Vid. e.g. *Öneryildiz v. Turkey* (GC), judgment of 30 November 2004, Application no. 48939/99, 98-101 (ECLI:EC:ECHR:2004:1130JUD004893999) or *Budayeva and others v. Russia*, judgment of 29 September 2008, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 147-160 (ECLI:EC:ECHR:2008:0320JUD001533902).

5 The Strasbourg Judge notes as a principle that the exercise of the right of individual petition cannot be used to prevent a potential violation of the ECHR, since, in theory, the ECtHR can only examine a violation ex post facto, once it has occurred. Only in very exceptional circumstances can an applicant claim to be a victim because of the risk of a future violation of the ECHR. *Berger-Krall and others v. Slovenia*, judgment of 13 October 2014, Application no. 14717/04/99, 258 (ECLI:EC:ECHR:2014:0612JUD001471704).

applicants to: 'produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur', considering insufficient a mere suspicion or conjecture of future harm[6].

These principles established in general by the ECtHR in relation to ius standi are transposed to climate litigation. And it is precisely the differences between the position of Strasbourg Judges in these cases and that of other international bodies for the protection of human rights of a non-jurisdictional nature, i.e. committees, that highlight the above-mentioned divisions. Thus, the approach to ius standi has a more restrictive scope in the case of the courts than in the case of the committees, in an attempt to minimise the impact that a broader position in this respect could have on their workload and, by extension, on their future functioning. In the following, we will analyse this different approach of international human rights protection committees and courts to the status of victim in the case of climate litigation.

(2) Different approach to the condition of victim in international climate change litigation based on human rights

As a model or example of the position adopted in this respect by the committees, one can cite the Views of the Human Rights Committee, in relation to the communication submitted by *Daniel Billy*. This body, after confirming its jurisprudence concerning the need to demonstrate that the Member State has already impaired the exercise of the rights of the authors of the communication, or that such impairment is imminent, concludes that these individuals, as members of a population extremely vulnerable to climate change, are exposed to a risk that their rights will be impaired, which the Committee considers to be more than a theoretical possibility, and therefore declares the communication admissible[7].

This approach contrasts with that of the Court of Justice of the European Union (CJEU) and especially with that of the ECtHR. In the first case, the General Court, in its Order of 8 May 2019 in the *Armando Carvalho* case, confirmed by Judgment of the CJEU of 25 March 2021[8], concludes that the applicants have not been individually and directly affected by the legislative provisions to which the action for annulment is directed, which establish the effort to reduce GHG emissions to be made by the Member States of the European Union. In relation to the issue of interest here, the Court's rejection of the applicants' argument that: 'each applicant is affected by climate change ... idiosyncratically and is therefore distinguished from all other persons' is particularly noteworthy, qualifying it as fallacious from a logical perspective by implying that: 'every person around the world is individually concerned by this legislative package'. This leads the Luxembourg Judge to consider that the above argument is a blatant contradiction of its own case-law criterion which requires the existence of genuine distinguishing

6 Vid. e.g. *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, judgment of 17 July 2014, Application no. 47848/08, 101 (ECLI:CE:ECHR:2014:0717JUD004784808).

7 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, 18 September 2023, 7.9 and 7.10.

8 Judgment of 25 March 2021, *Armando Carvalho and others v Parliament and Council* (C-565/19 P) (ECLI:EU:C:2021:252).

features[9]. This approach of the European Union Judge to the question of the individual's direct scope of action before him leads to pessimistic predictions regarding the future of climate litigation in this forum[10].

In the case of the ECtHR, the approach to ius standi in climate litigation contrasts even more with that of the Human Rights Committee mentioned above. This contrast is evident in its judgment in the *Verein KlimaSeniorinnen* case, in which the Strasbourg Judges warned of the risk of taking too broad an approach to the status of victim, warning that this would mean opening the door to everyone, depriving the status of victim through its role as a limiting criterion, i.e. its role as a filter, as mentioned at the beginning[11].

The perception of this risk leads the ECtHR to identify two specific criteria for the recognition of victim status in these climate disputes, which sum up this restrictive approach. These criteria are as follows:

> '(a) the applicant must be subject to high intensity exposure to the adverse effects of climate change, that is, the level and severity of adverse consequences of governmental action or inaction affecting the applicant must be significant; and
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> (b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence, or inadequacy, of any reasonable measures to reduce harm'[12].

To this is added the determination of an especially high threshold for fulfilling these criteria, in view of the exclusion of actio popularis. This threshold means that, in contrast to what the Human Rights Committee stated earlier, for the Strasbourg Judge it is not enough to belong to a category of persons particularly sensitive to the effects of climate change in order to consider the applicants to have the status of victims, but rather the situation must be analysed in each case, and in this case the applicants have not demonstrated that they have fulfilled the specific criteria indicated, and therefore they are not recognised as victims[13].

This restrictive approach of the ECtHR can also be seen in the case of the applicant association in the same case, which is also denied the status of victim, although it is recognised as having the capacity to act before it[14]. But, again, this capacity to act is

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9 Order of 8 May 2019, *Armando Carvalho and others v Parliament and Council* (T-330/18), 28 (ECLI:EU:T:2019:324).

10 Beatriz Pérez de las Heras considers this path to be practically non-existent, although she adds that this conclusion is somewhat compensated for by the indirect positive effect that the CJEU can play in this regard, serving as support, via preliminary rulings, for the role of national courts in forcing governments to modify their climate policies. B., Pérez de las Heras, 'Climate litigation in the European Union: an asymmetrical instrument of climate governance', 64 *General European Law Review* (2024), 92.

11 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, judgment of 9 April 2024, Application no. 53600/20, 460 (ECLI:EC:ECHR:2024:0409JUD005360020).

12 *Ibid*., 487-488.

13 In particular, the ECtHR points out that there is nothing to show that the applicants have suffered critical health problems, the aggravation of which due to the heatwaves could not be mitigated by adaptation measures available in Switzerland or reasonable individual adaptation measures. Moreover, the ECtHR recalls that it does not recognise the status of victim in respect of a future risk other than by way of exception and the applicants have not proved the existence of such exceptional circumstances, and therefore declares the individual application inadmissible. *Ibid*., 531 et seq.

14 Recognition that is underpinned by the status of such associations, according to Strasbourg's own case law, as an accessible, and sometimes the only, effective means of defence in relation to particularly

restricted by the determination of specific conditions that try to avoid the presentation of actio popularis[15].

This restrictive approach of the ECtHR to the attribution of victim status has been the subject of criticism with respect to its jurisprudence on the right to a healthy environment, arguing that it reduces the possibilities for the ECHR system to be configured as an instrument for the protection of a public interest, such as the environment[16]. This would be transferable to climate litigation and the status of the ECtHR as a tool to make climate justice effective in the face of policy inadequacies.

In this regard, it should be noted that this position clearly results in a limitation of access to the ECtHR in defence of the right to a suitable climate, but there are a number of observations to be made with respect to the above allegations. Firstly, that in determining their position on the recognition of this right the Strasbourg Judges have had to weigh up various interests in relation to which, as has already been said, they must strike a balance. One such interest is that of ensuring the proper functioning of the system of protection itself, in particular with regard to the problem of the workload that continues to weigh it down at present, in relation to which climate cases pose the risk already noted of a virtual universalisation of access to the ECHR system.

Furthermore, this criticism of the restrictive approach of the ECtHR, with the consequent limitation of its configuration as an instrument for the defence of a public interest such as environmental protection, can be countered by another consideration that has to do with the very nature of the ECHR system. Its raison d'être is to safeguard individual and specific rights and, in accordance with the principle of subsidiarity, to support the proper functioning of national systems. Indeed, it is this objective of safeguarding individual rights that leads the ECtHR not to accept the submission of actio popularis, which in principle rules out the possibility of considering it as an instrument designed for the protection of any public interest, however legitimate it may be.

(B) CAUSALITY IN CLIMATE CHANGE LITIGATION

Causality is a fundamental element for the attribution of liability and generally consists, as noted above, in the determination of the cause-effect relationship between a given conduct and a damage or harm, which allows the attribution of liability for the commission of that damage or harm to the perpetrator of that conduct. However, causality has distinctive elements in the case of climate change, the complexity of which

complex administrative acts, which is seen as particularly valid in the case of climate change. *Ibid*., 489.

15 These conditions include that the association is legally constituted or has the capacity to act in the State in question; that it demonstrates that it pursues a specific interest, in accordance with its statutory objectives, in defending the fundamental rights of its members or other affected individuals in that country; that it is truly representative; and that it is entitled to act on behalf of its members or other individuals. In addition, the persons on whose behalf such an association acts before the ECtHR must be in a position to claim that they are subject to specific threats or adverse effects of climate change on their lives, health, well-being and quality of life. *Ibid*., 524.

16 Vid. R. Pavoni, 'Public Interest Environmental Litigation and the European Court of Human Rights: No Love at First Sight', in F. Lenzerini and A. F. Vrdoljak (eds.), *International Law for Common Goods: Normative Perspectives on Human Rights, Culture and Nature* (Hart Publishing, Oxford, 2014), at 331-359.

makes it more difficult to determine the existence of such a causal link between a specific conduct, such as the insufficient effort of a State in relation to the reduction of GHG emissions, and the harm suffered by a specific individual.

(1) Complexity of causality in International Climate Change Litigation

This complexity is embodied in the identification of several stages of this causal relationship, which can be distinguished as follows:

> that which links the increase in anthropogenic GHG emissions to the existence of climate change.
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> that which establishes the relationship between climate change and the occurrence of extreme events (floods, droughts, rising temperatures, ...), and
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> that which relates these extreme events to the prejudice suffered by individuals to their rights.

In principle, the determination of causality in each of these stages does not pose any difficulties from a scientific point of view, and one can refer to the successive IPCC reports, which increasingly clearly corroborate these cause-effect relationships. Moreover, the integration of each of these causal links would ultimately lead to consideration of the link between anthropogenic GHG emissions and the harm to the rights of individuals.

However, the problem arises when it comes to determining the individual responsibility of each State in relation to the harm caused to the rights of each specific person, which is known as specific causality. The reasons for the difficulty in establishing this causal link result from the fact that the harm caused to the rights of a specific person does not have a single responsible party, but rather results from a confluence of multiple conditions contributed by multiple actors. This leads to the qualification of climate change as a: 'collective action problem so pervasive and so complicated as to render at once both all of us and none of us responsible'[17].

Thus, although there has been some progress in the science of attribution, it is still not possible to determine specific causation, i.e. to demonstrate precisely that the defendant's specific emissions caused the specific injury alleged[18]. This distinguishes

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17 T. Burman, 'A New Causal Pathway for recovery in Climate Change Litigation?', 52 *Environmental Law Reporter* (2022), at 1044. Available at: https://www.elr.info/sites/default/files/files-general/52.10038.pdf. Constituting what Richard J. Lazarus calls a *super-wicked problem* from a policy and legal point of view. What he describes as a consequence of several elements such as a very large number of sources that originate the problem or the wide variety of actors involved in it, from States themselves to small and large businesses, farmers, and individuals who consume goods, heat their homes, or drive a car, etc. Added to this are additional complicating factors such as the fact that the emission of GHG is not forbidden in and of itself, being its cumulative effect in space and in time that is problematic or the rapid diffusion of GHG emissions in the atmosphere, which leads to the fact that their effects are not related to the location of their source. R. J. Lazarus, 'Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future', 94 Cornell Law Review, No. 5 (20099, at 107. Available at: https://ssrn.com/abstract=1302623.

18 T. Burman, 'A New Causal Pathway for recovery in Climate Change Litigation?', cit. at 1052. Along the same lines, Andre Nollkaemper acknowledges that the IPCC's findings on general causation may not solve specific causation problems, and adding that the significant progress made for climate science in the

climate litigation from environmental litigation, where the cause-effect relationship between a particular conduct of a State and the harm caused to the rights of specific persons appears much more direct and individualised. In conclusion, the significant advances made by climate science in recent years do not allow, at least at the current state of those progresses, to reach specific conclusions on whether a particular State caused specific harm or led to the violation of a right of a particular person.

The demonstration of this specific causality is presented as necessary for the purpose of determining compensation for damages, making it possible to determine the specific degree of contribution of that State to the harm caused to that individual and, therefore, its share of responsibility and, if applicable, the assumption of that compensation. However, this is not usually the aim of human rights-based climate litigation, including international human rights litigation; rather, it is litigation that is described as preventive, trying to push for specific action, to press legislators and policymakers to be more ambitious in their approaches to climate change and fill the gaps left by legislative and regulatory inaction[19].

In order to avoid this obligation to intensify their efforts to reduce GHG emissions, States resort to the *drop in the ocean* argument, putting forward that their contribution to the total of these emissions and therefore to the aggravation of climate change is small, which, taken to the extreme, would exonerate them from responsibility for the harm suffered by a private individual, which would continue to occur even if that State increased its mitigation efforts.

However, such an argument, which is ultimately not without reason as far as the final conclusion of continued harm to the rights of the individual is concerned, clearly risks exonerating all States, or at least the vast majority except the major GHG emitters, from having to undertake an intensification of their mitigation effort[20].

(2) Normative approach to causality in international climate change litigation

In any case, this argument is rejected by the international human rights protection bodies, which change their approach to causality so that they choose to focus on State behavior not so much in relation to GHG emissions as to the adoption of the necessary preventive measures to avoid the impacts of climate change affecting the rights of individuals, regardless of the State's contribution to those impacts.

This approach is the one followed by the ECtHR in its judgment in the *KlimaSeniorinnen* case, in which it ruled out the possibility of a State avoiding its responsibility by hiding behind those of others, concluding that, in cases of joint responsibility of several States,

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past few years, does not (yet) allow for specific findings that a particular State caused a particular harm. A. Nollkaemper, *Causation Puzzles In International Climate Litigation*, 17 Amsterdam Law School Research Paper (2024) at 2. Available at: file:///Users/user/Downloads/ssrn-4819496%20(2).pdf.

19 S. Maljean-Dubois, 'Climate Change Litigation', *Max Planck Encyclopedia of Procedural International Law* (2018), at 5. Available: https://opil.ouplaw.com/display/10.1093/law-mpeipro/e3461.013.3461/law-mpeipro-e3461?rskey=3i5w6U&result=1&prd=OPIL&print. What is identified as *strategic litigation*. B. Pérez de las Heras, 'Climate litigation in the European Union: an asymmetrical instrument of climate governance', cit.

20 M. Feria-Tinta, 'Climate Change Litigation in the European Court of Human Rights: Causation, Imminence and other Key Underlying Notions', (1) 3 *Europe of Rights & Liberties/Europe des Droits & Libertés* (2021), at 60.

each of them must be held accountable according to its share of responsibility[21] . Thus, the ECtHR approaches Switzerland's responsibility in this case from the perspective of that State's compliance with its positive obligations under the ECHR in relation to climate change, considering it sufficient that the domestic authorities are found to have failed to take reasonable measures that would have had a real opportunity to change the course of events or to mitigate the damage caused[22].

And the same approach is followed by other international bodies, such as the Committee on the Rights of the Child, in the *Sacchi* case[23], or the International Tribunal for the Law of the Sea (ITLOS), in its Advisory Opinion of 2024, in which it opts for a similar solution by stating that: 'the causation between emissions from activities under the jurisdiction or control of one State and damage caused to other States and their environment, should be distinguished from the applicability of an obligation under article 194, paragraph 2, to marine pollution from anthropogenic GHG emissions'[24]..

In other words, the factual causation standard is replaced by a normative approach to causality based on international obligations to prevent climate change, in which the question is not whether that State has caused significant harm but whether it has done enough to prevent it[25]. This new approach facilitates the determination of State responsibility, which is now circumscribed to simply to prove that the State has failed to meet its obligations of conduct by not having taken all the measures that should have been taken and that makes its contribution to the prejudice of the violated rights of a specific person irrelevant[26].

The first criterion for assessing this normative causality, i.e. the sufficiency of the State's action to prevent harm to the applicant's rights, is logically compliance with its legal obligations, including those of an international nature. However, the complexity of the response to climate change and the relative ambiguity of the obligations resulting from legal texts, especially at an international level and in particular those set out in the Paris Agreement, mean that, even in strict compliance with their obligations, a State's GHG emission reduction efforts may be considered insufficient for an effective response to climate change and contribute to the harm that may be caused to the rights of potential applicants[27]. This insufficiency of legal obligations is expressly noted by ITLOS, which recalls that: 'the Paris Agreement does not require the Parties to reduce

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21 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, cit., 441.

22 *Ibid*., 444.

23 *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019*, ***, CRC/C/88/D/104/2019, 8 October 2021, par. 10.4 and 10.5.

24 *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, 21 May 2024, 252. Available: https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf.

25 A. Nollkaemper, *Causation Puzzles in International Climate Litigation*, cit.

26 S. Maljean-Dubois, 'Climate Change Litigation', cit.

27 This insufficiency of the mitigation effort so far is expressly reflected in the first global stocktake presented in accordance with Art. 14 of the Paris Agreement at COP 28 in 2023, which notes that the significant collective progress made is insufficient to meet the objectives of the Agreement. Decision 1/CMA.5. *Outcome of the first global stocktake*, FCCC/PA/CMA/2023/16/Add.1, 15 March 2024, 4. Available at: file:///Users/user/Downloads/cma2023_16a01_adv_.pdf.

GHG emissions to any specific level according to a mandatory timeline but leaves each Party to determine its own national contributions in this regard', and therefore concludes that it is necessary to consider: 'other factors relevant to the determination of necessary measures to prevent, reduce and control marine pollution'. Adding in this regard that 'Article 194, paragraph 1, of the Convention provides that States shall take necessary measures, using for this purpose "the best practicable means at their disposal" and "in accordance with their capabilities"'. Thus, the scope and content of necessary measures may vary depending on the means available to States and their capabilities, such as their scientific, technical, economic and financial capabilities[28].

And, in the same vein, the applicants in the *Verein KlimaSeniorinnen* case, after considering that Switzerland's contribution to the goal of limiting the temperature increase to 1.5 °C is far from fair[29] , turn to science, relying on the 5th IPCC report to conclude that, to have a 66% chance of staying within the 2°C global average temperature increase target set in the Paris Agreement, States like the respondent would need to reduce their emissions by at least 40% and possibly up to 100% by 2030 compared to 1990[30].

(C) CONCLUSIONS

The complexity of climate change poses specific challenges for the recognition of ius standi and the determination of the causal link in the case of human rights-based climate litigation. However, international rights protection bodies take a proactive approach to overcoming these procedural hurdles, opening the way for the individual to bring their own claims before these bodies.

However, this approach is conditioned by the nature of these protection bodies, being more restrictive in the case of the courts than in that of the committees. This does not prevent the hurdle represented by specific causality from being overcome, even within the framework of the proceedings before these international courts, by replacing the traditional approach based on factual causality with one that focuses on the positive obligations of States, in this case in relation to the impact of climate change on the rights of persons subject to their jurisdiction, and which is identified as a normative approach to this causal relationship.

The realisation of the difficulties encountered in international human rights-based climate litigation should not undermine the importance of climate action at the judicial level as an appropriate way to help overcome the inadequacy of policy. However, it does highlight the limits of this avenue and clarifies its true function, which is to raise awareness and open ways for States to strengthen their commitment to tackling climate change.

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28 *Request for an Advisory Opinion...*, cit.

29 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, cit., 304.

30 *Ibid*., 769 et seq. And they even point to additional arguments, such as the use of objective scientific analyses of the equity of states' mitigation efforts, such as that carried out by the *Climate Action Tracker*, which in this case leads to the assertion that if all States were to follow Switzerland's approach in terms of their efforts to reduce GHG emissions, global warming would reach 3 °C, which leads to the conclusion that Switzerland's reaction to this phenomenon is insufficient.