

INDEX

Abbreviations used in the index

- 1503 procedure (procedure for submission of claims to the UN Commission on Human Rights established by Economic and Social Council resolution 2000/3)
- Aarhus Convention (Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998))
- Abidjan Convention (Convention for the Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (1984))
- ACCOBAMS (Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (1996))
- ACHPR (African Charter on Human and Peoples' Rights (1981))
- ACHR (American Convention on Human Rights (1969))
- AComHPR (African Commission on Human and Peoples' Rights)
- ACT (Amazon Cooperation Treaty (1978))
- ACtHPR (African Court on Human and Peoples' Rights)
- ACTO (Amazon Cooperation Treaty Organization)
- ADRDM (American Declaration of the Rights and Duties of Man (1948))
- ADRIP (American Declaration on the Rights of Indigenous People (2016))
- Algiers Convention (African Convention on the Conservation of Nature and Natural Resources)
- Amsterdam Treaty (Treaty of Amsterdam amending the Treaty on European Union and the Treaties establishing the European Communities (1997))
- ANPS (Airports National Policy Statement (2018))
- AR (IPCC Assessment Report)
- Arab Charter (Arab Charter on Human Rights (2004))
- ASEAN HRD (ASEAN Human Rights Declaration (2012))
- Bali Guidelines (Bali Guidelines for Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (2010))
- Barcelona Convention (Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (1976/1995))
- Barcelona Convention Protocol (Barcelona Convention Integrated Coastal Zone Management Protocol (2008)) (ICZM Protocol)
- Basel Convention (Basel Convention on Transboundary Movements of Hazardous Wastes (1989))
- Bucharest Convention (Convention on the Protection of the Black Sea against Pollution (1992))
- Cartagena Convention (Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (1983))
- Cartagena Protocol (Cartagena Protocol on Biosafety (2000))
- CBD (Convention on Biological Diversity (1992))
- CCA (UK Climate Change Act 2008)
- CCC (Climate Change Convention (1992))
- CCC (UK Climate Change Committee)

- CDES (Centro de Derechos Económicos y Sociales)
 CEJIL (Center for Justice and International Law)
 CESCR (UN Committee on Economic, Social and Cultural Rights)
 CFR (European Charter of Fundamental Rights (2000))
 CGC (Compañía General de Combustibles)
 CNS (Convention on Nuclear Safety (1994))
 CODENPE (Council for the Development of Nationalities and Peoples)
 COP (Conference of the Parties)
 CSAS (Climate Science, Awareness and Solutions)
 CSD (United Nations Commission on Sustainable Development)
 ECE (Economic Commission for Europe)
 ECHR (European Convention on Human Rights (1950))
 ECLAC (Economic Commission for Latin America and the Caribbean)
 ECtHR (European Court of Human Rights)
 EEC [or TEC] (Treaty Establishing the European Economic Community) (1957)
 (Treaty of Rome as updated by the Treaties of Amsterdam and Nice)
 EIA Regulations (Town and Country Planning (Environmental Impact Assessment)
 Regulations 2017)
 ENMOD (Convention on the Prohibition of Military or Any Other Hostile Use of
 Environmental Modification Techniques (1976)) 283
 Espoo Convention (ECE Convention on Environmental Impact Assessment in a
 Transboundary Context)
 ETS (Emissions Trading System)
 GC common Article (Geneva Conventions (1949), common Article)
 GLA (Greater London Authority Act 1999)
 HD (Habitats Directive (92/43/EEC))
 HELCOM (ECE Convention on the Protection of the Marine Environment of the
 Baltic Sea Area (1992)) (Helsinki Convention)
 HR (Conservation of Habitats and Species Regulations 2010)
 HRC (UN Human Rights Committee)
 HRC GC (UN Human Rights Committee General Comment)
 IACoHR (Inter-American Commission on Human Rights)
 IACtHR (Inter-American Court of Human Rights)
 IADC (Inter-American Democratic Charter (2001))
 ICCPR (International Covenant on Civil and Political Rights (1966))
 ICCPR OP 1 (ICCPR First Optional Protocol)
 ICESCR (International Covenant on Economic, Social and Cultural Rights (1966))
 ICZM Protocol (Barcelona Convention Integrated Coastal Zone Management
 Protocol (2008))
 IEL (international environmental law)
 IHRL (international human rights law)
 ILC(SR) (International Law Commission, Articles on State Responsibility for
 Internationally Wrongful Acts)
 ILC(TBH) (Draft Articles on Prevention of Transboundary Harm from Hazardous
 Activities, with commentaries (2001))
 ILO No 169 (Convention concerning Indigenous and Tribal Peoples in Independent
 Countries of the ILO)
 IMO (International Maritime Organization)
 INADE (Peruvian National Development Institute (INADE))

- IPCC (Intergovernmental Panel on Climate Change)
 IPCC (International Plant Protection Convention (1951))
 ISP (Inter-American Strategy for the Promotion of Public Participation in Decision-making on Sustainable Development (2000))
 Jeddah Convention (Regional Convention for the Conservation of the Red Sea and of the Gulf of Aden Environment (1982))
 Kuwait Convention (Regional Convention for Cooperation on the Protection of the Marine Environment from Pollution (1978))
 Lima Convention (Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (1981))
 London Convention (London Convention on the Prevention of Marine Pollution by the Dumping of Wastes (1972))
 MCM (Minamata Convention on Mercury (2013))
 NAAEC (North American Agreement on Environmental Cooperation (1993))
 Nairobi Convention (Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean (1985))
 Nature Charter (World Charter for Nature (1982))
 NGO (non-governmental organization)
 Noumea Convention (Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (1986))
 NPS (National Policy Statement)
 NTA (Native Title Act 1993 (Australia))
 Oslo Convention (Oslo Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (1972))
 OSPAR (Convention for the Protection of the Marine Environment of the North-East Atlantic (1992))
 PA (Paris Agreement on Climate Change (2015))
 Paris Agreement (2015) (UN Framework Convention on Climate Change (2015))
 PIC (Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998))
 PIDS (Inter-American Program for Sustainable Development 2016-21)
 RC (Convention Relating to the Status of Refugees (1951))
 RCAP (Royal Commission on Aboriginal People (Canada))
 ROP (Rules of Procedure)
 Rotterdam Convention (Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998))
 SAC (Special Area of Conservation)
 San Salvador Protocol (ACHR Additional Protocol on Economic, Social and Cultural Rights)
 San Salvador Working Group (Working Group on the Protocol of San Salvador)
 SEA Directive (EC Council Directive 2001/42/EC on the assessment of the effect of certain plans and programmes on the environment)
 SEA Protocol (UNECE Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (2003))
 Stockholm Convention (POPs) (Stockholm Convention on Persistent Organic Pollutants (POPs) (2001))
 Tehran Convention (Framework Convention for the Protection of the Marine Environment of the Caspian Sea (2003))

TEIA (Convention on the Transboundary Effects of Industrial Accidents (1993))
 UFA (Umbrella Final Agreement (1990) (Canada/Yukon First Nations/Yukon))
 UNCAT (UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984))
 UNCCD (UN Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (1994))
 UNDRIP (UN Declaration on the Rights of Indigenous Peoples (UNGA Resolution 61/295) (2007))
 UNDROP (UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018))
 UNECE (Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (2003))
 UNEP (UN Environment Programme)
 UNHRC (UN Human Rights Council)
 VCLT (Vienna Convention on the Law of Treaties (1969))
 Water Convention (ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992))
 Watercourses Convention (UN Convention on the Law of the Non-Navigational Uses of International Watercourses (1997) (entry into force: 2014))
 WCR (Wider Caribbean Region)
 WSP (WSP Parsons Brinkerhoff)
 WWF (World Wide Fund for Nature)

Aarhus Convention (1998)

access to justice (Aarhus 9) (remedies/enforcement proceedings) 307
 class actions (Aarhus 9(3)) 516
 public participation (Aarhus 6) 305

Aboriginals (Australia): *see* native title (Australia)

access to justice

elements of

access to due process remedies 306, 308
 access to information 307, 308
 non-discrimination 308
 public participation 307

jurisprudence

ECtHR

Taşkın 307

IACtHR

Environment and Human Rights 306-8

Favela Nova Brasília 306

Goiburú 306

La Cantuta 306

Velásquez Rodríguez 306

transboundary pollution, States' obligation to ensure access to justice 208, 308
 on non-discriminatory basis 308

treaties and other international instruments relevant to

Aarhus 9 307

Agenda 21 307

Brundtland Report (Principles 6, 13 and 20) 308

- Code of Conduct on Accidental Pollution of Transboundary Inland Waters (1990) 307
- Nature Charter (1982) 307
- Rio Declaration (Principle 10) 307
- TEIA 9(3) 307, 308
- Watercourses Convention 32 308
- ACHPR (1981)**
 - applicability to collective rights of native people 139 n. 300
 - environmental rights (ACHPR 24) 221
- ACHR (1969): see also** ACHR (1969), applicability “over all persons subject to their jurisdiction” (ACHR 1(1))/extraterritorial jurisdiction; ACHR (1969), compliance/implementation obligation (ACHR 1(1)); ACHR (1969), interpretation
 - erga omnes* obligation to respect and guarantee Convention rights 250
 - restrictions: *see* differential treatment, justification/requirements (ACHR 30)
 - rights protected by
 - economic, social and cultural rights (ACHR 26/San Salvador Protocol (1988)) 213-14, 219, 221-2, 229, 282: *see also* environmental protection obligations/sustainable development/human rights, relationship
 - indivisibility with civil and political rights 221-2
 - international cooperation obligation (ACHR 26) 282
 - justiciability 312-16
 - interrelationship 250
 - State responsibility for breach
 - dependence on establishment of ACHR 1(1) jurisdiction over alleged victims 229-30, 245
 - jurisprudence
 - Jiguamiandó and Curbaradó Communities* 18
 - Lysias Fleury* 18
 - Sarayaki Case* 18
 - Urso Branco Prison* 18
 - non-fulfilment of ACHR 1(1) and ACHR 2 as basis 229-30
- ACHR (1969), applicability “over all persons subject to their jurisdiction” (ACHR 1(1))/extraterritorial jurisdiction**
 - dependence on causal link between act originating on State’s territory and infringement of human rights of persons outside its territory 243, 308
 - effective control test 232-4, 240, 245
 - consent, invitation or acquiescence of third State government and 238-40
 - State obligations under special environmental protection regimes 234-41
 - extraterritorial jurisdiction
 - as exception/conditions for exercise 233-4, 245
 - presence in the country, relevance 230-4, 245
 - jurisprudence 230
 - Armando Alejandro* 230, 232-3
 - Coard* 230-1, 233
 - Djamel Ameziane* 233
 - Environment and Human Rights* (OC-23/17) 229-45
 - Molina* 230-1, 233, 241
 - Rights and Guarantees of Children in the Context of Migration* (OC-21/14) 230, 234
 - Salas* 233
 - Saldaño* 230
 - Sarayaki Case* 18

- ACHR (1969), applicability “over all persons subject to their jurisdiction” (ACHR 1(1))/extraterritorial jurisdiction** (*cont.*)
 potential victims of transboundary damage caused by State of origin 243-4
 similar provisions in other human rights treaties 229-30, 232-4
travaux préparatoires 231
- ACHR (1969), compliance/implementation obligation (ACHR 1(1)):** *see also*
Environment and Human Rights (IACtHR (OC-23/17))
 compliance with human rights/environmental obligations as justification for non-compliance with other norms of international law, exclusion 238-9
 consultation obligation as fundamental to 106-10
 as dual obligation (repeal of rules and practice violating ACHR/adoption of rules and practices effectively ensuring respect for ACHR) 145-7
 due diligence obligation 253-4
 as *erga omnes* obligation 250
 obligation to adopt such measures as may be necessary to give effect to rights and freedoms (ACHR 2) 26, 136-8
Albán Cornejo 263
Genie Lacayo 136
Las Dos Erres Massacre 136
Rights and Guarantees of Children in the Context of Migration (OC-21/14) 264
Sarayaku People 19, 136-8
Valencia Hinojosa 263
Vélez Loor 264
 obligation to investigate alleged human rights violations 153-5
 “other measures” 137-8
 property, right to (ACHR 21) and 110-13
 special environmental protection regimes as an extension of ACHR 1(1) jurisdiction 238-40
 State responsibility for ensuring 106-7
- ACHR (1969), compliance/implementation obligation (ACHR 1(1)), jurisprudence**
Bámaca-Velásquez Case 17
Barrios Family 106-7
Chocrón Chocrón 136
Environment and Human Rights (OC-23/17) 206-9, 229-45
Gómez-Paquiyaury Brothers 17
Jiguamiandó and Curbaradó Communities 18
Marta Colomina and Liliana Velásquez 17
Molina 230
Peace Community of San José de Apartadó 18
Sarayaku People 17-18
Street Children 18
Urso Branca Prison 18
Velásquez Rodríguez 107
- ACHR (1969), interpretation**
 applicable law
 applicable principles of international law 238-9
 IEL taking into account the relevant conventions, jurisprudence and other international instruments 211-13
 VCLT (1969) 209-10
 context (VCLT 31(2)) (other treaties concluded by same parties as part of the relevant *corpus juris*) 211-13
 general rule (VCLT 31(1)) 209-10, 230

- IACtHR decisions, role: *see* advisory jurisdiction (ACHR 64), competence/scope
 intertemporal law/developments subsequent to conclusion of treaty as “relevant rule”
 (VCLT 31(3)(c)) (“living-tree” principle) 211
 domestic law developments and 99-100
 jurisprudence (principles of interpretation)
Artavia Murillo (IVF) 211
Bueno Alves 99
Consular Assistance (OC-16/99) 99, 211
Effect of Reservations (ACHR 74 and 75) (OC-2/82) 210
Entitlement of Legal Entities to Hold Rights under the Inter-American System of Human Rights (OC-22/16) 209-10
Environment and Human Rights (OC-23/17) 229-45
Gómez-Paquiyaúri Brothers 99
González (Cotton Field) 211, 212
Interpretation of ADRDM (OC-10/89) 99
Juridical Status and Human Rights of the Child (OC-17/02) 99
Mayagna (Sumo) Awas Tingni Community 99
 “Other Treaties” Subject to the Advisory Jurisdiction of the Court (OC-1/82) 99
Promulgation and Enforcement of Laws (OC-14/94) 212-13
Rights and Guarantees of Children in the Context of Migration (OC-21/14) 209-10
Sarayaku People 98-136
Sawboyamaxa 99
Street Children 99, 211
Xákmok Kásek 99
Yakye Axa 99-100
 [natural and] ordinary meaning in context (VCLT 31(1)) 230, 231
 object and purpose (teleological approach) (VCLT 31(1)) 210-11
 fullest protection of rights principle 210-11
 interpretation most favourable to the weaker party/*pro persona* principle 211
 responsibility for, IACtHR 200: *see also* advisory jurisdiction (ACHR 64), competence/
 scope
 restrictions regarding interpretation (ACHR 29) 211
 human rights treaties and (ACHR 29(b)) 99, 110, 131-2
 special features as human rights treaty 210-11
 systematic and historical interpretation
Environment and Human Rights (OC-23/17) 203, 211-13
 relevant elements 203
travaux préparatoires 231
admissibility (HRC including OP 1:5): *see also* exhaustion of local remedies (ICCPR OP
 1:5(2)(b))
 burden/standard of proof (OP 1:2) 328
 compatibility with ICCPR provisions (OP 1:3) 353-4
 exclusion of ICCPR 1 rights 327-8
 exhaustion of local remedies: *see* exhaustion of local remedies (ICCPR OP 1:5(2)(b))
 jurisprudence
A v. Uruguay 327
Gillot 327
Lubicon Lake Band 327
Mahuika 327
Poma Poma 327-8
Randolph 327

admissibility (HRC including OP 1:5) (cont.)

“not being examined under another procedure of international investigation or settlement” (OP 1:5(2)(a)) (1503 procedure) 327

State’s failure to address specific allegations 328

advisory jurisdiction (ACHR 64), competence/scope

ACHR 64(1) (interpretation of the Convention) 200, 203

ACHR 64(1) (interpretation of “other treaties concerning the protection of human rights in the American States”)

as broad and non-restrictive provision 200

“other treaties” 200, 202-3

characteristics

contentious jurisdiction distinguished 204-5

legal effect of opinion

for all OAS Member States 205-6

for OAS organs whose competence relates to the matter of the request 205-6

as legal process 212-13

compétence de la compétence 199-200

discretion to decline request/factors of possible relevance

avoidance of over-formalism 201

exclusion of hypothetical cases 201

jurisprudence

Almonacid Arellano 200

Article 55 of the American Convention on Human Rights (OC-20/09) 200, 201

Chinchilla Sandoval 200

Constitutional Court v. Peru (OC-97) 199, 200, 204

Consular Assistance (OC-16/99) 204, 207

Control of Due Process in the Exercise of IACoMHR Powers (OC-19/05) 201

Enforceability of the Right to Reply or Correction (ACHR 14(1), 1(1) and 1(2)) (OC-71/86) 208

Entitlement of Legal Entities to Hold Rights under the Inter-American System of Human Rights (OC-22/16) 199, 200, 201, 202-3, 204, 205-6

Environment and Human Rights (OC-23/17) 199-209

Interpretation of the ADRDM within the Framework of ACHR 64 (OC-10/89) 200, 201, 202-3, 204, 205-6

Judicial Guarantees in States of Emergency (ACHR 27(2), 25 and 8) (OC-9/87) 201

Juridical Status and Rights of Undocumented Migrants (OC-18/03) 204, 205-6

“Other Treaties” Subject to the Advisory Jurisdiction of the Court (OC-1/82) 200, 201, 202-3

Reports of the Inter-American Commission on Human Rights (ACHR 51) (OC-15/97) 199, 201, 204

Restrictions to the Death Penalty (ACHR 4(2) and 4(4)) (OC-3/83) 204

Rights and Guarantees of Children in the Context of Migration (OC-21/14) 203, 204, 205-6

object and purpose

assistance to OAS Members in the fulfilment of their international human rights

obligations 202-3, 205

clarification of the meaning, purpose and reasons for international human rights norms 203

judicial interpretation of the Convention 204

protection of fundamental rights 292-3

procedural issues, admissibility of request for advisory opinion in parallel with ICJ/IACoMHR proceedings 203-4

- request for opinion
 - inherent authority of Court to define, clarify and reformulate 204-5, 206-9
 - requirements
 - considerations giving rise to request 201-2
 - precise questions, specification of provisions to be interpreted and name/address of agent (ROP 79/ROP 71) 201
 - standing 199
- advisory jurisdiction (ECHR Protocol 16) 512**
- Akiba* (native title)**
 - background
 - grounds of appeal 393-4
 - legislative provisions: *see* native title (Australia), Native Title Act 1993
 - procedural history in date order
 - Federal Court's determination of native title including Order 5 (2 July 2010) 392, 412
 - Full Court's variation of Order 5(b) excluding right to take fish and other aquatic life for sale or trade (14 March 2012) 392-3, 398-402, 412-13
 - special leave to appeal to the High Court against the extinguishment issue (5 October 2012) 393
 - judgment (French CJ and Crennan J) 392-411
 - introduction
 - overview 392-3
 - definitions (NTA) 394-6
 - determination (primary judge) 396-8
 - issues 393-4
 - conclusion 411
 - extinction/extinguishment of common law rights
 - clear provision, need for/presumption against extinction 401-2
 - parties' arguments 399-400
 - review of the relevant fisheries legislation 398-402
 - rights and their exercise for particular purposes 399-409
 - rights and title distinguished/inconsistent legislation 402-9
 - rights held communally and group rights and interests/"reciprocal rights" distinguished 409-11
 - judgment (Hayne, Kiefel and Bell JJ) 412-21
 - introduction
 - Full Court's variation of the determination excluding right to take fish and other aquatic life for sale or trade 412-13
 - primacy of right over activity as circumstance attending its exercise 418-19
 - primary judge's determination 412
 - conclusion 421
 - extinction/extinguishment of common law rights, principles
 - act *affecting* native title (NTA 227), relevance 419-20
 - applicability of NTA for claims under the NTA 413, 414-15
 - clear provision, need for/presumption against extinction 413, 416-18
 - Harper*, relevance 420-1
 - identification of the alleged native title rights and interests 413, 416
 - partial extinguishment or suspension of rights, possibility of 413, 415-16
 - preservation of certain native rights and interests (NTA 211) 420
- Amazon, conservation measures**
 - forest degradation
 - causes 467-8

Amazon, conservation measures (*cont.*)

intergenerational inequity 469
 irreversibility 469
 risks from 468

Lozano Barragán 465-75

States' obligation to take measures/failures 470-5

treaties and other international instruments

Amazon Cooperation Treaty (1978) (ACT) 466

Amazon Vision Fund (2018) 466

"Deforestation Control and Forest Management Strategy" (2015/16) 467

amparo as effective remedy

ACHR 25, 155-7

jurisprudence

Constitutional Court v. Peru 155

Habeas Corpus in Emergency Situations 155

Las Dos Erres Massacre 155

Sarayaku 155-7

Antarctica

notification obligation

Antarctic Treaty, Protocol on Environmental Protection (1991) 285

emergency situations and 286-7

Arab Charter on Human Rights (2004), healthy environment (Arab Charter 38) 221

ASEAN HRD (2012), environmental rights (ASEAN HRD 28(f)) 221

Australia, native title: *see* native title (Australia)

Bali Action Plan (2007) (COP-13) 488

Brundtland Report (2007)

access to justice (Principle 10) 307

non-discrimination (Principles 6, 13 and 20) 308

notification (Principle 16) 265, 284-5

participation (Principle 20) 305

Canada

Constitution Act 1982 by section, 35-6 (rights of the aboriginal peoples of Canada): *see*

First Nations (Canada)

indigenous treaties: *see* First Nations (Canada)

Cancún Pledges 488**causation/causal link as requirement for finding of breach of State responsibility/liability for reparation (ILC(SR) 31(2))**

ACHR obligations 243, 244, 252, 308

Environment and Human Rights (OC-23/17) 243, 244, 252

CCC: *see* Climate Change Convention (1992) (CCC)

climate change: *see also* IPCC (Intergovernmental Panel on Climate Change); *Plan B Earth*; *Urgenda*

ECHR 2/ECHR 8, applicability to 492-3, 495, 499, 500-2, 505-18, 525, 528-9, 533

Kiribati 365-88

persecution (RC 1A(2)) (*Teitiota* (HRC)) 378-88

Climate Change Convention (1992) (CCC): *see also* Kyoto Protocol (1997)

Colombia's obligations under 466, 469-70

- commitments (Annex I countries), leadership in the international context for counteracting climate change (CCC 4(2)(a)) 457
- COP system (CCC 7) 488
 - non-binding nature of decision 517-18
- COP-13 (2007) (Bali Action Plan) 488
- COP-15 (2009) (Copenhagen: failure to reach agreement on succession to Kyoto Protocol) 488
- COP-16 (2010) (Cancún: Cancún Pledges) 488
- COP-18 (2012) (Doha: Doha amendment) 489
- determination of emissions
 - courts' right to assess compliance of State's measures with obligations 518
 - non-binding rules, applicability 518
 - as a political matter 517-18
- international consensus on urgent need for Annex I countries to reduce emissions by 25-40% by 2020 519-24
- joint/shared responsibility/obligation to cooperate 283, 512-16
- object and purpose/principles 487, 513
- parties (Annex I/non-Annex I) 487
- right to participate in public affairs (CCC 6(a)(iii)) 305
- Colombia**
 - acción de tutela* (Constitution 86), applicability to breaches of collective rights
 - acción popular* (Constitution 88/Law 472 of 1998) as normal mechanism 453
 - criteria 453
 - connection between environmental protection obligations, sustainable development and human rights 453-5
 - threat to fundamental individual and collective rights 464-5
 - jurisprudence
 - Constitutional Court Judgment T-362 (2014) 454
 - Lozano Barragán* 453-6, 464-5: *see also* *Lozano Barragán* (climate change/human rights)
 - Supreme Court decisions 454-5
 - environment/human rights: *see* *Lozano Barragán* (climate change/human rights)
- compensation for breach of ICCPR (ICCPR 2(3))**: *see also* effective remedy before national authority, need for (ECHR 13/ICCPR 2(3))
 - measure (full reparation including compensation) 360
 - Portillo Cáceres* 360
- costs (IACtHR) (ACHR 63(1))**
 - evidence of, need for/standard of proof 176
 - Court's *ex proprio motu* decision in absence of 176-7
 - Sarayaku* 174-7
- differential treatment, justification/requirements (ACHR 30)**
 - "necessary in a democratic society" 97-8
 - "proportionate to the legitimate aim" 97-8
- due diligence**: *see also* environmental impact assessment (EIA), need for, due diligence; IHL (international humanitarian law) (*jus in bello*), due diligence and (GC Common Article 1); obligation of result vs obligation of conduct/means/best efforts to ensure compliance with, due diligence obligation
 - association with State responsibility in relation to obligations of means 253
 - ILC(TBH) Commentaries 3(8) 253
 - as concept determined by international law 253

ECHR (1950)

- applicability “within their jurisdiction” (ECHR 1)
 - extraterritorial acts
 - consent, invitation or acquiescence of third State government and 238-9
 - examples (*Banković*) 239
 - exceptional nature 241
 - jurisprudence
 - Al-Skeini* (ECtHR) 232, 233, 241
 - Banković* 232, 233, 241
 - Câmpeanu* 505
 - Catan* 232, 233
 - Chiragov* 232, 233
 - Cyprus v. Turkey* (2001) 232
 - Drozd and Janousek* 241
 - Ilaşcu* 232, 233
 - Issa* 241
 - Ivančec* 232
 - Kiliç* 505
 - Loizidou* 232
 - Manitaras* 232
 - Mozer* 232
 - Öcalan* 232
 - Pisari* 232
 - Soering* 241
 - compliance obligation (ECHR 1) (choice of means) 507
 - interpretation
 - “any relevant rules of international law applicable in the relations between the parties” (VCLT 31(3)(c)), jurisprudence
 - Al-Adsani* 238
 - Banković* 238
 - Nada* 509
 - Urgenda* 509
 - jurisprudence relating to principles
 - Bosphorus* 134
 - Cyprus v. Turkey* (just satisfaction) 134
 - Demir* 134
 - Loizidou* 134
 - Urgenda* 509-10
 - [natural and] ordinary meaning in context (VCLT 31(1)) 509
 - object and purpose/spirit and purpose (teleological approach) (VCLT 31(1)), effectiveness (*Urgenda*) 509
 - subsequent changes, need to reflect “living-tree” principle) (VCLT 31(3)(c)), current scientific views and accepted standards 511
 - subsequent practice in application of treaty (VCLT 31(3)(b))
 - Demir* 509-10
 - Urgenda* 509-10
- Ecuador**
 - amparo as effective remedy 155-7
 - Constitution 2008 by article
 - 21 (right to build and uphold cultural identity) 4
 - 57 (collective rights of the indigenous communes) 82, 107-8

- 83-5 (Rights of Indigenous and Black or Afro-Ecuadorian People) 68
- indigenous peoples in: *see also Sarayaku People*
- IACoMHR 1997 report 113
- ILO No 169, effect of entry into force 109-11, 113-14
- legislation relevant to
 - Agrarian Development Act 2004 108
 - Commune Organization and Management Law 2004 108
 - Constitution 1998 68, 109-11
 - Constitution 2008, Article 57 82, 107-8, 110-11
 - Environmental Management Act 2004 108
 - Investment Promotion and Public Participation Act 2000 111
 - Mining Act 2009 108
 - National Human Rights Plan 1998 111
 - Public Participation Act 2010 108
 - Regulations on the Application of Mechanisms for Social Participation 2008 136
 - Regulations for Consultation on Hydrocarbon Activities 2002 (Executive Decree 3401) 111-12, 136-7
 - Vacant Lands and Settlement Act 2004 108
- Special Rapporteur's Report (2010) 137 n. 296
- oil exploration, 63: *see also Sarayaku People*
- effective remedy before national authority, need for (ECHR 13/ICCP 2(3))**
- criminal and administrative penalties on all responsible parties 360
- “effective remedy” (thorough and effective investigation capable of leading to the identification and punishment of those responsible) 360
- effectiveness, test
 - determination by a national court 511
 - prevention or termination of violation 510-11
 - reparation for violation 510-11
- jurisprudence
 - Kudla* 510
 - Kuppinger* 511
 - Neshkov* 510, 511
 - Portillo Cáceres* 360-1
 - Ulemek* 510, 511
 - Urgenda* 510-11
- measures to ensure non-repetition (ICCP 2(3)(a)) 360
- emissions trading system**, ETS Directive 490
- Environment and Human Rights***: *see Environment and Human Rights* (IACtHR (OC-23/17)) (background: procedural history in date order); *Environment and Human Rights* (IACtHR (OC-23/17)) (background: jurisdiction/admissibility/Court's approach to the case); *Environment and Human Rights* (IACtHR (OC-23/17)) (issues); *Environment and Human Rights* (IACtHR (OC-23/17)) (separate opinions) (justiciability of economic, social and cultural rights (ACHR 26/San Salvador Protocol (1988)))
- Environment and Human Rights* (IACtHR (OC-23/17)) (background: procedural history in date order)**
- presentation of request (14 March 2016) 190-9
 - considerations leading to the request 191-2
 - specific questions 192-3
- invitation to interested parties to submit written opinions (ROP 73(3)) (18 May 2016)/
 - observations received
 - civil society members 196

Environment and Human Rights (IACtHR (OC-23/17)) (background: procedural history in date order) (cont.)

- international organizations (IMO) 195
- OAS Member States 194
- OAS organs 194
- State agencies, national and international associations, NGOs and academic establishments 195
- transmission of the request in accordance with ROP 73(1) (18 May 2016) 193-4
- public hearing arrangements (ROP 73(4)) 196-7
- public hearing (22 March 2017) 197-9

Environment and Human Rights (IACtHR (OC-23/17)) (background: jurisdiction/admissibility/Court's approach to the case)

- admissibility of request for advisory opinion in parallel with ICJ/IACoMHR contentious proceedings 203-4
- advisory jurisdiction
 - characteristics
 - contentious jurisdiction distinguished 204-5
 - IACtHR as autonomous judicial organ 204
 - competence/scope
 - compétence de la compétence* 199-200
 - interpretation of Convention including provisions on procedure 200
 - interpretation of “other treaties” (ACHR 64(1)) 200, 202-3
 - discretion to decline request/factors of possible relevance
 - avoidance of over-formalism 201
 - exclusion of hypothetical cases 201
 - legal effect of opinion
 - for all OAS Member States 205-6
 - for OAS organs whose competence relates to the matter of the request 205-6
 - as legal process 212-13
 - object and purpose
 - assistance to OAS Members in the fulfilment of their international human rights obligations 202-3
 - clarification of the meaning, purpose and reasons for international human rights norms 203
 - judicial interpretation of the Convention 204
 - request for opinion (inherent authority of Court to define, clarify and reformulate)
 - Question 1 (simplification) 206-8
 - Questions 2 and 3 (combination of) 208-9
 - request for opinion, requirements
 - considerations giving rise to request 201-2
 - precise questions, specification of provisions to be interpreted and name/address of agent (ROP 79/ROP 71) 201
 - standing 199
- Court's decision on jurisdiction 206
- structure of the Opinion 209
- treaty compliance (State responsibility for conduct of State organ/agency (ILC(SR) 4)) 205
- treaty interpretation, criteria 209-13
 - applicable law
 - international environmental law (IEL) taking into account the relevant conventions, jurisprudence and other international instruments 211-13
 - VCLT (1969) 209-11

- context (VCLT 31(2)), other treaties concluded by same parties as part of the relevant *corpus juris* 211-13
- general rule (VCLT 31(1)) 209-10
- “living-tree principle” 211
- object and purpose
 - fullest protection of rights principle 210-11
 - interpretation most favourable to the weaker party/*pro persona* principle 210-11
 - restrictions regarding interpretation (ACHR 29) 211
 - special features of ACHR as a human rights treaty 210-11
 - systematic and historical interpretation 203, 211-13
- Environment and Human Rights (IACtHR (OC-23/17)) (issues):*** *see also* environmental impact assessment (EIA); environmental protection obligations
- Court’s conclusions
 - issues 1-5 (“jurisdiction” (ACHR 1(1)))
 - a. obligations to respect and ensure ACHR rights to all persons subject to their jurisdiction 244
 - b. State responsibility for violation of ACHR rights attributable to it 245
 - c. extension of jurisdiction beyond territory of State/State’s obligation towards persons outside their territory 245
 - d. extraterritorial jurisdiction as exception subject to specific/restrictive examination in each case 245
 - e. effective control test 245
 - f. good neighbourliness principle (*sic utere tuo*)/avoidance of harm to others 245
 - g. obligation to take all necessary measures to avoid activities in their territory/under their control affecting peoples’ rights 245
 - h. State responsibility for breach, dependence on causal link between act originating on State’s territory and infringement of human rights of persons outside its territory 245
- Court’s conclusions, issue 7 (States’ obligations) 309-10
 - a. to prevent significant environmental damage within or outside their territory 259, 309
 - b. to regulate, supervise and monitor 309
 - c. to comply with precautionary principle 309
 - d. to cooperate in good faith 295-6, 309
 - e. to notify, consult and negotiate in good faith 294, 310
 - f. to ensure access to information 310
 - g. to ensure public participation 310
 - h. to ensure access to justice 310
- Court’s decision 311-12
- issue 1: human rights and the environment, interrelationship 213-19
 - African approach to 215
 - Agenda 2020 216-17
 - European approach to 215
 - IEL/IHRL, interrelationship 211-13, 219
 - indigenous peoples’ property/land rights and 214
 - inter-American approach to 213-15
 - obligation to avoid action hindering other States complying with their treaty obligations (VCLT 25) 240, 243
 - San Salvador Protocol 213-14
 - Stockholm/Rio/Johannesburg Declarations 216-17
 - UN approach to 215-16
 - UNHRC Independent Expert’s Report (2012) 217-18

Environment and Human Rights (IACtHR (OC-23/17)) (issues) (cont.)

- UNHRC Resolutions on environmental threats to human rights 217-18
- issue 2: human rights affected by environmental degradation including the right to a healthy environment 218-29
 - characteristics 221-2
 - criteria for exercise of right (San Salvador Working Group) 222
 - instruments providing for 219-22, 224
 - UNGA Resolution 66/288 (The future we want) 228
 - progress indicators (OAS General Assembly Resolution AG/RES. 2823 (XLIV-O/14) (monitoring mechanisms)) 222
 - State obligations (ACoMHRP (*SERAC and CESR*)) (reasonable measures) 222
 - State obligations (San Salvador Working Group) 221-2
 - vulnerable people, particular impact on 226-9
 - vulnerable rights
 - procedural rights 224
 - substantive rights 225-6
- issue 3: “jurisdiction” (ACHR 1(1)) (scope) 229-45
 - “all persons subject to their jurisdiction”
 - effective control test 232-4, 238, 240
 - obligation to ensure free and full exercise of their rights 229-34
 - dependence of State responsibility for a violation of the Convention on establishment of ACHR 1(1) jurisdiction 229-30
 - extraterritorial jurisdiction
 - consent to restriction of sovereignty, need for 238-40
 - as exception/conditions for exercise 233-4
 - presence in the country, relevance 230-4
 - jurisprudence
 - ECtHR 232, 233
 - HRC 232
 - IACtHR/IACoMHR 230-1, 232-3
 - ordinary meaning 230, 231
 - similar provisions in other human rights treaties 229-30, 232-4
 - travaux préparatoires* 231
- issue 4: “jurisdiction” (ACHR 1(1)) (State obligations under special environmental protection regimes) 234-41
 - applicable principles of international law 238-9
 - compliance with human rights or environmental obligations as override, exclusion 238-9
 - examples of treaties constituting special legal regimes 235-40
 - functional nature of jurisdiction under 237
 - UNEP Regional Seas Programme 234-41
- issue 5: “jurisdiction” (ACHR 1(1)) (obligations regarding transboundary damage (good neighbourliness principle (*sic utere tuo*)/avoidance of harm to others)) 241-5
 - CESCR General Comments 14 and 15 243
 - jurisprudence 241-2
 - obligation to avoid action hindering other States complying with their treaty obligations (VCLT 25) 243
 - obligation to make good the damage (ILC(TBH): General Commentaries) 243, 244, 258
 - potential victims of transboundary damage caused by State of origin 243-4

- State responsibility for breach, dependence on causal link between act originating on State's territory and infringement of human rights of persons outside its territory 243
- issue 6: rights to life and personal integrity in the context of environmental protection 245-50
 - life, right to (ACHR 4)
 - conditions for a decent life 247-8
 - environmental risks to 248-9
 - as fundamental right 249
 - obligation to investigate death 247
 - obligation to protect and preserve (ACHR 1(1)) 247
 - obligation to punish/provide redress for deprivation of life 247
 - obligation to safeguard access to conditions that ensure a decent life 247-9
 - proactive/positive nature of obligation 247
 - personal integrity/inhuman or degrading treatment (ACHR 5(1))
 - examples 249-50
 - indigenous and tribal communities and 249
 - right to life (ACHR 4), link with 250
- issue 7: State obligations to respect and ensure the rights to life (ACHR 4) and personal integrity (ACHR 5) in face of the risk of environmental damage, requirements 250-309
 - access to information (ACHR 13) 296-303: *see also* freedom of expression/freedom of the press (ACHPR 9/ACHR 13/ECHR 10/ICCPR 19(2))
 - as basis for the exercise of other rights 298
 - Court's conclusion 303
 - jurisprudence 297-8, 302
 - justified restrictions (ACHR 13(2)) 302
 - public participation, relationship with 298-300, 303
 - treaties and other international instruments relevant to 298-300
 - access to justice 306-8
 - applicability of obligation (ACHR 1(1)) 308
 - elements of 306-8
 - jurisprudence 306-7
 - treaties and international instruments relevant to 307-8
 - characteristics
 - as due diligence obligations 253-4
 - as *erga omnes* obligations 250, 252
 - as obligation of conduct/means/best efforts 253-4, 263
 - compliance, general environmental obligations relevant to 254-6
 - compliance (obligation of prevention), applicability of obligation (activities on a State's territory or under its jurisdiction or in areas not subject to any State's jurisdiction) 258-9
 - Court's conclusion 259
 - compliance (obligation of prevention), type of damage to be prevented/significant level requirement 259-62
 - Court's conclusion 262
 - exploration/exploitation of natural resources in indigenous territory, scope for 261
 - ILC(TBH) 260
 - jurisprudence (ECtHR) 251-2
 - jurisprudence (IACtHR) 251

Environment and Human Rights (IACtHR (OC-23/17)) (issues) (cont.)

- “significant” 260-1
- treaty provisions 259-60
- compliance (obligation of prevention)/good neighbourliness principle 256-8
 - as customary international law 256-8
 - marine environment obligations 257-8
 - treaties and other international instruments relevant to including the Cartagena Convention 256-8
- compliance, specific environmental obligations relevant to 255-6
- consultation and negotiation obligation
 - Court’s conclusion 294
 - good faith and 291-4
 - inter-State obligation and State’s duty to consult indigenous and tribal communities distinguished 290
 - jurisprudence 292-3
 - timing and form 290-2
- exchange of information 294-5
 - treaties and other international instruments relevant to 294-5
- notification obligation 284-7
 - applicability to all situations involving such a risk 285-6
 - content 288-9
 - Court’s conclusion 289-90
 - emergency situations and 286-7
 - jurisprudence 285-6
 - timing 287-8
 - treaties and other international instruments relevant to 285
- obligation to cooperate 282-96
 - ACHR 26/San Salvador Protocol 282
 - Court’s conclusion 295-6
 - as customary international law 283-4
 - as a fundamental principle 284
 - as inter-State obligation 284
 - shared resources and 284
 - treaties and other international instruments relevant to 282-3
- obligation to ensure rights, requirements 251-3
 - all appropriate steps to protect and preserve the rights 251
 - compensation for negative consequences 252
 - investigation and punishment of violations 251
 - measures of a legal, political, administrative and cultural nature promoting protection of rights 251
 - measures to prevent third parties from violating the protected rights in the private sphere 252
 - positive measures to permit/help individuals exercise their rights 252
- obligation to respect rights and freedoms/excluded actions
 - any practice or activity that denies or restricts access to the requirements for 251
 - CESCR General Comments 14 and 15 251
 - unlawful pollution of the environment having a negative impact on a dignified life 251
- precautionary principle 279-82
 - balancing factors/cost-effectiveness 282
 - burden/standard of proof 282
 - jurisprudence 280-1

- legislation 281
- scientific uncertainty 282
- treaties and international instruments relevant to 279-80
- prevention measures (regulation)
 - ACHR 2 (adoption of measures necessary to give effect to rights and freedoms) 263-4
 - ECtHR jurisprudence 265
 - EIA requirements 265
 - treaties and other international instruments relating to 264
- prevention obligations, summary 278
- preventive measures (EIA), need for 267-71
 - activities which may have detrimental effect/cause significant environmental damage 268-71
 - contingency plan 276
 - due diligence and 270
 - indigenous peoples' right to 268
 - legislative provision for 268-9
 - private projects, applicability to 271
 - State responsibility for 270-1, 272
- preventive measures (EIA), scope/requirements including standard of assessment
 - compatibility of project with international obligations including human rights 272-3
 - completion by independent entity under the State's supervision 272-3
 - completion prior to implementation of project 271-2
 - content, dependence on the circumstances 275-6
 - cumulative effect/existing developments 273
 - participation of interested parties (indigenous peoples) 273-4
 - participation of interested parties (legislation) 274-5
 - participation of interested parties (UNEP Goals and Principles of EIAs (1987)) 273-5
 - potential social impact 273-4
 - relevant international standards/best practice 271
 - respect for the traditions and culture of indigenous peoples 275
- preventive measures (mitigation of any significant environmental damage) 277-8
 - cooperation obligation 278
 - nature of the obligation (ILC *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*) 277
 - possible measures 277-8
 - as responsibility of State of origin 277
- preventive measures (supervision and monitoring) 266-7
 - IACtHR 267
 - ICJ 266-7
- procedural obligations to ensure protection of human rights (life (ACHR 4)/personal integrity (ACHR 4)) 296-309
 - access to information (ACHR 13) 296-303
 - public participation (ACHR 23(1)(a)) 303-6
 - summary 309
- public participation (ACHR 23) 303-6
 - access to information, relationship with 290-300, 303
 - disclosure and transparency, need for 303
 - as fundamental procedural right 303
 - indigenous communities and 303-4

Environment and Human Rights (IACtHR (OC-23/17)) (issues) (cont.)

- jurisprudence 303-5
- timing 306
- treaties and other international instruments relevant to 304, 305
- State responsibility for human rights violations by third parties
 - attribution, dependence on 252
 - in case of State's failure to comply with *erga omnes* treaty obligations 252
 - CESCR General Comments 14 and 15 (obligation to take appropriate measures to prevent acts of registered transnational corporations with negative impact on human rights outside their territory) 266
 - due diligence obligation including ILC(TBH) Commentary 3(8) 253-4
 - factors for consideration (including priorities and resources) 252
 - OAS General Assembly Resolution 2840 (XLIV-O/14) (promotion and protection of human rights in business) 267
 - as obligation of conduct/means/best efforts 253-4, 263
 - parallel responsibility of business enterprises (UN Guiding Principles on Business and Human Rights: Special Representative's Report, 2011) 267

Environment and Human Rights (IACtHR (OC-23/17)) (separate opinions) (justiciability of economic, social and cultural rights (ACHR 26/San Salvador Protocol (1988)))

- Sierra Porto J 314-16
- Vio Grossi J 312-14

environment (TFEU 191-3)

- Effort Sharing Decision (2009) 490
- ETS Directive 490

environmental impact assessment (EIA)

- advantages 275
- compatibility of project with international obligations including human rights 272-3
- completion by independent entity under the State's supervision 272-3
- completion prior to implementation of project 271-2
- content, dependence on the circumstances, UNEP *Environmental Impact Assessment and Strategic Environmental Assessment* (2004) 275-6
- contingency plan 276
- cumulative effect/existing developments 273
- indigenous peoples, obligation to take traditions and culture into account 275
- international agreements and other international instruments, *Environmental Impact Assessment and Strategic Environmental Assessment* (UNEP: 2004) 272, 275
- jurisprudence
 - Environment and Human Rights* 271-2
 - Kaliña and Lokono Peoples* 272-3, 275
 - Kichwa Indigenous People of Sarayaku* 272
 - Kuna* 275
 - Punta Piedra Garifuna* 275
 - Saramaka* 271-3, 275
 - Yakye Axa* 275
- participation of interested parties 273-5
 - indigenous peoples 273-4
 - legislation 274-5
 - UNEP Goals and Principles of EIAs (1987) 273-5
- potential social impact 272-3
- regulatory instruments, requirements of clarity as to
 - process for making the assessment (requirements and procedures) 265

- proposed activities and their impact 265
- responsibilities and duties of the project managers 265
 - intended use of the EIA in decision-making process 265
 - measures to be taken should due process not be followed 265
- standard of assessment, relevant international standards/best practice 271
- environmental impact assessment (EIA), need for** 267-71
 - activities which may have detrimental effect/cause significant environmental damage 268-71
 - due diligence and 270
 - EC Directive 2001/42/EC / EU Directive 2011/92/EU: *see Plan B Earth*
 - indigenous peoples, right to consultation and (ILO No 169 7(3)) 97-8, 128-9, 268
 - EIA as means of ensuring a basis for informed decisions on the proposed project 268
 - legislative provision for 268-9
 - in absence of 270
 - private projects, applicability to 271
 - State responsibility for 270-1, 272
 - treaties and other international instruments relevant to
 - CBD 14 (impact assessment and minimizing adverse impacts) 268
 - CCC 283
 - ECE Transboundary Effects of Industrial Accidents Convention (1992) 290
 - ENMOD (1976) 283, 290
 - Espoo (1991) 287
 - Rio Declaration (1992) (Principle 17) 268
- environmental impact assessment (EIA), need for, jurisprudence** 270: *see also*
 - Environment and Human Rights*
 - Certain Activities/Construction of a Road* 270
 - Hatton* 270
 - Kaliña and Lokono Peoples* 268, 271-2
 - Kichwa Indigenous People of Sarayaku* 208
 - Plan B Earth*: *see Plan B Earth*
 - Pulp Mills* 270
 - Saramaka* 268, 271-2
 - Sarayaku* 67, 128-9
 - Taşkın* 270
 - Triunfo de la Cruz Garifuna Community* 268, 271
- environmental protection obligations**: *see also* *Environment and Human Rights*; marine
 - environment, protection and preservation, treaties and other international instruments relating to (including pollution) in date order
- access to information/disclosure
 - access to information/disclosure obligation, ISP (2000) 299
 - as basis for exercise of other rights 297-8
 - treaties and other international instruments relevant to
 - Aarhus Convention 1 298
 - ACHR 13 296-303
 - Agenda 21 299, 305, 307
 - Algiers Convention XVI 298
 - Bali Guideline 10 299
 - CCC 6(a)(ii) 298
 - CNS 16(2) 298
 - Espoo 2(6)/Espoo 4(2) 298
 - HELCOM 16 298
 - Lima Vision (2013) 299-300

environmental protection obligations (*cont.*)

MCM 18(1) 298

NAAEC 4 298

OSPAR 9(2) 299

Rio Declaration, Application of Principle 10 (2016) 298

Tehran Convention 8 298

UNCCD 16(f)/UNCCD 19(3)(b) 298

UNECE 8 298

UNEP Plan of Action to 2014 299

public participation 303-6: *see also* Aarhus Convention (1998); public affairs, right to participate in (ACHR 23/ACHPR 13/ICCPR 25)

treaties and other international instruments relevant to

Agenda 2030 for Sustainable Development (2015) 202, 217

Charter of Economic Rights and Duties of States (UNGA Resolution 3281 (XXIV)) 291

Physical Protection of Nuclear Material Convention (1979) 290

Stockholm Convention (POPs) (2001) 356

environmental protection obligations/sustainable development/human rights, relationship 213-29, 250-9: *see also* *Environment and Human Rights*ACHR obligations: *see* *Environment and Human Rights*

characteristics

as *erga omnes* obligations 250, 252

as obligation of conduct/means/best efforts 263, 507-9

as obligation towards community 507

special duties based on particular needs due to personal conditions or specific situation 250

consultation and negotiation obligation 290-4

applicable law, norms of international environmental law 291

good faith and 291-3

elements of 201

obligation to find a solution distinguished 293

possibility of resort to dispute settlement mechanisms in case of failure 293-4

restrictions on activities pending conclusion of the process 292-3

inter-State obligation and State's duty to consult indigenous and tribal communities distinguished 290

jurisprudence

Gabčíkovo–Nagyymaros Project 291*Lac Lanoux* 291, 292-3*MOX Plant* 295*North Sea Continental Shelf* 291*Pulp Mills* 292, 293

summary of requirements 294, 295-6

timing and form 290-2

“at an early stage” 291

treaties and other international instruments relating to

Charter of Economic Rights and Duties of States (UNGA Resolution 3281 (XXIV)) 291

ENMOD (1976) 283, 290

Physical Protection of Nuclear Material Convention (1979) 290

Rio Declaration (Principle 19) 290-1, 293

Transboundary Effects of Industrial Accidents Convention (1992) 290

Watercourses Convention (1997) 292 n. 464

- due diligence 253-4
 - association with State responsibility in relation to obligations of conduct/means/best efforts 253-4, 507-8
 - as concept determined by international law 253
 - jurisprudence
 - Construction of a Road* 253-4
 - Environment and Human Rights* (OC-23/17) 253-4
 - Gonzales Lly* 254
 - Ortiz Hernández* 254
 - Pulp Mills* 253-4
 - Velásquez Rodríguez* 254
 - Stockholm Declaration and 253-4
- human rights
 - life (ECHR 2)/privacy/family life (ECHR 8) 505-34
 - life (ICCPR 6)/privacy, family, home (ICCPR 17) 355-60
- human rights affected by environmental degradation including the right to a healthy environment 218-29
 - characteristics
 - autonomous right 223
 - connectivity to other rights 221
 - individuals' right 221
 - intergenerational right 221
 - irreparable nature of harm to humans/fundamental nature of right 221
 - criteria for exercise of right (San Salvador Working Group)
 - acceptability 222
 - accessibility 222
 - adaptability 222
 - availability 222
 - sustainability 222
 - progress indicators (OAS General Assembly Resolution AG/RES. 2823 (XLIV-O/14) (monitoring mechanisms))
 - air quality 222
 - atmospheric conditions 222
 - biodiversity 222
 - energy resources 222
 - forestry resource 222
 - pollutant waste 222
 - quality and sufficiency of water sources 222
 - soil quality 222
 - State obligations (ACHPR (*SERAC and CESR*)) (reasonable measures)
 - establishment of ecologically sustainable development and use of natural resources 222
 - monitoring system 222
 - prevention of pollution and ecological degradation 222
 - promotion of conservation 222
 - State obligations (San Salvador Working Group)
 - basic public services 221-2
 - guarantee of healthy environment 221-2
 - promotion of environmental conservation 221-2
 - promotion of environmental improvement 221-2
 - promotion of environmental protection 221-2
 - treaties and other international instruments relevant to

environmental protection obligations/sustainable development/human rights, relationship (*cont.*)

- ACHPR 24 (environmental rights) 220-1
- ACHR 26 (economic, social and cultural rights) 219-20, 282-96, 312-14
- AComHPR Resolution 153 (climate change and human rights) 225
- ADRIP 19 (healthy environment) 220
- Arab Charter 38 (healthy environment) 221
- ASEAN HRD 28(f) 221
- CESCR General Comments 225
- CFR 37 (environmental protection) 224
- ECHR 2/ECHR 8 482-534: *see also* family/private life, respect for/freedom from interference (ACHR 11/ACHR 17/ECHR 8(1)/ICCPR 17); life, right to (ECHR 2) (obligation to protect and preserve (substantive obligation))
- ECHR (absence of provision for autonomous right) 224 n. 104
- municipal legislation 220
- San Salvador 11 219, 220
- vulnerable people, particular impact on 226-9
 - children 227
 - indigenous people 214, 226-7, 228-9
 - minorities 227
 - people dependent on resources from the marine environment, forested areas and river basins 227-8
 - people with disabilities 227
 - people living in extreme poverty 227
 - women 227
- vulnerable rights (procedural rights) 224
 - effective remedy 224
 - freedom of expression and association 224
 - freedom of information 224
 - participation in decision-making 224
- vulnerable rights (substantive rights)
 - ACHR 29 protection of rights 226
 - cultural life 225
 - food 225
 - fraternal conduct/peace 226
 - freedom from forcible displacement 225-6
 - health 224, 225
 - housing 225
 - liberty and security 226
 - life 224, 225, 379
 - personal integrity 224, 225
 - private and family life 224-5
 - property 224
- human rights (life (ACHR 4)/personal integrity (ACHR 4)) in the environmental context, procedural obligations to ensure 296-309: *see also* freedom of expression/freedom of the press (ACHPR 9/ACHR 13/ECHR 10/ICCPR 19(2))
 - access to information (ACHR 13) 296-303: *see also* freedom of expression/freedom of the press (ACHPR 9/ACHR 13/ECHR 10/ICCPR 19(2))
 - as basis for exercise of other rights 298-9
 - public participation, relationship with 298-300, 303
 - access to justice (ACHR 1(1)/ACHR 8(1)/ACHR 25) 306-8

- public participation 303-6: *see also* public affairs, right to participate in (ACHR 23/ACHPR 13/ICCPR 25)
 - summary 309
- notification obligation 284-7
 - content
 - EIA-related documentation 289
 - “pertinent information” 288
 - “sufficient and adequate information” 288-9
 - summary of requirements 289-90
 - jurisprudence
 - Certain Activities/Construction of a Road* 287, 289
 - Corfu Channel* 285, 286
 - Gabčíkovo–Nagyymaros Project* 286
 - Lac Lanoux* 286, 291
 - Pulp Mills* 285, 286, 287-8, 289
 - South China Sea* 287
 - timing
 - EIA, prior to commencement/prior to conclusion 287-8
 - “prior and timely” 287
 - treaties and other international instruments relevant to
 - Antarctic Treaty, Protocol on Environmental Protection (1991) 285
 - Barcelona Convention Protocol (2008) 287
 - Basel Convention (1989) 283
 - bilateral treaties 285
 - Biodiversity Convention 285
 - Brundtland Report 284-5
 - Cartagena Protocol (2000) 286-7
 - ILC(TBH) Articles 286, 288 n. 457, 289 n. 460
 - ILC(TBH) Commentaries 286, 287, 288 n. 458
 - Oslo Convention (1972) 285
 - RAMSAR Convention 285
 - Rio Declaration, Principle 19 285, 286
 - Tehran Convention 286
 - UNGA Resolution 2985 (XXVII) (Cooperation in the Field of Environment) 284-5
 - Vienna Convention for Protection of the Ozone Layer (1985) 285
 - Water Convention (1992) 286
 - Watercourses Convention (1997) 285, 286, 288
 - obligation to cooperate
 - ACHR 26/San Salvador Protocol 282
 - compliance, duties 284-94
 - as customary international law 283-4
 - as a fundamental principle 284
 - as inter-State obligation 284
 - Rio Declaration, Principles 7 and 8 283
 - shared resources and 284
 - Stockholm Declaration, Principle 24 283
 - obligation to ensure rights, requirements 251-3
 - appropriate steps to protect and preserve the rights 251
 - compensation for negative consequences 252
 - investigation and punishment of violations 251

environmental protection obligations/sustainable development/human rights, relationship (*cont.*)

- measures of a legal, political, administrative and cultural nature promoting protection of rights 251
- measures to prevent third parties from violating the protected rights in the private sphere 251
 - dissemination of information (CESCR General Comments 12 and 15) 253
 - as obligation of conduct/means/best efforts 252
- positive measures to permit/help individuals exercise their rights 252-3, 358-9
- obligation to prevent harm or damage to the environment 256-63
 - all appropriate steps to protect and preserve the rights including punishment and compensation 256
 - applicability of obligation (activities on a State's territory or under its jurisdiction or in areas not subject to any State's jurisdiction) 258-9
 - measures to prevent third parties from violating the protected rights in the private sphere, guarantee of essential minimum of food and water (CESCR General Comment 12) 253
- mitigation of any significant environmental damage 277-8
 - cooperation obligation 278
 - nature of the obligation (ILC *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities*) 277
 - possible measures 277-8
 - as responsibility of State of origin 277
- regulation
 - ACHR 2 (adoption of measures necessary to give effect to rights and freedoms) 263-4
 - EIA requirements 265
 - treaties and other international instruments relating to 264
- summary 278
- type of damage to be prevented/significant level requirement 259-62
 - exploration/exploitation of natural resources in indigenous territory, scope for 261
 - ILC(TBH) 260
 - "significant" 260-1
 - treaty provisions 259-60
- obligation to respect rights and freedoms/excluded actions
 - any practice or activity that denies or restricts access to the requirements for 251
 - CESCR General Comments 14 and 15 251
 - unlawful pollution of the environment having a negative impact on a dignified life 251
- principles/State obligations
 - clear and systematic identification of principles, as contribution of IACtHR's advisory jurisdiction 202-3
 - IEL/IHRL, interrelationship 211-13, 219
- State responsibility for human rights violations by third parties
 - attribution, dependence on 252
 - factors for consideration (including priorities and resources) 252
 - in case of State's failure to comply with *erga omnes* treaty obligations 252
 - due diligence obligation including ILC(TBH) Commentary 3(8) 253-4
 - jurisprudence
 - Gonzales Lluy* 252
 - Mapiripán Massacre* 252
 - as obligation of conduct/means/best efforts 253, 263

obligation to take appropriate measures to prevent acts of registered transnational corporations with negative impact on human rights outside their territory 266
 supervision and monitoring 266-7

environmental protection obligations/sustainable development/human rights, relationship, jurisprudence

AComHPR, *SERAC and CESR* 215, 222, 225, 356

arbitration, *Lac Lanoux* 283, 285, 291, 292-3

ECtHR

Borysiewicz 225

Brincat 507, 508

Budayeva 215, 265, 277-8, 357, 379, 506, 507

Cordella 379, 507, 508

Di Sarno 215

Dubetska 215, 261, 508

Fadeyeva 215, 261, 507, 508

Giacomelli 215, 225

Gorovenky 507

Guerra 215

Hatton 215, 225, 261

Jugheli 508

Kolyadenko 506

Leon and Agnieszka Kania 215, 261

López Ostra 215, 225

Moreno Gómez 225

Öneryıldız 215, 225, 265, 357, 379, 506, 508

Özel 215, 357, 379

Papastavrou 215

Roche 215

Stoicescu 508-9

Tagayeva 507

Taşkın 215, 225, 506

Tatar 215, 506, 507

Turgut 215

Environment and Human Rights (OC-23/17): see *Environment and Human Rights* (IACtHR Advisory Opinion) (OC-23/17) (issues)

HRC

Hopu and Bessert 358

Portillo Cáceres 355-60, 379

Teitiota 379-84

Toussaint 379

IACtHR 251-3

Afrodescendant Communities (Operation Genesis) 214

Albán Cornejo 263

Case of IV 222, 250, 252

Claude Reyes 224

El Mozote Massacres 251

Environment and Human Rights (OC-23/17) 250-312, 356: see also *Environment and Human Rights*

Gonzales Lhuy 222, 250, 251

Kaliña and Lokono Peoples 214, 224, 252, 261, 266, 267

Kawas Fernández 213, 356, 379

Kichwa Indigenous People of Sarayaku 214, 224, 266

environmental protection obligations/sustainable development/human rights, relationship, jurisprudence (*cont.*)

Kuna Indigenous People of Madungandí and Emberá Indigenous People of Bayano 224

Luna López 251

Mapiripán Massacre 250, 251, 252

Pueblo Bello Massacre 250

Rights and Guarantees of Children in the Context of Migration (OC-21/14) 264

Sarawak 261

Sawhoyamaxa 214

Street Children 251

The Word “Laws” 251

Valencia Hinojosa (OC-21/14) 263

Velásquez Rodríguez 252

Vélez Loor 264

Ximenes Lopes 266

Yakye Axa 214, 224

ICJ

Certain Activities 266-7

Corfu Channel 285, 286

Gabčíkovo–Nagyymaros Project 283-4, 285, 291

Legality of Nuclear Weapons 217, 282

Nuclear Tests 283

Pulp Mills 266-7, 284, 285, 286, 287-8, 291, 292, 293

South China Sea 287-9

ITLOS, *MOX Plant* 284, 295

municipal courts

Colombia

Constitutional Court decisions 456-7, 462-5

Lozano Barragán 453-77: *see also* *Lozano Barragán*

environmental protection obligations/sustainable development/human rights, relationship, treaties and other international instruments relevant to

Abidjan Convention 264

ACCOBAMS 264 n. 293

AComHPR Resolution 153 (climate change and human rights) 225

Amazon Cooperation Treaty (1978) (ACT) 466

Amazon Vision Fund (2018) 466

Cartagena Convention (1983) 264

CESCR General Comments 225

Climate Change Convention (1992): *see* Climate Change Convention (1992) (CCC)

Convention for the Prevention of Marine Pollution from Land-based Sources (1974) 285

ENMOD 283, 460

Espoo 283

HRC GC 36:62 379

IADC (2001) 202

ICESCR 12 (right to physical and mental health) 460

“Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources” (IACoMHR, 2009) 215

Inter-American Democratic Charter (2001) 202

Inter-American Program for Sustainable Development 2016-21 (PIDS) 202

Nairobi Convention 264

- OAS General Assembly Resolutions
 - 1819 (XXXI-O/01)(Human Rights and the Environment) 202
 - 2429 (XXXVIII-O/08) (Human Rights and Climate Change in the Americas) 215
 - 2840 (XLIV-O/14) (promotion and protection of human rights in business) 267
- OP I:35(3)/OP I:55 (unwarranted attack on nature) 460
- Paris Agreement (2015) 202, 462, 466, 469-70
- Physical Protection of Nuclear Material Convention (1979) 290
- Rio Declaration 216-17, 283
 - Principle 11, 264
- San Salvador Protocol (1988) 212-14, 219, 221-2, 229, 282
- Stockholm Declaration 216-17, 264, 283, 460-1
- Tehran Convention (2003) 264, 283
- UN Guiding Principles on Business and Human Rights (Special Representative's Report, 2011) 267
- UNCLOS 207-12 264
- UNDROP (2018) 358
- UNGA Resolution 66/288 (The future we want) 228
- UNHRC Independent Expert's Report (24 December 2012) 216, 217, 224, 227, 241
- UNHRC Resolutions on environmental threats to human rights
 - climate change 217-18
 - environmental degradation 217-18
 - illicit traffic/improper management of toxic waste 218
 - right to food 218
- Water Convention (1992) 264 n. 293
- Espoo (1991)**, notification obligation (Espoo 3) 287
- European Charter of Fundamental Rights (CFR) (2000)**, environmental protection (CFR 37) 224
- evidence (HRC)**: *see* HRC (UN Human Rights Committee), evidence/findings of fact in the light of all written information made available by parties (OP 1:5(1))
- evidence (IACtHR)**
 - admissibility (documentary evidence) 55-7
 - authenticity and 55
 - electronic links, requirements 56
 - media reports
 - complete documents/documents with identifiable source and date of publication 56
 - reports corroborating other evidence 56
 - reports of publicly known or notorious facts 56
 - pertinence to facts and their legal consequences 55-6
 - admissibility (expert evidence)
 - evidence not in accordance with Rules of Procedure 58
 - evidence not requested by Court 58
 - admissibility (on-site procedure), ancillary nature of evidence 60
 - admissibility (statements of presumed victims and of testimonial evidence)
 - ancillary nature 58
 - evidence of violation of rights other than those in the petition 52 n. 27
 - relevance to purpose established by Court Order requirement 57-8
 - supervening facts "at any stage in the proceedings" 52 n. 27
 - Court's discretion 54
 - evaluation
 - principles governing 54
 - rules of sound judgment 54

evidence (IACtHR) (*cont.*)

- expert: *see* admissibility (expert evidence) *above*
- failure to submit (alleged victims/representatives) 55
- provisional measures and contentious cases distinguished 59-60
- timeliness 56-7
 - exceptional admission of untimely evidence (ROP 57(2)) 56-7
- witnesses
 - exclusion of victims/witnesses from hearing of another alleged victim's statement (ROP 51(6)) 59
 - member of State's delegation distinguished 58-9

evidence (IACtHR), jurisprudence

- Atala Riffo* 60
- Barrios Family* 60
- Escué Zapata* 56
- Fernández Ortega* 59
- Five Pensioners* 52 n. 27
- Forneron* 52 n. 27, 54, 55, 58
- González Medina* 56
- Loayza Tamayo* 58, 60
- Mapiripán Massacre* 52 n. 27
- Pacheco Teruel* 56
- Perozo* 59, 60
- Ríos* 60
- Sarayaku People* 54-60
- Torres Millacura* 52 n. 27, 60
- Velásquez Rodríguez* 56
- White Van* 54

exhaustion of local remedies (ACHR 46(1)(a))

- acquiescence/acknowledgement of responsibility (ROP 62 [52]) as acceptance of Court's competence to hear case 53-4
- jurisprudence
 - Ituango Massacres* 54
 - Mapiripán Massacre* 54
 - Montero Aranguren* 54
 - Sarayaku People* 53-4
 - Vélez Loor* 54

exhaustion of local remedies (ICCPR OP 1:5(2)(b))

- "effective" remedy, need for (OP 1:5(2)(b)) 354-5
- jurisprudence
 - Abdoellaevna* 354
 - Chernev* 354
 - Colamarco Patiño* 354
 - Portillo Cáceres* 354-5
 - TK* 354
- purpose, opportunity for State party to rectify situation 354
- reasonable prospect of success requirement (OP 1:5(2)(b)) 354-5
- unreasonably prolonged proceedings (OP 1:5(1)(b)) 354

extraterritorial jurisdiction: see ACHR (1969), applicability "over all persons subject to their jurisdiction" (ACHR 1(1))/extraterritorial jurisdiction**extraterritorial jurisdiction including extraterritorial enforcement of legislation by legislating State**
requirements/limitations

causal link between act originating on State's territory and infringement of human rights of persons outside its territory 243, 244, 245
 consent/acquiescence (restriction on sovereignty) 238-40

fair trial (ACHR 8): *see* judicial protection/effective remedy (ACHR 25)

family/private life, respect for/freedom from interference (ACHR 11/ACHR 17/ ECHR 8(1)/ICCPR 17)

Member States' positive obligation to establish effective and accessible procedures to protect rights

acts or omissions in relation to a natural or environmental disaster

effect on well-being/enjoyment of home 506

long-term risks 506, 511-12

serious consequences for person's health requirement 506

ECtHR Guide on Article 8 of the ECHR (2019) 506

environmentally hazardous activities 507

HRC GC 16 (right to privacy) 359-60

Member States' positive obligation to establish effective and accessible procedures to protect rights, jurisprudence

Note: for jurisprudence focusing on the environment: *see* environmental protection obligations/sustainable development/human rights, relationship, jurisprudence

Cordella 359

Fadeyeva 359

Hopu and Bessert 358

López Ostra 359

Portillo Cáceres 358-9

Taşkin 506

Urgenda 505-34

obligation to take positive measures to ensure 358-9

peasants and people working in rural areas, applicability to (UNDROP 1) 358

public participation in environmental decision-making, relevance 304

First Nation of Nacho Nyak Dun

overview (Court)

Court's decision 426

development of the Peel Watershed regional land use plan 425-6

land use planning process 428-30

Peel Watershed 427-30

Peel Watershed Planning Region 427-8

summary of the issues 425-6

UFA/Final Agreements, summary of provisions 426-7

Yukon's authority to modify Final Recommended Land Use Plan 426

Court's analysis: a. role of the Court 432-3

light touch/adequate scrutiny balance 432-3

modern treaty interpretation rules 432-3

Court's analysis: b. Yukon's approval of its Final Recommended Plan 433-9

modifications in response to changing circumstances, possibility of/limitations 438-9

Haida 438

Manitoba Metis Federation 438

Mikisew Cree 438

treaty interpretation principles 433-4

UFA/Final Agreements 11.6.3.2

"consultation" 434-5

First Nation of Nacho Nyak Dun (*cont.*)

“modify” 434

Yukon’s acknowledgement of non-compliance with treaty requirements 438-9

Court’s analysis: *c. remedy*

jurisprudence

Chandler 439

Little Narrows Gypsum 440

Little Salmon 440

parties’ return to the position they were in prior to the invalid decision (s 11.6.3.2 stage) 439-41

Judicial Review of Administrative Action in Canada (Brown and Evans) 439

Court’s conclusion

endorsement of trial judge’s order quashing Yukon’s approval of plan 426, 441

return of parties to s 11.6.3.2 stage of the land use plan 441

judicial review, limitation to the assessment of challenged decision 432

procedural history

Appeal Court 431

trial judge 431

First Nations (Canada) (status): *see also First Nation of Nacho Nyak Dun*

legislation

Constitution Act 1982, s 35(1): recognition/affirmation of aboriginal and treaty rights 427, 433, 438

Yukon First Nations Land Claims Settlement Act 1994 427, 432

treaties (historic), endorsement of special rights pre-1982 473

treaties (modern)

comprehensive land claim agreements, Umbrella Final Agreement (1992) (UFA)/

Yukon Final/Transboundary arrangements: *see First Nation of Nacho Nyak Dun*

as constitutional documents 433

continuity, transparency and predictability as objectives 433

as documents “meticulously negotiated by well-resourced parties” 433

inclusion of land claims 427

interpretation principles

applicability of modern treaty interpretation principles (jurisprudence/treaty provisions) 433

courts’ role (light touch/adequate scrutiny balance) 432-3, 434

generosity 426, 433-4

Interpretation Act, RSC 1985 433

respect for the text 433-4

treaty as a whole 433-4

jurisprudence

Clyde River (Hamlet) 432

Delgamuukw 432

First Nation of Nacho Nyak Dun 425-42

Little Salmon 425, 426-7, 428, 433-4, 436

Van der Peet 432

role in fostering reconciliation 425, 432, 433-4

RCAP Report (1996) 432

freedom of expression/freedom of the press (ACHPR 9/ACHR 13/ECHR 10/ICCPR 19(2))

freedom to impart information, in the public interest/public’s right to be informed 296-7

justified restrictions/interference by public authority/requirements (ACHPR 9(2)/

ACHR 13(2)/ECHR 10(2)/ICCPR 19(3))

- burden of proof 302
- legality of measure, “expressly established by law” (ACHR 13(2)) 302
- legitimate purpose
 - protection of morals 302
 - protection of public order/public policy/*ordre public* 302
 - “necessary in a democratic society” (ECHR 10(2)/ACHR 13(2)) 302
 - “necessary . . . to ensure . . . the rights or reputations of others . . . or the protection of national security, public order or public health or morals” (ACHR 13(2)(a)) 302
- public participation, relationship with 298-300, 303
- freedom of expression/freedom of the press (ACHPR 9/ACHR 13/ECHR 10/ICCPR 19(2)), jurisprudence**
- AComHPR
 - Kenneth Good* 383
 - SERAC and CESR* 297-8
- ECtHR
 - Di Sarno* 297
 - Guerra* 297
 - McGinley* 297
 - Roche* 207
 - Taşkın* 297
- IACtHR
 - Claude Reyes* 302
 - Environment and Human Rights* 296-303: *see also Environment and Human Rights*
 - Kaliña and Lokono Peoples* 302
 - Kichwa Indigenous People of Sarayaku* 297
 - Palamara Iribarne* 297
- General Assembly resolutions in number/date order**
- 2995 (XXVII) (Cooperation in the Field of Environment) 284-5
- 3281 (XXIX) (Charter of Economic Rights and Duties of States) 291
- General Comments (CESCR)**
- 3 (States Parties’ obligations (ICESCR 2(1))) 254
- 4 (ICESCR 11(1): right to housing) 225
- 12 (ICESCR 11: right to adequate food) 248, 249, 253
- 14 (ICESCR 12: right to the highest standard of physical and mental health) 194, 225, 243, 248, 251, 266
 - obligation to take appropriate measures to prevent acts of registered transnational corporations with negative impact on human rights outside their territory 266
- 15 (ICESCR 11 and 12: right to water) 225, 241, 243, 249, 251, 252-3, 254, 266
 - obligation to take appropriate measures to prevent acts of registered transnational corporations with negative impact on human rights outside their territory 266
- 17 (ICESCR 15(1)(c) (right of everyone to benefit from the protection of moral and material interests)) 139 n. 300
- 21 (ICESCR 15(1)(a): right of everyone to participate in cultural life) 139 n. 300, 225
- General Comments (HRC)**
- 16 (ICCPR 17 (right to privacy)) 358-9
 - “home” 358
- 23 (ICCPR 27 (minorities)) 328-9
- 31 (ICCPR 2(1): *non-refoulement* obligation in case of ICCPR 6/ICCPR 7 risk) 378

General Comments (HRC) (cont.)

- 32 (ICCPR 14 (right to equality before courts and to a fair trial)) 378
- 36 (ICCPR 6: right to life)
 - non-refoulement* obligation in the case of persons not having refugee status 378
 - obligation to take measures including environmental measures to address threats 356, 379
 - right to enjoy life with dignity/freedom from acts or omissions causing unnatural/untimely death 356, 379

good neighbourliness principle (*sic utere tuo*)/avoidance of harm to others 242 n. 191

- as customary international law 256-8
- “harm”, ILC(TBH) 2(b)/Commentary 2(8) (harm caused to persons, property or the environment) 253

jurisprudence

- Certain Activities/Construction of a Road* 242, 256
- Corfu Channel* 241-2, 256
- Environment and Human Rights* (OC-23/17) 241-5, 256: *see also* *Environment and Human Rights* (IACtHR) (OC-23/17) (issues), issue 5: “jurisdiction” (ACHR 1 (1)) (obligations regarding transboundary damage (good neighbourliness principle (*sic utere tuo*)/avoidance of harm to others))
- Gabčíkovo–Nagyymaros Project* 256
- Ghana/Côte d’Ivoire* 256
- Iron Rhine (Ijzeren Rijn)* 256
- Kishanganga* 256
- Legality of Nuclear Weapons* 242
- Pulp Mills* 242, 256
- South China Sea* 256
- Trail Smelter Arbitration* 241-2, 256
- Urgenda* 512-13

- obligation to notify and consult with potentially affected States in case of risk of significant transboundary harm, obligation to make good the damage (ILC (TBH): General Commentaries) 244, 258

- pacta sunt servanda* principle (VCLT 26) (obligation to avoid action hindering other States complying with their obligations) 243

State responsibility for prevention of transboundary damage 245

- State where activities causing harm took place (“State of origin”) 243-4, 245
- victims of damage as “persons subject to their jurisdiction” 243-4

treaties and other international instruments relevant to

- CCC Preamble 242, 513
- ILC(TBH): *see* hazardous activities (ILC(TBH) by article)
- OHCHR (Knox report: December 2013) 243
- Paris Agreement 513-14
- Rio Declaration on Environment and Development (1992) 242, 256, 264
- Stockholm Declaration on the Human Environment (1972) (Principle 21) 242, 256
- UNCLOS 194(2) (obligation to avoid damage to other States and their environment) 242-3

Habitats Directive (92/43/EEC): *see also* *Plan B Earth*

- compliance, standard of review, HD 6(3) and HD 6(4) compared 560-4

hazardous activities (ILC(TBH) by article)

- 1 (applicability exclusively to activities not prohibited by international law) 244, 260
- 2(b) (“harm”), Commentaries 2(4) 260

- 3 (obligation to prevent/minimize risk of transboundary harm), Commentaries 3(5) and 3(8) (as due diligence obligation) 253
- Hazardous Wastes, Basel Convention, notification obligation** 285
- health:** *see also Environment and Human rights*; environmental protection obligations/sustainable development/human rights, relationship
 definition (WHO Preamble) 248
- home, respect for (ICCPR 17) (freedom from arbitrary or unlawful interference with)** “home” (HRC GC 16) 358
Portillo Cáceres 358-9
- HRC (UN Human Rights Committee)**
 admissibility: *see* admissibility (HRC including OP 1:5); exhaustion of local remedies (ICCPR OP 1:5(2)(b))
 evidence/findings of fact in the light of all written information made available by parties (OP 1:5(1))
 absence of submissions from State party as substantiation of complainant’s allegations 356
 burden of proof/State’s obligation to investigate (OP 1:4(2)), inequality of access to the evidence and 356
 jurisprudence
Medjnoune 356
Portillo Cáceres 355-6
- Rules of Procedure (ROP)
 92 [86] (interim measures) 365
 93(1) (admissibility) 327
 97 [87] (admissibility) 376
 standard of review (arbitrary decision/manifest error/denial of judgment) 379
 jurisprudence
BDK 378
MM 378
Teitiota (HRC) 374-8
- “victim” (OP 1:1)
 “actually affected”/imminent risk 376-7
 jurisprudence
Aalbersberg 376, 377
Aumeeruddy-Cziffra 376-7
Bordes 377
Picq 376
Rabbae 376
Teitiota 376-7
 “prospective victim”/possible future events 377
- human rights treaties (general)**, interpretation, intertemporal law/developments subsequent to conclusion of treaty as “relevant rule” (VCLT 31(3)(c)) (“living-tree” principle) 211
- IACtHR:** *see also* advisory jurisdiction (ACHR 64), competence/scope; provisional measures (IACtHR)
 discontinuance, acquiescence and friendly settlement (ROP 61-4)
 acquiescence/acknowledgement of responsibility (ROP 62 [52])
 Court’s obligation to examine validity of acquiescence 51-2
 as reparation in part for violation of human rights 52

IACtHR (*cont.*)

- acquiescence/acknowledgement of responsibility (ROP 62 [52]), jurisprudence: *see also Sarayaku People* (Merits)
 - Contreras* 51, 52
 - El Caracazo* 52
 - Ituango Massacres* 54
 - Kimel* 51
 - Manuel Cepeda Vargas* 51, 52, 53
 - Mapiripán Massacre* 54
 - Montero Aranguren* 54
 - Pacheco Teruel* 52
 - Sarayaku People* 49-54
 - Tiu Tojín* 53
- discontinuance of case consequent on acceptance of acquiescence, continuing action by Court
 - determination of reparations 52-3
 - specific determination of events 52-3
- jurisdiction and functions (ACHR 61-5)
 - advisory jurisdiction: *see* advisory jurisdiction (ACHR 64)
 - “all matters relating to the interpretation or application of [the] Convention” (ACHR 62(1)/ACHR 62(3)) 200
 - as autonomous judicial organ 204
 - compétence de la compétence* 190-200
 - interpretation of Convention provisions on procedure 200
 - responsibility of State for breaches of the Convention, limitation to criminal, administrative or disciplinary responsibility of individuals, exclusion 52 n. 26
 - López Mendoza* 52 n. 26
 - Sarayaku People* 51-2
 - Velásquez Rodríguez* 52 n. 26
- Rules of Procedure (2003)
 - 25 (provisional measures) 9, 19-20, 43
 - 25(1) (provisional measures: urgency/prevention of irreparable damage) 9
 - 40 (alleged victims brief (pleadings, motions and evidence)) 43
- Rules of Procedure (2009)
 - 15(2) (privacy of hearings) 36
 - 27 (provisional measures) 36
 - 31(2) (judgments and orders: by Court/Presidency) 36
 - 41(1)(b) (State’s answer: indication of tendered evidence, properly organized with indication of facts and arguments) 58
 - 46 (definitive list of declarants) 54, 56
 - 47 (objections to witnesses) 54
 - 50 (offering, convocation and appearance of declarants) 54, 58
 - 51 (hearing) 54
 - 51(6) (hearing: exclusion of victims/witnesses from hearing of another alleged victim’s statement) 59
 - 57 (admissibility of evidence) 54
 - 57(2) (admissibility of evidence: exceptional circumstances) 56-7
 - Sarayaku People* 56-7
 - 58 (procedure for taking evidence) 54
 - 61 (discontinuance of case) 514

- 62 (respondent's acquiescence/acknowledgement of responsibility) 49-54, 514
- 64 (continuation of case) 51, 514
- 70 (interpretation of the Convention: request for an advisory opinion) 201
- 71 (interpretation of other treaties: request for an advisory opinion) 201
- 73(1) (transmission of copies of request) 193-4
- 73(3) (invitation to interested parties to submit a written opinion on the issues) 193-6
- 73(4) (oral proceedings) 196-7
- 75(3) (separate opinions) 312
- ICCPR 2(1), *non-refoulement* obligation where there is a risk of irreparable harm (HRC GC 31:12)** 378, 380-1, 386-7
 - Celiberti* 232
 - Montero* 232
- IEL (international environmental law)**, applicability of obligations in areas outside territory 258-9
- IHL (international humanitarian law) (*jus in bello*)**, due diligence and (GC Common Article 1) 253
- IHRL (international human rights law)**
 - due diligence obligation 253-4
 - Application of the Genocide Convention* 253
 - CESCR General Comments 3 and 15 254
 - ACHR 1(1) obligation to ensure the free and full exercise of Convention rights 254
- ILC(TBH) (Draft Articles on Prevention of Transboundary Harm from Hazardous Activities)**: *see* hazardous activities (ILC(TBH) by article)
- indigenous peoples**: *see* Ecuador, indigenous peoples in; First Nations (Canada) (status); indigenous peoples, basic considerations including human rights other than consultation, culture/identity and property rights; indigenous peoples, consultation rights (including ILO No 169 6); indigenous peoples, land/property rights (ACHR 21/ACHPR 14/ACHPR 21/ADRDM XII/ILO No 169 14); native title (Australia)
- indigenous peoples, basic considerations including human rights other than consultation, culture/identity and property rights**
 - applicability of rights to both members of a community and the community/"people" collectively 139-40
 - ACHPR 20, ACHPR 21 and ACHPR 22 139 n. 300
 - CESCR General Comment 17 ("the right . . . also applies to indigenous peoples as collective subjects and not only to their members as individuals") 139 n. 300
 - CESCR General Comment 21 ("may denote both the individual and the collective subject") 139 n. 300
 - jurisprudence
 - Mayagna (Sumo) Awas Tingni* 139-40
 - Saramaka* 139-40
 - Sarayaku* 139-40
 - Sawhoyamaxa* 139-40
 - Xákmok Kásek* 139-40
 - Yakye Axa* 139-40
 - UNDRIP 1 ("as a collective or as individuals") 139 n. 300
- definition/criteria for classification as an indigenous people
 - tribal people regarded as indigenous on account of descent from populations at time of conquest or colonization who retain some or all of their own institutions (ILO No 169 1(1)(b)) 100
 - tribal people whose social, cultural and economic conditions distinguish them from national community (ILO No 169 1(1)(a)) 100

- indigenous peoples, basic considerations including human rights other than consultation, culture/identity and property rights** (*cont.*)
- democratic participation/parliamentary representation, IADC 9 139
 - effective remedy (ACHR 25)/fair trial (ACHR 8(1))/compliance with implementation obligation (ACHR 1(1)) 151-7
 - environmental protection obligations and 214, 226-7, 228-9, 268: *see also Sarayaku People*
 - human rights (general), obligation to adopt measures giving effect to ACHR rights and freedoms (ACHR 2) 136-8
 - non-discrimination/equality
 - equality before the law, municipal law/general 132
 - human rights and fundamental freedoms without discrimination (ACHR 1(1)/ILO No 169 3) 131-2
 - relationship with land/property rights 94-6
- indigenous peoples, consultation rights (including ILO No 169 6)** 98-136
- appropriate procedures/adequate and accessible consultation requirement 124-7, 304
 - “appropriate procedures” 125-7
 - ILO Committee of Experts on the Application of Conventions and Recommendations Report (1989) 125
 - ILO No 169 6(1)(a) 125
 - municipal legislation/jurisprudence 126-7
 - communal property rights, importance for 98, 106-10
 - cultural identity, importance to 131-6
 - domestic legislation reflecting 101-6
 - EIA requirement (ILO No 69 7(3)) 97-8, 128-9
 - EIA as means of ensuring a basis for informed decisions on the proposed project 268
 - elements of obligation 106-7, 114-40, 304
 - ILO No 169 107
 - UNDRIP 107
 - as fundamental part of treaty implementation obligation (ACHR 1(1)) 106-10
 - as general principle of international law 106
 - good faith with the aim of reaching an agreement (ILO No 169 6(2)) 117-24
 - consultation as “a true instrument for participation” 118-19
 - incompatible practices 118-19
 - municipal legislation/jurisprudence 119
 - Special Rapporteur’s Report (2009) 118
 - UN Permanent Forum on Indigenous Issues Report (2005) 118
 - informed consultation requirements 129-31, 304
 - international instruments other than ILO No 169 providing for
 - ACHR 6, 15, 17, 22, 27 and 28 100
 - UNDRIP 19/UNDRIP 30(2)/UNDRIP 38, 98, 107
 - jurisprudence
 - IACtHR
 - Environment and Human Rights* 303-4
 - Saramaka People* 97, 98, 115, 118, 124-5, 128-9
 - Sarayaku* 98-136
 - municipal courts 101-7
 - First Nation* 434-9
 - Intag* 129 n. 275
 - Judgment C-169/01* (Constitutional Court of Colombia) 98
 - Judgment SU-039/97* (Constitutional Court of Colombia) 128-9
 - Nangaritza* 129 n. 275

- Yuma* 129 n. 275
 as obligation of the State/non-delegation 119-24, 127
 prior consultation obligation 107, 115-17, 434-9
 ILO Committee of Experts' reports 116
 ILO No 169 15(2) 115
 municipal legislation 116
 Special Rapporteur's Report (2009) 116
 UNDRIP 32(2) 115 n. 326
 respect for the particular consultation system of each people or community, need for 106, 304
- indigenous peoples, culture/identity**
 AComHPR Communication No 276/2003 133
 applicability of rights, CESCR General Comment 21 (ICESCR 15(1)(a): right to participate in cultural life) 133
 consultation rights, importance to 131-6
 Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) 132
 as a fundamental right 134
 ILO No 169 132
 jurisprudence
 Chapman 133
 Gorzelik 133
 Saramaka 131
 Sarayaku 131-6
 Yakye Axa 131
 respect for traditions and culture of, EIA and 275
 Rio Principle 22 (indigenous people) 132
 UNDRIP 8(1), UNDRIP 8(2), UNDRIP 11 and UNDRIP 12 132
 UNESCO
 Convention for the Safeguarding of the Intangible Cultural Heritage (2003) 132
 Recommendation on Participation by the People at Large in Cultural Life (1976) 132
 Recommendation on the Safeguarding of Traditional Culture and Folklore (1989) 132
 Universal Declaration on Cultural Diversity (2000) 132
- indigenous peoples, land/property rights (ACHR 21/ACHPR 14/ACHPR 21/ADRDM XII/ILO No 169 14)**
 communal/collective form of tenure, evidence of, State recognition of 94
 cultural, intangible and spiritual values, relationship with land (including ILO No 169 13) 94-6
 EIA and 275
 elements of right
 access to territories 93-4
 equal protection under the law, entitlement to 92-3
 natural resources, control of 93
 indigenous communal property 92-8
 diversity of forms 94
 traditional practices, importance 94
 jurisprudence
 AComHPR/ACtHPR, *Yakye Axa* 93-4, 97
 IACoMHR/IACtHR
 Mayagna (Sumo) Awas Tingni Community 92, 93
 Saramaka 97, 98

indigenous peoples, land/property rights (ACHR 21/ACHPR 14/ACHPR 21/ADRDM XII/ILO No 169 14) (cont.)

Sawhoyamaxa 93-4

Xáikmok Kásek 92, 93-4

restrictions on interpretation (rights recognized in States parties' laws/other conventions) (ACHR 29(b)) and, consultation obligations 110, 131-2

restrictions on/differential treatment, justification/requirements (ACHR 21(2)) 97-8

special nature of relationship with territory 94-6

activities demonstrating, importance of non-interference with 94

diversity of forms 94

traditional practices, importance, examples 94

Indigenous and Tribal Peoples Convention (ILO No 169) (1989)

applicability "without discrimination to male and female members of these peoples" 139
 n. 300

implementation, examples of legislation 106

inhuman or degrading treatment (ACHR 5)

examples 249-50

indigenous and tribal communities and 249: *see also* indigenous peoples, culture/identity jurisprudence

Environment and Human Rights (OC-23/17) 249-50

Kichwa Indigenous People of Sarayaku 249

Loayza Tamayo 249

Ortiz Hernández 249

Río Negro Massacres 249

personal, physical and mental integrity (ACHR 5(1)) 249

jurisprudence

Chinchilla Sandoval 250

Juvenile Re-education Institute 250

Kichwa Indigenous People of Sarayaku 250

right to life, link with 250

international environmental law (IEL): *see* IEL (international environmental law)

international human rights law (IHRL): *see* IHRL (international human rights law)

international rivers and watercourses

notification obligation 285, 286

Watercourses Convention (1997) 285

IPCC (Intergovernmental Panel on Climate Change): *see also* climate change

establishment/status 486

reports

AR4 (2007) 486-7

AR5 (2013-14) 487

role (assessment of world-wide scientific and technological information) 486

Johannesburg Declaration on Sustainable Development (2002), economic

development, social development and environmental protection as pillars of

sustainable development 217

judicial protection/effective remedy (ACHR 25)

ACHR 1(1) (obligation to ensure respect for rights) and 151-2

characteristics, as *jus cogens*/peremptory norm 306-7

indigenous peoples and 153

interrelationship with ACHR 8/duty to provide effective legal remedies for victims of

human rights violations (ACHR 25) in accordance with due process rules

(ACHR 8(1)) 151-3

- obligation to investigate alleged breaches 153-5
 - as *ex officio* obligation independent of any private action 153-4
 - jurisprudence
 - Barrios Family* 154
 - García Prieto* 154
 - Torres Millacura* 153-4
 - Velásquez Rodríguez* 153-4
 - serious, impartial and effective investigation designed to establish truth and pursue perpetrators, need for 154
 - requirements
 - effective mechanisms 153
 - effectiveness 152-3
 - legislation ensuring due application of effective remedies and due process 153
 - measures to ensure compliance with judicial decisions 153
- judicial protection/effective remedy (ACHR 25), jurisprudence (general)**
 - Baena Ricardo* 153
 - Cabrera García* 152
 - Castillo Páez* 152
 - Castillo Petruzzi* 152
 - Fleury* 151-2
 - Judicial Guarantees in States of Emergency* 152
 - Mejía Idrovo* 153
 - Saramaka* 152
 - Sarayaku* 151-7
 - Velásquez Rodríguez* 151-2
 - Xákmok Kásek* 152
- judicial review/justiciability, scope/standard of review/grounds/relevant considerations**
 - degree of scrutiny, criteria for determining, jurisprudence
 - IBA Health* 558
 - Kennedy* 558
 - Pham* 558, 587
 - Plan B Earth* 558-64
 - Prideaux* 559
 - Smith* 558
 - limitation of courts' role to determination of legal requirements/second-guessing,
 - exclusion 440, 538, 587-9, 635
 - on a technical or scientific question 602-3
 - margin of appreciation and
 - in case of dependence on assessment of complex technical matters 559
 - jurisprudence
 - Mott* 559, 603, 605
 - Plan B Earth* 559
 - Prideaux* 559
 - reasonableness/rationality (*Wednesbury* principle)
 - "manifest error" (EU) compared 562
 - "may reasonably be required" (SEA Directive 1 and Annex I) challenge, applicability to, jurisprudence
 - Ashdown Forest Economic Development* 588
 - Bedford and Clare* 584
 - Bowen-West* 584
 - Cogent Land* 592
 - Edwards* 590
 - Holohan* (A-G Kokott) 587

judicial review/justiciability, scope/standard of review/grounds/relevant considerations (*cont.*)

- HS2 Action Alliance* 591
- Inter-Environnement Bruxelles ASBL* 586
- Milne* 584
- No Adastral New Town* 592
- Plan B Earth* 583-92
- Save Historic Newmarket* 587
- Seaport Investments* 591-2
- Shadwell Estates* 584, 591
- Terre Wallonne* 591
- Uppjohn* (A-G Léger) 587-8
- Walton* 591

precautionary principle, relevance, jurisprudence 560-1

- Mynydd y Gwynt* 559, 563-4
- Smyth* 559, 563

proportionality test (ECHR/EU law) compared/proposed move to, jurisprudence

- Commission v. Portugal* (A-G Kokott) 561
- Craeynest* (A-G Kokott) 561-3, 589
- Lumsdon* 560, 561
- Plan B Earth* 560-4

Kiribati, climate change 365-88

Kyoto Protocol (1997)

- adoption and entry into force 488
- failure to agree extension/succession to (Copenhagen 2009) 488
 - Cancún Pledges (2010) 488
- failure to agree raised reduction rates (Doha Amendment) (2012) (COP-18) 489

legal assistance/legal aid, applicability of, ACHR 8, 179

life, right to (ACHPR 4) (*SERAC and CESR*) 356

life, right to (ACHR 4)

environmental protection and, *Environment and Human Rights* (OC-23/17) 245-310: *see also Environment and Human Rights*

as fundamental right 246-7

jurisprudence (nature of State's obligations)

- Anzualdo Castro* 145
- Children's Rehabilitation Institute* 145
- Chinchilla Sandoval* 247
- Environment and Human Rights* (OC-23/17) 356
- Gelman* 145
- Juan Humberto Sánchez* 247
- Kawas-Fernández* 356
- La Rochela Massacre* 145
- Mapiripán Massacre* 145
- Ortiz Hernández* 246-7
- Sarayaku* 145-9
- Street Children* 246-7
- Yakye Axa* 145

- obligation to investigate death, *Pueblo Bello Massacre* 247
- obligation to protect and preserve (ACHR 1(1))
 - arbitrary deprivation of life, exclusion (negative obligation) 247
 - awareness of a situation of real and imminent danger test 147
 - proactive nature of obligation 247
- obligation to punish/provide redress for deprivation of life 247
- obligation to safeguard access to conditions that ensure a decent life
 - conditions required for
 - access to and quality of water, food and health 247-8
 - CESCR General Comments 12 and 14 247
 - CESCR General Comment 15 249
 - environmental risks to 248
 - jurisprudence (ECHR)
 - Acar* 247 n. 206
 - Makaratzis* 247 n. 206
 - jurisprudence (European Committee of Social Rights) 248 n. 210
 - jurisprudence (IACtHR)
 - Artavia Murillo* (IVF) 247, 248
 - Chinchilla Sandoval* 248
 - Gonzales Lluy* 247 n. 206
 - Juvenile Re-education Institute* 247
 - Kaliña and Lokono Peoples* 248
 - Kichwa Indigenous People of Sarayaku* 247 n. 206
 - La Rochela Massacre* 247 n. 206
 - Ortiz Hernández* 247
 - Saramaka* 249
 - Sawhoyamaxa* 247, 248
 - Street Children* 247
 - Xákmok Kásek* 248, 249
 - Yakye Axa* 247, 248
 - positive measures, need for 247
 - obligation towards “all persons subject to their jurisdiction” (ACHR 1(1)) 247
- life, right to (ECHR 2) (obligation to protect and preserve (substantive obligation))**
 - acts or omissions in relation to a natural or environmental disaster 505-6
 - jurisprudence
 - Note:* for jurisprudence focusing on the environment: *see* environmental protection obligations/sustainable development/human rights, relationship, jurisprudence
 - Acar* 247 n. 206
 - Budayeva* 506
 - Makaratzis* 247 n. 206
 - Öneryıldız* 506
 - Urgenda* 506-9
 - “real and immediate risk”/State’s awareness of 506
 - “immediate” 506
- life, right to (ECHR 2/ACHR 4) (obligation to investigate death (“procedural obligation”))**
 - Cruz Sánchez* 247
 - Pueblo Bello Massacre* 247
- life, right to (ICCPR 6)**
 - definition/classification as
 - life with dignity/freedom from actions or omissions causing unnatural or premature death (HRC GC 36) 356
 - threats and situations not causing loss of life (GC 36) 356

life, right to (ICCPR 6) (*cont.*)

obligation to take measures including environmental measures to address threats (HRC GC 36) 356

Portillo Cáceres 355-7

Lozano Barragán (climate change/human rights)

background (environmental concerns)

Colombian Constitution 1992 462-3

Colombian Constitutional Court decisions 463-5

deforestation in the Amazon, causes and risks 465-75

review of the literature 456-60

treaties and other international instruments 460-2, 466-7

background (High Court rejection of *acción popular*) 452

applicants' challenge 452-3

Department of Environmental Affairs' support for challenge 453

background (parties' positions)

accused government departments/agencies 450-1

applicants 448-50

requested measures 449-50

CSAS *amicus curiae* brief 451-2

institutions requesting access to protection requested 451

Court's conclusions

causal link between climate-change-related environmental degradation and loss of rights to dignified life, water and food 467-70

State's obligations to take measure to deal with the problems 470-1

failure of government agencies to take effective measures 471-4

prescribed action 474-5

Court's decision 475-7

margin of appreciation (including ACHR, EC, ECHR, ICCPR and municipal law practice): *see* judicial review/justiciability**marine environment, protection and preservation, treaties and other international instruments relating to (general points)**

environmental obligations, possibility of treatment as human rights obligations within the State's ACHR 1(1) jurisdiction 238-40

extraterritorial jurisdiction, dependence on consent to restriction on sovereignty 238

functional nature of jurisdiction under 237

as special legal regimes 235-40

marine environment, protection and preservation, treaties and other international instruments relating to (including pollution) in date order

London Convention on the Prevention of Marine Pollution by the Dumping of Wastes (1972)

notification obligation 285

Protocol (2006) 279

UNEP Regional Seas Programme (1974) 234-41

Barcelona Convention (1976/1995) 236, 239

Kuwait Convention (1978) 237

Abidjan Convention (1981) 236, 239

Lima Convention (1981) 236, 240

Jedda Convention (1982) 236

UNCLOS (1982)

general obligation of all States to protect and preserve (UNCLOS 192) 257

- obligation to avoid damage by pollution to other States and their environment (UNCLOS 194(2)) 242-3
- Cartagena Convention (1983) 235-6, 239, 257-8, 264
- Nairobi Convention (1985) 236, 239
- Noumea Convention (1986) 236, 240
- Bucharest Convention (1992) 236, 239
- OSPAR Convention (1992) 237: *see also* OSPAR 9 (disclosure obligation (“access to information”))
- Water Convention (1992) 24 n. 293, 237, 240
- Tehran Convention (2003) 236, 239, 286
- Barcelona Convention Protocol (2008) 287
- measure of damages/compensation, absence of adequate evidence as to the extent of material damage, equitable basis alternative** 171
- minority rights (ICCPR 27):** *see also* indigenous people
 - consultation, right to, effective participation in the decision-making process 330
 - enjoyment of own culture
 - economic and social activities 329
 - exploitation of natural resources and 329
 - positive measures, need for 329
 - HRC General Comment 23 328-9
 - jurisprudence
 - Länsman* 329
 - Lubicon Lake Band* 329
 - Poma Poma* 328-31
 - justifiable economic development, substantive negative impact test 329-30
- native title (Australia)**
 - extinction/extinguishment of common law rights
 - effect 395-6
 - legislation
 - Continental Shelf (Living Natural Resources) Act 1968 (Cth) 399
 - Fisheries Act 1952 (Cth) 399
 - Fisheries Management Act 1991 (Cth) 399
 - Pearl Fisheries Act 1952 (Cth) 399
 - Queensland legislation 398-402, 415
 - Torres Strait Fisheries Act 1984 (Cth) 399
 - principles
 - applicability of NTA for claims under the NTA 413, 414-15
 - clear provision, need for/presumption against extinction 401-2, 413, 416-18
 - identification of the alleged native title rights and interests 413, 416
 - partial extinguishment or suspension of rights, possibility of 413, 415-16
 - preservation of certain native title rights and interests (NTA 211) 420
 - rights and their exercise for particular purposes 399-409, 415
 - primacy of right over activity as circumstance attending its exercise 418-19
 - rights and title distinguished/inconsistent legislation 402-9
 - jurisprudence
 - Akiba* 392-421: *see also* *Akiba* (native title)
 - Fejo* 395, 402, 406, 407, 413, 414, 417-18
 - Harper* 408-9, 420-1
 - Lacey* 405
 - Mabo (No 1)* 405

native title (Australia) (*cont.*)*Mabo (No 2)* 405, 406, 416*Native Title Act Case* 404-5*Ward* 402, 403, 407, 413, 414, 415, 416, 417-18, 419*Wik Peoples* 402, 406, 407, 413, 414, 416-18*Yanner v. Eaton* 395, 404, 406-7, 414, 416-18, 420, 421*Yarmirr* 395, 407, 414, 417-18, 494

Native Title Act 1993 (NTA) by section

10 (recognition and protection of title “in accordance with the Act”) 414

11(1) (extinction of native title/“not contrary to this Act”) 414

23A(1) (acts by the Commonwealth on or before 23 December 1996 completely or partially extinguishing native title) 415-16

211 (preservation of certain native title rights and interests) 403-4, 417-18, 420

223(1) (“native title”/“native title rights and interests”) 394-6

hunting, gathering and fishing as 395-6

rights held communally and group rights and interests (“reciprocal rights”)

distinguished 409-11

223(1)(a) (possession under traditional laws and customs) 414

223(1)(c) (recognition under common law)

Akiba 395-6 *Fejo* 395-6

225 (“determination of native title”)

requirements 396

Torres Strait waters 396-8

227 (act affecting native title) 402-3, 414-15, 419-20

228 (past act) 415

238(4) (rights and interests partly ineffective) 403

438 (non-extinguishment principle) 415

nature, rights held communally and group rights and interests (“reciprocal rights”)

distinguished 409-11

natural resources, UNGA Resolution 3281 (XXIV) (Charter of Economic Rights and Duties of States) 291**Netherlands**

Civil Code, article 3:305a (class action suits) 516

climate change policy in date order: *see also Urgenda* *Schoon en zuinig* (“Clean and Economical”) (2007) 490-1

adjustment of Dutch reduction target to the EU-level reduction (2011) 491

Government Agreement taking the Dutch target beyond the EU target (2017) 491

Dutch/EU emissions record (1990-2019) 491

Constitution 2018 by article

93 (binding effect of treaties and international resolutions following publication) 511, 533

94 (international obligations: primacy/compatibility of the law with treaties and decisions of international organizations) 511, 533

non-refoulement (HRC GC 31): *see* general comments (HRC), 31 (ICCPR 2(1): *non-refoulement* obligation in case of ICCPR 6/ICCPR 7 risk)**Norway, “home” (HRC GC 16)** 358**obligation of result vs obligation of conduct/means/best efforts to ensure compliance with**

due diligence obligation 253

- UNCLOS obligations “to ensure” 253
- jurisprudence
Environment and Human Rights (OC-23/17) 253
Five Pensioners 263
Jugheli 508
Pulp Mills 253
Urgenda 507-8
Velásquez Rodríguez 263
- transboundary harm (ILC(TBH) Commentaries 3(8)) 253-4
- OSPAR 9 (disclosure obligation (“access to information”))** 299
- pacta sunt servanda*/good faith observance of treaties (VCLT 26)**
- jurisprudence
Environment and Human Rights (OC-23/17) 240
Gabčíkovo–Nagyymaros Project 240
- obligation to avoid action hindering other States complying with their treaty obligations
 240, 243
- Paraguay**, Civil and Commercial Procedure Code 566 (amparo: jurisdiction) 342
- Paris Agreement (2015)**: *see also* Climate Change Convention (1992) (CCC); *Plan B Earth*
- CCC basis 504
- conclusion/parties to (COP-21) 462, 489, 504
- COP conferences on 503-4, 513
- need for all States to meet obligations 489-90, 513
- PIDS and 202 n. 24
- purposes and principles (PA Preamble)
- mobilization of a stronger and more ambitious climate action by all actors 462
- urgency of the situation 490, 521
- UNEP Reports (2013/2017) 489-90, 504
- persecution (with particular reference to RC 1A(2)), need for action directed at individual/individualized assessment of the risk**
- HRC GC 36:12 378
- Jasin* 381
- Sufi* 380
- Teitiota* (HRC) 378-84
- Warsame* 381
- Peru**, Environment and Natural Resources Code 5 (EIA) 321-2
- Plan B Earth (England: Court of Appeal) (climate change), background**
- facts in date order
- Greater London Authority Act 1999 (GLA Act) 530
- “The Future of Air Transport” (16 December 2003) (proposal for new runway at Heathrow) 542
- Climate Change Act 2008 (26 November 2008) (CCA) 542-3
- Planning Act 2008 (26 November 2008) 542-3
- Airports Commission: establishment/terms of reference (1 September 2012) 543
- Aviation Policy Framework (March 2013) 543
- Airports Commission: interim report (17 December 2013) 543
- Airports Commission: Appraisal Framework (January 2014) 543-4
- Airports Commission: Final Report (1 July 2015) 544-5
- Business Case/Sustainability Assessment 545
- Aviation Commission: reviews of Final Report (September–December 2015) 545

Plan B Earth (England: Court of Appeal) (climate change), background (cont.)

- Paris Agreement: conclusion (December 2015) 545
- Government announcement on state of play on Airports Commission's options (14 December 2015) 545-6
- WSP's Appraisal of Sustainability: Airports NPS Scoping Report (9 March 2016) 546
- CCC's Report: UK climate action following the Paris Agreement (13 October 2016) 546
- Government's announcement of choice of Heathrow runway scheme (25 October 2016) 547
- Paris Agreement: UK ratification (17 November 2016) 547
- WSP Scoping Consultation Responses Report (February 2017) 547
- launch of consultation on draft ANPS (2 February 2017) 547
- second consultation on draft ANPS (24 October 2017) 547
- Government report on revised draft ANPS inquiry (23 March 2018) 547-8
- HR Assessment (June 2018) 546
- publication of final "Appraisal of Sustainability: Airports National Policy Statement" (June 2018) 548
- "Government response to the consultations on the ANPS: Moving Britain Ahead" (5 June 2018) 548
- parliamentary vote on proposed ANPS (25 June 2018) 548
- Airports National Policy Statement (26 June 2018) (ANPS) 538
- designation of the ANPS in the Planning Act, s 5(1) (26 June 2018) 548
- publication of "ANPS: Post Adoption Statement" (26 June 2018) 548-9
- CCA 2008 (2050 Target Amendment) Order 2019 (27 June 2019) 542-3
- legislative instruments
 - EIA Regulations 2017 555-6
 - Habitats Directive by article
 - 2(1) (aim of Directive) 552
 - 6(1) (SACs obligations: necessary conservation measures: appropriate management plans specifically designed for the sites) 552
 - 6(2) (SACs obligations: appropriate steps to avoid the deterioration of natural habitats and the habitats of species) 552
 - 6(3) (SACs obligations: assessment of implications of plan not directly connected to the site but likely to have a significant effect/ascertainment that there would be "no adverse effect") 552
 - 6(4) (SACs obligations: derogation for imperative reasons of overriding public interest/compensatory measures) 553
 - Planning Act 2008 by section
 - 5(3) (NPS: pre-designation appraisal of sustainability) 549
 - 5(4) (NPS: pre-designation parliamentary scrutiny) 549
 - 5(7) (NPS: inclusion of reasons for the policy) 549
 - 5(8) (NPS: inclusion of explanation of relationship between the NPS statement and the Government's climate change policy) 550
 - 6(1) (NPS review: "whenever the Secretary of State thinks it appropriate") 550
 - 6(2) (NPS review: scope) 550
 - 6(3) (NPS review: criteria for undertaking) 550
 - 6(5) (NPS review: post-review action) 550
 - 7 (consultation and publicity) 550-1
 - 7(2) (consultation and publicity as appropriate) 550-1
 - 7(4) (consultation with such persons as may be prescribed) 550-1
 - 7(6) (consultation and publicity, regard to responses in deciding whether to proceed) 550-1

- 8 (consultation with local authorities in the GLA) 551
- 9 (parliamentary requirements) 551
- 10 (sustainable development) 551
- 13(1) (NPS legal challenges: conditions (claim for judicial review/6-week time limit)) 551
- 14(1)(i) (nationally significant infrastructure projects: airport-related development) 549
- 104 (ministerial decisions in cases where NPS has effect) 551-2
- SEA Directive by article
 - Recital 1 (precautionary principle) 553
 - Recital 9 (procedural nature of Directive) 554
 - Recital 14 (environmental assessment: content) 554
 - 1 (purpose: promotion of sustainable development) 553
 - 2(a) (environmental assessment: requirements) 554
 - 2(c) (environmental assessment: required information) 554
 - 3 (environmental assessment: scope) 554
 - 4(1) (environmental assessment: “during the preparation of a plan . . . and before its adoption”) 554
 - 5(1)/Annex I (environmental assessment: required information) 555
 - 6(1) (environmental assessment: availability) 556
 - Annex I (information to be provided under SEA 5(1)) 555
 - Regulation 12 (preparation of environmental report) 556
 - SEA Regulations, treatment of Directive as if it had direct effect 556
- procedural matters
 - claims for judicial review under consideration 538-9
 - history in date order
 - rejection on jurisdictional grounds of claim for judicial review of the Government’s 25 October 2016 preference decision (*Hillingdon*) (30 January 2017) 547
 - Divisional Court dismissal of claims (1 May 2019) 539
 - permission to appeal (22 July 2019) 539
 - WWF request for permission to intervene/permission for written representations (18 September/4 October 2019) 539-40
 - parties to the proceedings 538-9
- Plan B Earth (England: Court of Appeal) (climate change), merits***
 - climate change issues, overview (Divisional Court judgment)
 - claimants’ grounds of challenge 609
 - ANPS on climate change 609-10
 - CCA 2008 as statement of UK policy on climate change 610-11
 - Paris Agreement, status in English law 609-10
 - climate change issues, overview (relevant evidence)
 - CCC’s 2016 Report, summary 613-16
 - CCC’s response to Plan B Earth’s reply to summary grounds of defence in proceedings brought by Plan B Earth (October 2016) 612-13
 - Plan B Earth’s challenge to 613
 - reliance of respondent’s defence team on/difficulties with 613
 - Government statements after ratification of the Paris Agreement 617-19
 - respondent’s stance as pleaded 619-21
 - witness statement (Low on behalf of respondent) (29 November 2018) 611-12
 - climate change issue 1 (ANPS designation as breach of Planning Act s 10(3)(a)) 541, 624-6
 - claimants’ arguments 624
 - Court’s analysis and conclusion

- Plan B Earth (England: Court of Appeal) (climate change), merits*** (*cont.*)
- exclusion of Paris Agreement from consideration, advice to Secretary of State 624
 - unincorporated international obligations as “so obviously material” 625
 - unincorporated treaty as evidence of Government policy 622-4
 - WWF submissions (rights of the child) 625-6
 - climate change issue 2 (Divisional Court’s alleged errors: failure to give reasons for rejecting Friends of the Earth’s argument) 541
 - Court’s analysis and conclusions (CO₂ precautionary principle) 628-9
 - parties’ arguments (claimants) 626-7
 - parties’ arguments (respondent) 627, 628-9
 - climate change issues 3, 4, 5 and 6 (Government’s commitment to the Paris Agreement as “government policy” for purpose of the Planning Act, s 5(8)) 542, 621-4
 - claimants’ arguments 621
 - Court’s analysis
 - consistency of Planning Act and CCA obligations 622
 - “Government policy” 622
 - Government’s commitment to Paris Agreement as part of “Government policy” 623
 - limited nature of obligation 623
 - need to address Paris Agreement obligations specifically 623-4
 - “taken into account” 622
 - Court’s conclusions
 - Court’s role 635-6
 - non-compliance with Planning Act provisions on the ANPS 635-6
 - relief 630-5
 - HD issue, overview 540, 557-64
 - Divisional Court’s findings 558-60
 - HD 6(3) and 6(4), distinguishability 560-4
 - Wednesbury* principle 559-64
 - “alternative solution” (HD 9(4))/sufficiency of margin of discretion and 561
 - margin of appreciation and 559-60
 - precautionary principle, relevance 560-1
 - HD issue 1: alleged breach of HD 6(4) (standard of review), impairment of environmental protections as a serious interference with EU fundamental rights 561-3
 - HD issue 2: alleged breach of HD 6(4) (decision against Gatwick as alternative: failure to meet “hub objective”) 540, 564-70
 - claimants’ argument before the Court of Appeal 567, 568-9
 - Court’s analysis and conclusion 567-70
 - Divisional Court’s rejection of challenge to adoption of the “hub objective” 565-7
 - documents discussing the options
 - ANPS (2 February 2017 draft) 565
 - HR Assessment (draft (2 February 2017)) 564-5
 - HR Assessment (revised draft (24 October 2017)) 565
 - HD issue 3: alleged breach of HD 6(4) (decision against Gatwick as alternative: SAC considerations) 540, 570-6
 - Court’s analysis and conclusion (validity of exclusion of Gatwick alternative) 574-6
 - Divisional Court’s conclusions 572-3
 - documents discussing the options
 - Airport Capacity Policy Directorate officials’ distillation of the February 2017 draft HR Assessment (25 September 2017) 570
 - HR Assessment (revised draft (24 October 2017)) 570-1

- RPS report on the impact on Mole Gap to Reigate Escarpment SAC (December 2017) 571-2
- parties' arguments before the Court of Appeal 573-4
- HD issue 4: Divisional Court's alleged error in distinguishing between "alternative solution" (HD 6(4)) and "reasonable alternatives" (SEA Directive) 540, 576-81
- claimants' argument before the Court of Appeal 577
- Court's analysis and conclusion (endorsement of Divisional Court's conclusion) 578-81
- Divisional Court's arguments 576-7
- HD issue 5 (TFEU 267 referral to the CJEU) 540-1, 581-2
- Court's decision 282
- parties' arguments (claimants) 581-2
- parties' arguments (respondent) 582
- relief/remedy 542
- SEA issue 1 (standard of review: SEA environmental report vs EIA environmental statement/applicability of *Wednesbury* principle) 541, 583-92
- Blewett* finding 583
- Court's analysis 588-90
- "may reasonably be required" test (SEA 5(1) and Annex I) 585-9
- Court's conclusion 590-2
- District Court's endorsement of *Blewett* 583-6
- parties' arguments (claimants) 586-7
- parties' arguments (respondent) 587-8
- SEA issue 2 (designation of ANPS as breach of SEA 5(1), SEA 5(2) and SEA Annex (I(a)): failure to indicate relationship between ANPS and other plans and programmes) 541, 592-9
- Court's analysis and conclusions 596-9
- Divisional Court's conclusions 592-5
- parties' positions (claimants) 587-8, 597, 598
- parties' positions (respondent) 588
- SEA issue 3 (designation of ANPS as breach of SEA 5(1), SEA 5(2) and SEA Annex (I(a)): failure to identify environmental characteristics of affected areas) 599-608
- Appraisal of Sustainability/ANPS consultation 599-601
- Court's analysis and conclusions
- identification of "areas" (Annex I(c)) 607
- substantial margin of appreciations (*Mott*) 605-7
- use of 54 dB LA_{eq} 16-hour threshold 605-6
- use of indicative flight paths 604-5
- Divisional Court's analysis and conclusions 602-4
- parties' positions (claimants) 604, 605-6, 607
- parties' positions (respondent) 606
- SEA issue 4 (failure to consider Paris Agreement as breach of the SEA Directive)
- Court's decision 626
- parties' positions (claimants) 626
- parties' positions (respondent) 626
- Poma Poma* (ICCP 2(3)(a)/ICCP 27)**
- admissibility (ICCP OP 1:5)
- burden/standard of proof (OP 1:2) 328
- Court's decision 328
- exclusion of ICCPR 1 rights 327-8
- "not being examined under another procedure of international investigation or settlement" (OP 1:5(2)(a)) 327

Poma Poma (ICCPR 2(3)(a)/ICCPR 27) (cont.)

- State's failure to address specific allegations 328
 - background
 - complaint/alleged breaches
 - ICCPR 1(2) (deprivation of livelihood) 324
 - ICCPR 2(3)(a) (right to an effective remedy in cases involving violation by an official) 324
 - ICCPR 14(1) (equality before the courts) 324
 - ICCPR 17 (privacy, family, home, correspondence) 324
 - complaint/alleged breaches, State Party's observations 325-6
 - author's comments 326-7
 - facts in date order 321-4
 - author's alpaca farm 321
 - diversion of the river Uchusuma (1950s) 321
 - drilling of the Ayro wells (1970s) 321
 - continued diversion of water from the Andes for benefit of Tacna city (1980s) 321
 - Special Tacna Project (Proyecto Especial Tacna (PET)) (1990s)/failure to approve an EIA 321-2
 - demonstrations by members of the Aymara community (1994)/alleged failure to investigate murder of a demonstrator 322
 - EIA-related exchanges (May 1999–April 2000) 322
 - reopening of well No 6/filing of criminal complaint by author (2002) 322
 - author's appeal to Senior Prosecutor/institution of criminal charges (17 September 2003) 322-3
 - failure of trial to proceed for procedural reasons (13 July 2004) 323
 - author's complaint to INADE/INADE's rejection of request for an investigation (11 November 2004) 323
 - prosecutor lodges further charges (10 January 2005) 323
 - dismissal of 12 January charges on procedural grounds (24 June 2005) 323
 - merits
 - Committee's finding (OP 1:5(4)) 331
 - degradation of author's land as violation of ICCPR 27
 - Committee's conclusion 330
 - justifiable economic development/substantive negative impact test 329-30
 - positive measures, need for 329
 - protected rights 328-9
 - effective remedy (ICCPR 2(3)(a)) 330-1
 - obligation to provide author with effective remedy (ICCPR 2(3)(a)) 331
 - request for information on measures taken to give effect to Committee's Views 331
- Portillo Cáceres (ICCPR 2(3)/ICCPR 6/ICCPR 7/ICCPR 17)***
- admissibility
 - alleged incompatibility with ICCPR provisions (OP 1:3) 353-4
 - Committee's decision 355
 - exhaustion of local remedies (ICCPR OP 1:5(2)(b))
 - as opportunity for State party to rectify situation 354
 - reasonable prospect of success requirement (OP 1:5(2)(b)) 354-5
 - unreasonably prolonged proceedings (OP 1:5(1)(b)) 354
 - "not being examined under another procedure of international investigation or settlement" (OP 1:5(2)(a)) 353
 - alleged violation of ICCPR 6 (right to life) 355-8
 - Committee's evaluation of the evidence and conclusion 357
 - definition/classification as

- life with dignity/freedom from actions or omissions causing unnatural or premature death (HRC GC 36) 356
 - threats and situations not causing loss of life (HRC GC 36) 356
- environmental protection obligations/sustainable development/human rights, relationship 355-7
- jurisprudence 356-7
- Stockholm Convention (POPs) (2001) 356
- evidence/findings of fact (OP 1:5(1))
 - inequality of access to the evidence and 358
 - substantiation of complainant's allegations, presumption of 356
- obligation to take measures including environmental measures to address threats (HRC GC 36) 356
- alleged violation of ICCPR 7 (cruel, inhuman or degrading treatment), Committee's decision not to address in view of their decision on ICCPR 6 358
- alleged violation of ICCPR 17 (respect for privacy, family and home) 358-9
 - obligation to take positive measures to ensure 358-9
- peasants and people working in rural areas, applicability to (UNDROP 1) 358
- background (complaint)
 - alleged violations
 - ICCPR 2(3) (effective remedy) 346-7
 - ICCPR 6 (right to life) 345
 - ICCPR 7 (cruel, inhuman or degrading treatment) 345
 - ICCPR 17 (family/private life) 345-6
 - authors' comments 349-53
 - exhaustion of domestic remedies 344-5
 - findings of other UN bodies on use of toxic agrochemicals 344
 - State Party's observations
 - admissibility 347-8
 - merits 348-9
- background (facts as submitted by the authors)
 - authors 336, 337
 - Colonia Yerutí settlement/industrial farms, practices of 337-8
 - contamination leading to sickness and death 338-9
 - government responsibilities 338
- background (procedural history (Paraguay) in date order)
 - authors' criminal complaint (13 January 2011) 339-40
 - inspections finding evidence of a breach of the law (14 January 2011) 340
 - request for amparo/allegations (14 January 2011) 341-2
 - transfer on jurisdictional grounds from Asunción to Curuguaty 342
 - Curuguaty Court's finding of the State's failure to exercise its responsibilities (15 April 2011) 341-2
 - failure to enforce Curuguaty Court's decision 343
 - initial charges of breach of environmental law (14 March 2011) 340
 - criminal charges (14 September 2011) 340
 - delays to the preliminary hearings (September 2011–June 2012) 340
 - preliminary hearing (25 June 2012) 340-1
 - stay of proceedings/request for additional evidence (31 July/3 September 2012) 341
 - failure to collect requested evidence 341
- obligation to provide author with effective remedy (ICCPR 2(3)(a))
 - Committee's finding of breach 359-60
 - criminal and administrative penalties on all responsible parties 360
 - effective and thorough investigation 360

Portillo Cáceres (ICCPR 2(3)/ICCPR 6/ICCPR 7/ICCPR 17) (cont.)

- full reparation including adequate compensation 360
- measures to prevent repetition 360
- request for information on measures taken to give effect to Committee's Views 360

precautionary principle

- balancing factors, cost-effectiveness 282
- best efforts/due diligence and 281-2
- burden/standard of proof 282
- jurisprudence
 - Environment and Human Rights* 279-82
 - municipal courts 280
 - Plan B Earth* 629
 - Pulp Mills* 280
 - Responsibilities and Obligations* 280-1, 282
 - Southern Bluefin Tuna* 280
 - Tatar* 279
 - Waddenzee* 629
- legislation 281
- preventive action principle linkage 282
- scientific uncertainty 282
- treaties and international instruments relevant to
 - Amsterdam Treaty (1997) 280
 - Bamako Convention (1991) 280
 - Biological Diversity Convention (1992) (CBD) 279-80
 - Climate Change Convention (1992) 279, 282
 - Helsinki Convention (1992) 280
 - OSPAR Convention (1992) 280
 - Rio Declaration on Environment and Development (1992) (Principle 15) 279, 282
 - Stockholm Convention on Persistent Organic Pollutants (2001) 279
 - Tehran Convention (2003) 280
 - Water Convention (1992) 280

preliminary ruling (TFEU 267), admissibility/requirements

- genuine dispute concerning rights and obligations 581-3
- Plan B Earth* 581-3

provisional measures (IACoMHR) (ROP 25): see Sarayaku People (Provisional Measures: Order of 15 June 200 4); *Sarayaku People* (Provisional Measures: Order of 4 February 2010)

provisional measures (IACtHR) (ACHR 63(2)/ROP 25)

- “at any stage of the proceedings” (ROP 25(1)) 15
- Commission's right to request prior to submission of case to the Court 16, 30
 - consequential absence of impact on merits 16, 31
- compliance obligation/report on action taken 19
 - beneficiaries' observations on reports 20
 - Commission's comments on 20
 - ongoing reporting 20
- Court's role (limitation to examination of existence of requirements) 30
- measures requested/ordered
 - communication to beneficiaries of progress on measures ordered by the Court 19
 - communication of Order to beneficiaries by Commission and notification of their right to comment on State's report 19
 - guarantee of freedom of movement 19
 - investigation and punishment 19

- involvement of beneficiaries of measures in their planning and implementation 19
- measures to preserve the life and physical integrity 19
- purpose/requirements
 - coexistence of extreme gravity, urgency and the risk of irreparable damage 18-19, 30
 - Carpio Nicolle* 30
 - El Rodeo Prison* 30
 - La Pica* 30
 - Natera Balboa* 30
 - Sarayaku People* 30
 - Uribana Prison* 30
 - Urso Branco Prison* 30
 - Yare Prison* 30
- incidental, precautionary and protective nature 59-60
- preservation of rights in dispute 17
- prima facie jurisdiction/admissibility on the merits
 - Bámaca-Velásquez* 17
 - Gómez-Paquiyaauri Brothers* 17
 - Marta Colomina and Liliana Velásquez* 17
 - Sarayaku* 17
- protection of a group not previously named but identifiable
 - Jigamíandó and Curbaradó Communities* 17, 24-5
 - Mayagna (Sumo) Awas Tingni Community* 17
 - Peace Community of San José de Apartadó* 17, 21-4
 - Sarayaku* 17, 21-7
- public affairs, right to participate in (ACHR 23/ACHPR 13/ICCPR 25)**
 - advantages to the government 304
 - elements of
 - access to information 298-300, 303
 - disclosure/transparency 303
 - as fundamental procedural right 303
 - indigenous communities and 303-4: *see also* indigenous peoples, consultation rights
 (including ILO No 169 6)
 - jurisprudence
 - ECtHR
 - Dubetska* 304-5
 - Eckenbrecht* 305
 - Grimkovskaya* 304-5
 - Taşkın* 304-5
 - IACtHR
 - Environment and Human Rights* (OC-23/17) 303-6
 - Kichwa Indigenous People of Sarayaku* 304
 - Saramaka* 304
 - Triunfo de la Cruz Garifuna* 304
 - methods 306
 - right to participate in the conduct of public affairs (ACHR 23(1)(a)) 303-6
 - timing 306
 - treaties and other international instruments relevant to
 - Aarhus Convention 305
 - Agenda 21, 305, 307
 - Bali Guidelines 305
 - Brundtland Report 305
 - CCC 6(a)(iii) 305

public affairs, right to participate in (ACHR 23/ACHPR 13/ICCPR 25) (cont.)

ECLAC *Access to information: towards achievement of the 2030 Agenda for Sustainable Development* 304

ISP 305

Nature Charter (1982) 305

Rio Declaration (Principle 10) 305

reparation: *see* reparation for breach of treaty (ACHPR Protocol 27(1)); reparation for breach of treaty (ACHR 63(1)) (compensation); reparation for breach of treaty (ACHR 63(1)) (obligation); reparation for breach of treaty (ACHR 63(1)) (other than compensation); reparation (pecuniary) for non-pecuniary loss/non-material damage including moral injury/intangible loss

reparation for breach of treaty (ACHPR Protocol 27(1))

pecuniary reparation for non-pecuniary damage/moral prejudice, assessment of quantum (fairness taking account of the circumstances) 174

pecuniary reparation for pecuniary damage/material prejudice, evidence, need for 169-71

reparation for breach of treaty (ACHR 63(1)) (compensation)

equity principle 170

jurisprudence

Arala Riffo 170

Neira Alegria 170

Sarayaku 167-74

measure

environmental damage 169-70

expenses 167-8

lost earnings 167-8

restitutio in integrum 159

moral injury/non-pecuniary damage: *see* reparation (pecuniary) for non-pecuniary loss/non-material damage including moral injury/intangible loss

pecuniary damage (equity principle) 170

pecuniary reparation for non-pecuniary damage/moral prejudice 171-4

assessment of quantum (fairness taking account of the circumstances) 174

equity principle 174

jurisprudence: *see* reparation (pecuniary) for non-pecuniary loss/non-material damage including moral injury/intangible loss, jurisprudence

requirements, causality 168

reparation for breach of treaty (ACHR 63(1)) (obligation)

Chorzów Factory principle of reparation (*restitutio in integrum*) 158

customary international law rule 156-7

jurisprudence

Castillo Páez 158

Formeron 157, 158, 159

Pacheco Teruel 158

Sarayaku 157-79

Ticona Estrada 158

Velásquez Rodríguez 157, 158-9

nexus/causal connection, need for 158

reparation for breach of treaty (ACHR 63(1)) (other than compensation)

acquiescence/acknowledgement of responsibility (ROP 62 [52]) 52-3

- judgment as 159
- jurisprudence
 - Atala Riffo* 159
 - Forneron* 159
 - Manuel Cepeda Vargas* 53
 - Neira Alegria* 159
 - Sarayaku People* 51-2, 159-67
 - Street Children* 159
 - Tiu Tojin* 53
- measures to prevent repetition/ensure protection of fundamental rights
 - prior consultation 164-5
 - regulation of consultation in domestic law 165-6
 - training of State officials on the rights of indigenous peoples 165-6
- publication and dissemination of judgment 167
- restitution of *status quo ante* (removal of explosives/reforestation) 161-2
- reparation (pecuniary) for non-pecuniary loss/non-material damage including moral injury/intangible loss**
 - equity principle 170
 - jurisprudence
 - Atala Riffo* 170
 - Forneron* 171-2
 - Sarayaku* 172-4
 - Street Children* 171-2
 - Velásquez Rodríguez* 170
 - relevant considerations 171-2
 - impact on cultural identity 174
- Rio Declaration on Environment and Development (1992)**
 - access to information (Principle 10) 298
 - access to justice (Principle 10) 307
 - dispute settlement obligation (Principle 26) 294
 - duty to notify (Principle 19) 285, 286
 - exchange of information (Principle 9) 294-5
 - good neighbourliness principle (*sic utere tuo*)/avoidance of harm to others (Principle 2) 242, 256
 - human rights/environmental protection, relationship 216-17, 264
 - indigenous people, role (Principle 22) 132
 - precautionary principle (Principle 15) 629
 - public participation (Principle 10) 305
 - sustainable development principle, establishment of CSD 461-2
- Sarayaku People***: see *Sarayaku People* (background: facts); *Sarayaku People* (background: procedural history in date order); *Sarayaku People* (Merits); *Sarayaku People* (Merits), preliminary matters; *Sarayaku People* (Merits), alleged breach of ACHR 4(1) (right to life), ACHR 5 (personal integrity) and ACHR 7 (personal liberty) (Court's considerations); *Sarayaku People* (Merits), alleged breach of ACHR 8(1) (right to a fair hearing)/ACHR 25 (judicial protection) in relation to ACHR 1(1) (Court's considerations); *Sarayaku People* (Merits), alleged breach of ACHR 21 (right to property) in relation to ACHR 1(1) and ACHR 2 (Court's considerations); *Sarayaku People* (Provisional Measures: Order of 15 June 2004); *Sarayaku People* (Provisional Measures: Order of 4 February 2010); *Sarayaku People* (reparations)

Sarayaku People (background: facts)

- developments in date order
 - award of territories to the Kichwa People of Sarayaku (12 May 1992) 64-5
 - Petroecuador–CGC exploration/exploitation contract (26 June 1992) 64-8
 - completion/approval of EIA (May/26 August 1997) 67
 - ILO Convention 169, Ecuador’s ratification of/entry into force (15 May 1998) 67
 - Ecuador Constitution 1998 recognizing the collective rights of the indigenous and Afro-Ecuadorian peoples (5 June 1998) 68
 - CGC’s attempts to negotiate access to the Sarayaku People’s territory/consent for exploration (1999-2003) 68-9
 - Ministerial Decision No 197 (suspension of prospecting activities)/extension until September 2002 68
 - Promotion of Investment and Citizen Participation Act (18 August 2000) 70
 - Executive Decree 1215 (Environmental Regulations for Hydrocarbon Operations in Ecuador) (13 February 2001) 70-1
 - Cooperation Agreement on Military Security (30 July 2001) 71
 - Sarayaku Association’s communication expressing opposition to entry of oil companies into its territory (13 April 2002) 71
 - approval of updated Environmental Management and Monitoring Plans (2 July 2002) 71
 - CGC investment agreements with indigenous communities (6 August 2002) 71-2
 - CGC’s request for lifting of *force majeure* status (September 2002) 72
 - deposit of pentolite explosives (October 2002–February 2003) 75-6
 - CGC’s progress report on the 2D seismic survey (13 November 2002) 72
 - Sarayaku complaint that 2D seismic survey constituted a violation of the Constitution (26 November 2002) 72
 - Ecuadorian Ombudsman’s “human rights declaration” (27 November 2002) 72
 - establishment of Peace and Life Camp (November 2002) 76
 - amparo application (28 November 2002) 73
 - facts related to CGC’s seismic survey and oil exploration activities (December 2002) 74-9
 - Regulations for Consultation on Hydrocarbon Activities (2 December 2002) 74
 - approval of CGC’s environmental monitoring measures (5 December 2002) 74
 - Agreement of Intent between the Ministry of the Interior and the representatives of the indigenous organizations (12 December 2002) 74-5
 - arrest of members of the Sarayaku (25 January 2003) 75
 - alleged threats and attacks against Sarayaku members/Sarayaku responses (February 2003–December 2004) 79-82
 - CGC’s declaration of *force majeure* and suspension of seismic exploration (February 2003) 77
 - Pastaza Ombudsman’s decision on the November 2002 complaint (10 April 2003) 77-8
 - Report of visit to the Sarayaku People by the Human Rights Committee of the Congress of the Republic (8 May 2003) 79
 - inter-institutional cooperation agreement to remove pentolite (3 August 2007) 82
 - Regulations for the Application of the Social Participation Mechanisms (22 April 2008) 82
 - entry into force of Ecuador’s 2008 Constitution (20 October 2008) 82
 - PETROECUADOR lifts suspension of activities (20 April 2009) 62
 - initiation of process to terminate partnership agreements (July 2009) 83
 - inter-institutional cooperation agreement to remove pentolite (2 October 2009) 83

- increase in budget for the Reparation and Remediation of Environmental Damage plan (17 December 2009) 83
- Kichwa Indigenous People of Sarayaku 60-2
 - access to territory 61
 - damage to territory caused by the oil company's activities 77-9
 - Napo-Kichwa People and the Kichwa People of Pastaza, relationship 60-1
 - as a Nationality (Constitution 83) 60
 - political organization 62
 - subsistence 61-2
 - territory 61
- oil exploration in Ecuador 63
- Sarayaku People (background: procedural history in date order)**
 - petition to the Commission submitted by the *Tuyjasaruta*, CDES and CEJIL (19 December 2003) 41
 - Provisional Measures Order (15 June 2004) 8-27, 28, 43
 - Presidential Order convening the Commission, representatives and State to a public hearing on 11 May 2005 (18 March 2005) 28
 - ratification of the 2004 Provisional Measures Order (17 June 2005) 28
 - Commission's Admissibility Report (13 October 2009) 41
 - exhaustion of local remedies, dismissal of challenge 41 n. 1
 - Presidential Order convening the Commission, representatives and State to a public hearing (3 February 2010) to obtain information on implementation of provisional measures (18 December 2009) 29
 - Provisional Measures Order (4 February 2010) 28-37, 43
 - Commission's application (26 April 2010) 41
 - representatives' pleadings and motions brief (10 September 2010) 43-4
 - request for access to the Legal Assistance Fund/approval (3 March 2011) 44
 - request for reparation 44
 - Presidential Order on admissibility of request for access to the Legal Assistance Fund (3 March 2011) 44
 - preliminary objection (exhaustion of local remedies) (12 March 2011) 44
 - State's "answer brief" (12 March 2011) 44
 - Commission/representatives, responses to preliminary objection (18 and 19 May 2011) 44
 - submission of evidence (June–August 2011) 45-6
 - amicus curiae* briefs 45-6
 - final written statements (Ecuador) (5 August 2011) 46
 - final written observations (Commission) (8 August 2011) 46
 - final written statements (representatives) (8 August 2011) 46
 - observations on the final arguments of the other party (Ecuador/representatives) (2 September 2011) 46
 - Commission's observations on Ecuador's observations (2 September 2011) 46
 - Secretariat's notification to representatives and Ecuador of inadmissibility of some of their arguments (6 September 2011) 46, 47-9
 - visit to the Sarayaku People (21 April 2012), Ecuador's acquiescence/acknowledgement of international responsibility (ROC 62) 48-54
- Sarayaku People (Merits), preliminary matters**
 - acquiescence/acknowledgement of responsibility (ROP 62 [52]) 49-53
 - continuing action by Court following discontinuance of the dispute 52-3
 - Court's obligation to examine validity of acquiescence 51-2
 - as recognition of Court's competence 54
 - as reparation in part for violation of human rights 52

Sarayaku People (Merits), preliminary matters (cont.)

- documentary, testimonial and expert evidence presented to the Court 54-5
 - admissibility (documentary evidence) 55-7
 - authenticity and 55
 - electronic links, requirements 56
 - media reports 56
 - pertinence to facts and their legal consequences 55-6
 - admissibility (evidence of violation of rights other than those in the petition) 52 n. 27
 - evidence not in accordance with Rules of Procedure 58
 - admissibility (statements of presumed victims and of testimonial evidence), ancillary nature 58
 - Court's discretion 54
 - evaluation
 - principles governing 54
 - rules of sound judgment 54
 - failure to submit (alleged victims/representatives) 55
 - on-site procedure/visit to the Sarayaku territory, ancillary nature 60
 - provisional measures and contentious cases distinguished 59-60
 - relevance to purpose established by Court Order requirement 57-8
 - timeliness (exceptional admission of untimely evidence (ROP 57(2)))
 - documents presented by Ecuador 57
 - Estudio de Poblamiento Tradicional, Poblacional y de Movilidad del Pueblo Originario Kichwa de Sarayaku* 56-7
 - vouchers for litigation expenses 57
 - timeliness (supervening facts “at any stage in the proceedings”) 52 n. 27
- evidence, admissibility (expert evidence), evidence not requested by Court 58
- exhaustion of local remedies (ACHR 46(1)) 53-4
 - acquiescence/acknowledgement of responsibility (ROP 62) as recognition of Court's competence 54
- parties'/Commission's arguments
 - alleged breach of ACHR 1(1) (compliance/implementation obligation)
 - Commission 92
 - State 92
 - alleged breach of ACHR 2 (obligation to adopt such measures as may be necessary to give effect to rights and freedoms)
 - Commission 91
 - representatives 91
 - State 92
 - alleged breach of ACHR 4(1) (right to life)
 - Commission 140-1
 - representatives 141
 - State 141-2
 - alleged breach of ACHR 5 (personal integrity)/ACHR 7 (personal liberty) (events of 25 January 2003)
 - Commission 144
 - representatives 143-4
 - State 144
 - alleged breach of ACHR 5 (personal integrity)/ACHR 7 (personal liberty) (events of 4 December 2003)
 - Commission 142-3
 - representatives 143

- State 141-2
- alleged breach of ACHR 8(1) (right to a fair hearing)/ACHR 25 (judicial protection) (amparo)
 - Commission 150
 - representatives 150, 151
 - State 150-1
- alleged breach of ACHR 8(1) (right to a fair hearing)/ACHR 25 (judicial protection) (effective investigations)
 - Commission 150
 - representatives 150
 - State 151
- alleged breach of ACHR 21 (right to property) in relation to ACHR 1(1) and ACHR 2
 - Commission 85-6
 - representatives 86-7
 - State 87-9
- alleged breach of ACHR 22 (freedom of movement and residence)
 - Commission 89
 - representatives 89-90
 - State 90
- alleged breach of ACHR 26 (economic, social and cultural rights) in relation to ACHR 1(1)
 - Commission 91
 - representatives 90-1
 - State 91
- Commission 150
- witnesses
 - exclusion of victims/witnesses from hearing of another alleged victim's statement (ROP 51(6)) 59
 - member of State's delegation distinguished 58-9
- Sarayaku People (Merits), alleged breach of ACHR 4(1) (right to life), ACHR 5 (personal integrity) and ACHR 7 (personal liberty) (Court's considerations)*** 142-9
- alleged attacks, unlawful arrest and restrictions on movement on the Bobonaza River 148-9
 - Court's conclusions (25 January 2003 events), absence of evidence to demonstrate torture or cruel treatment 148-9
 - Court's conclusions (4 December 2003 events)
 - Ecuador's failure to conduct diligent investigations 148
 - failure to demonstrate Ecuador's responsibility with regard to 4 December 2003 events for non-compliance with ACHR 5(1) 148
 - Court's conclusions (alleged violation of the personal liberty of the four detained Sarayaku members), failure to demonstrate Ecuador's responsibility for violation of ACHR 5/ACHR 7/UNCAT 6 149
- alleged threats to members of the Sarayaku People 145-8
 - awareness of a situation of real and imminent danger test, Court's conclusion (Ecuador's non-compliance) 147
 - compliance as dual obligation (repeal of rules and practice violating ACHR/adoption of rules and practices effectively ensuring respect for ACHR) 145-7
 - Court's conclusion (failure to demonstrate Ecuador's responsibility) 147-8
- explosives buried on the Sarayaku territory (risk to life and physical integrity), awareness of a situation of real and imminent danger test 147

- Sarayaku People (Merits), alleged breach of ACHR 8(1) (right to a fair hearing)/ ACHR 25 (judicial protection) in relation to ACHR 1(1) (Court's considerations)*** 151-7
- amparo as an effective remedy 155-7
 - Court's conclusions
 - civil authorities' non-compliance with court order 156
 - ineffectiveness of amparo because of judge's non-compliance with superior court order 155-6
 - State's failure to ensure compliance with judicial decision 157
 - Court's conclusion, State's violation of ACHR 8(1), ACHR 25(1), ACHR 25(2)(1) and ACHR 25(2)(c) 157
 - judicial protection/effective remedy (ACHR 25)
 - requirements
 - effective mechanisms 153
 - effectiveness 152-3
 - legislation ensuring due application of effective remedies and due process 153
 - measures to ensure compliance with judicial decisions 153
 - obligation to investigate alleged breaches
 - in compliance with ACHR 1(1) obligation to ensure respect for rights 151-2
 - Court's conclusions, State's failure to act with due diligence or to guarantee the right to personal integrity 155
 - as *ex officio* obligation independent of any private action 153
 - serious, impartial and effective investigation designed to establish truth and pursue perpetrators requirement 154
 - Sarayaku People (Merits), alleged breach of ACHR 21 (right to property) in relation to ACHR 1(1) and ACHR 2 (Court's considerations)*** 92-140
 - alleged breach of ACHR 13/ACHR 23/ACHR 26 (freedom of thought and expression, political rights, and economic, social and cultural rights) 139
 - alleged breach of ACHR 22 (freedom of movement), effect of buried explosives on right to communal property and prior consultation 138, 145-7
 - applicability of rights to both members of a community and the community/"people" collectively 139-40
 - consultation rights 98-136: *see also* indigenous peoples, consultation rights (including ILO No 169 6)
 - appropriate procedures/adequate and accessible consultation requirement 124-7
 - "appropriate procedures" 125-7
 - Ecuador's acknowledgement of delegation of consultation 127
 - Ecuador's non-compliance 127
 - communal property rights, importance for 98, 106-10
 - compliance/implementation obligation (ACHR 1(1)), fundamentality to 106-10
 - domestic legislation reflecting 101-6: *see also* Ecuador, indigenous peoples in, legislation relevant to
 - in Ecuador
 - post-1998 failure to comply with obligation 110-14
 - pre-1998 Constitution/entry into force of ILO No 169 109-10
 - recognition of rights at time of hearing 107-8
 - Ecuador's non-compliance 130-1
 - EIA, right to (ILO No 169 7(3)) 128-9
 - elements of obligation 106-7
 - examples of behaviour by Ecuador and CGC contrary to obligation 119-23
 - good faith with the aim of reaching an agreement (ILO No 169 6(2)) 117-24
 - consultation as "a true instrument for participation" 118-19

- Ecuador's acknowledgement of failure to consult 120
 - Ecuador's non-compliance 124
 - incompatible practices 118-19
 - municipal legislation/jurisprudence 119
- informed consultation 129-31
- obligation to respect the particular consultation system of each people or community 106
- as obligation of the State/non-delegation 119-24, 127
- prior consultation obligation 107, 115-17
 - Ecuador's non-compliance 117
- Court's conclusion (responsibility of Ecuador for violation of the right) 139-40
- culture/identity
 - consultation rights, importance to 131-6
 - Ecuador/CGC's violation of right 134-6
 - jurisprudence 131-3
 - treaties and other international instruments providing for 131-3
- obligation to adopt measures giving effect to ACHR rights and freedoms (ACHR 2) 136-8
 - Ecuador's non-compliance 138
 - "other measures" 137-8
- restrictions on/differential treatment, justification/requirements, absence of 97-8
- right to indigenous communal property, elements of
 - access to territories 93-4
 - equal protection of the law 93
 - natural resources, control of 93
- special nature of relationship with territory 94-6
 - evidence of
 - expert witness 96
 - Sarayaku witnesses 95-6
 - State's recognition of (12 May 1992 award) 94
 - traditional practices, importance/examples 94
- Sarayaku People (Provisional Measures: Order of 15 June 2004)*** 8-27
 - background/preliminary matters
 - Commission's right to request prior to submission of case to the Court 16
 - Court's request for State's comments/request for extension of time/further extension/refusal of request 16, 18
 - factual allegations 9-14
 - requested measures 15-16
 - submission of request for provisional measures (15 June 2004) 8-9
- Court's analysis 16-19
 - non-compliance with Commission's precautionary measures 17
 - protection of a group not previously named but identifiable 17
 - purpose/requirements (provisional measures)
 - coexistence of extreme gravity, urgency and the risk of irreparable damage 18-19
 - preservation of rights in dispute 17
 - prima facie jurisdiction/admissibility on the merits 17
 - protection of a group not previously named 17-18
 - State responsibility for acts of private persons or groups including irregular armed groups 18
- Court's decision/prescribed measures 19-20
 - communication to beneficiaries of progress on measures ordered by the Court 19

- Sarayaku People (Provisional Measures: Order of 15 June 2004)*** (*cont.*)
 communication of Order to beneficiaries by Commission and notification of their right to comment on State's report 19
 compliance obligation/report on action taken, need for 19
 beneficiaries' observations on reports 20
 Commission's comments on 20
 ongoing reporting 20
 guarantee of freedom of movement 19
 investigation and punishment 19
 involvement of beneficiaries of measures in their planning and implementation 19
 measures to preserve life and physical integrity 19
 separate opinions (concurring)
 Cançado Trindade J 22-7
 State responsibility for acts of private persons or groups including irregular armed groups 24-6
 García-Ramírez J 20-2
 protection of a group not previously named but identifiable 21-2
- Sarayaku People (Provisional Measures: Order of 4 February 2010)*** 28-37
 background/preliminary matters 28-9
 Commission's right to request prior to submission of case to the Court 30-1
 consequential absence of impact on merits 31
 Court's role, limitation to examination of existence of necessary requirements for provisional measures 30
 compensation (pecuniary damage)
 Court's considerations
 deficiencies in the evidence, explanation/presumptions 170-1
 equitable principle 170
 supporting documentation 170
 Court's decision 171
 parties'/Commission's arguments
 Commission 168
 Ecuador 169
 representatives 168-9
 compliance with 2004/2005 measures 30-6
 investigation of facts giving rise to the provisional measures
 Commission's observations 34
 Court's evaluation 36
 parties' positions (Ecuador) 34
 measures to protect and avoid irreparable damage to the life, physical integrity and security
 Commission's observations 31-2
 Court's evaluation 34-5
 parties' positions (representatives) 31
 removal of explosive material
 Commission's observations 34
 Court's evaluation 35-6
 parties' positions (Ecuador) 32-3
 parties' positions (representatives) 33-4
 Court's decision
 involvement of beneficiaries of measures in their planning and implementation 36
 ratification of 2005 Order

- Ecuador's reporting obligation 37
- measures to protect the life, physical integrity and personal security of the members of the Kichwa People 36
- removal of explosive material 36
- Sarayaku People (reparations)** 157-79
 - compensation (non-pecuniary)
 - parties'/Commission's arguments
 - Commission 172
 - representatives 172-3
 - State 173
 - costs and expenses
 - Commission/representatives' claims 175-6
 - compliance with order 178
 - insufficiency of evidence/Court's handling of 175-6
 - reparation for breach of treaty (ACHR 63(1)) other than compensation
 - acquiescence/acknowledgement of responsibility (ROP 62 [52]) as partial reparation 52-3
 - as customary international law 157-8
 - guarantees of non-repetition
 - due prior consultation 164-5
 - regulation of consultation in domestic law 165
 - training of State officials on the rights of indigenous people 165-6
 - judgment as 159
 - measures requested
 - Commission 159-60
 - representatives 168-9
 - measures of satisfaction
 - public act of acknowledgement of international responsibility 166-7
 - publication and broadcasting of the Judgment 167
- SEA Directive:** *see Plan B Earth*
- sovereign equality of States (UNC 2(1))** (*par in parem non habet jurisdictionem*), extraterritorial enforcement of legislation by legislating State and, consent to restriction of sovereignty 238
- State responsibility**
 - attribution (ILC(SR) 2(a))
 - attribution as essential feature of State responsibility 252
 - causal link 243, 244, 252
 - priorities and resources 252
 - factors for consideration, knowledge of real and imminent danger/failure to take necessary preventive measures 252
 - jurisprudence
 - Gonzales Lluy* 252
 - Mapiripán Massacre* 252
 - for conduct of private persons or groups
 - in case of State's failure to comply with *erga omnes* treaty obligations 252
 - for environmental damage impacting on human rights 252, 263-76
 - failure to regulate, supervise and monitor the activities of third parties 252, 263-76
 - parallel responsibility of business enterprises (UN Guiding Principles on Business and Human Rights: Special Representative's Report, 2011) 267
 - priorities and resources, relevance 252
 - for conduct of State organ/agency (ILC(SR) 4), failure to comply with treaty obligations 205

State responsibility (*cont.*)

- for human rights violations (acts of private persons) 18, 24-7
 - Jiguamiandó and Curbaradó Communities* 18
 - Lysias Fleury* 18
 - Sarayaku People* 18, 25-7

Stockholm Declaration on the Human Environment (1972)

- due diligence obligation (Principle 7) 253-4
- economic and social development, importance (Principle 8) 216
- exchange of information (Principle 20) 294-5
- good neighbourliness principle (*sic utere tuo*)/avoidance of harm to others (Principle 21) 242, 256
- integrated and coordinated approach to development planning (Principle 13) 216
- international cooperation, need for 283
- measures to prevent pollution of the seas (Principle 7) 264
- UNEP, establishment of 460-1

sustainable development principle (treaties and other international instruments reflecting): *see also* environmental protection obligations/sustainable development/human rights, relationship

- Agenda 2030 202, 217
- HRC Independent Expert's Report (2012) 217-18
- Inter-American Democratic Charter (2001) 217
- Inter-American Program for Sustainable Development 2016-21 202
- Johannesburg Declaration on Sustainable Development (2002) 217
- Rio Declaration on Environment and Development (1992) 216-17
- Stockholm Declaration on the Human Environment (1972) (Principle 1) 216-17

Teitiota (ICCPR 6) (HRC) 365-88

- admissibility (Committee's analysis and decision)
 - exhaustion of local remedies (OP 1:5(2)(b)) 376
 - victim status (OP 1:1) 376-7
 - "actually affected"/imminent risk 376-7
 - Committee's conclusion 377
 - "prospective victim"/possible future events 377
- admissibility (parties' positions)
 - author 374
 - State party 371-4
- background (decision of the NZ Immigration and Protection Tribunal of 25 June 2013) 365-70
 - analysis of author's position under the RC/UNCAT/ICCPR 368-9
 - refugee status, exclusion 369
 - right to life (ICCPR 6/HRC GC 6), author's failure to establish an imminent risk (*Aalbersberg*) 370
 - author's credibility 368
 - decision of the NZ Supreme Court 370
 - evidence examined
 - documents submitted by the author including scholarly articles 368
 - evidence of author 367-8
 - evidence of author's wife 368
 - expert evidence on the effect of climate change in Kiribati 366-7
 - National Adaptation Programme of Action (2007) (Kiribati) 365-6
 - complaint (alleged violation of ICCPR 6 by removal to Kiribati) 371

- individual opinions
 - Muhumuza (dissenting) (real, personal and reasonably foreseeable risk of a threat to author's right to life) 385-8
 - Sancin (dissenting) (right to water) 384-5
- merits (Committee's analysis and decision) (alleged breach of *non-refoulement* obligation (HRC GC 36:12)) 378-84
 - Committee's conclusion 383-4
 - environmental degradation/sustainable development/climate change as threat to the right to life 379-84
 - persecution
 - action directed at individual/individualized assessment of the risk requirement 378-84
 - climate change as 378-88
 - State party's responsibility for determination of risk 378
 - merits (parties' positions)
 - author 375-6
 - State Party 374-5
- travaux préparatoires as supplementary means of interpretation (VCLT 32), ACHR** 1(1) 231
- treaties**
 - breach, compliance with human rights or environmental obligations as override, exclusion 238-9
 - unincorporated treaty, treatment of
 - "at international . . . State level" (SEA Annex I(e)), inclusion of treaty in 626
 - as evidence of Government policy 622-4
 - Plan B Earth* 622-4, 626
 - "so obviously material obligations" 625
- treaty interpretation**
 - context (VCLT 31(2)), other treaties concluded by same parties, as part of the relevant *corpus juris* including treaties, customary international law, general principles and soft law providing guidance on interpretation 211-13
 - living-tree principle (VCLT 31(3)(c)), indigenous people, treaties relating to 98-136
 - other treaties concluded by same parties (VCLT 31(2)), "based on the legal system to which it belongs" (VCLT 31(3)) 99, 212
- UNEP Regional Seas Programme** 234-41: *see also* marine environment, protection and preservation, treaties other than UNCLOS and other international instruments relating to (including pollution) in date order
 - current situation (Regional Seas Reports and Studies No 199, 2017) 234-5
 - implementation of the Programme 234-5
- United Kingdom**
 - climate change: *see Plan B Earth*
 - Climate Change Act 2008 (CCA) by section: *see also Plan B Earth*
 - 1 (2050 "carbon target") 541-2
 - 32 (Climate Change Committee (CCC)) 542
 - judicial review
 - Plan B Earth* 558-64
 - reasonableness/rationality (*Wednesbury* principle) 559-64, 583-92
 - Planning Act: *see Plan B Earth* (England: Court of Appeal) (climate change)
 - unincorporated treaty, treatment of
 - "at international . . . State level" (SEA Annex I(e)), inclusion of treaty in 626

United Kingdom (*cont.*)

- as evidence of Government policy 622-4
- Paris Agreement (2015) 609, 620, 622-5, 626
- “so obviously material obligations” 625

Urgenda (climate change: ECHR 2/ECHR 8 obligations) (Netherlands Supreme Court)

- background (facts): *see also* Climate Change Convention (1992) (CCC); IPCC; Kyoto Protocol (1997); Paris Agreement (2015)
- climate change and its consequences 484-92
 - CCC/COP 487-9
 - Dutch climate policy 490-2: *see also* Netherlands, climate change policy in date order
 - European climate policy 490: *see also* environment (TFEU 191-3)
 - IPCC reports 486-7
 - UNEP reports (2013 and 2017) 489-90
- background (procedural)
 - decision (Court of Appeal) 483, 494-501
 - Court’s conclusion 500-1
 - ECHR 2/ECHR 8 obligations 495
 - real threat of dangerous climate damage 495
 - standing (Urgenda) 494-5
 - State’s defences 497-500
 - State’s failure to meet reduction target of 25% by end of 2020 495-7
 - decision (District Court) 483, 493-4
 - parties’ positions on the merits
 - State 493
 - Urgenda 492-3
 - parties’ positions on procedure 483-4
 - Court’s decision on the right to be heard 483
 - State’s complaints in cassation 501-2
- Court’s analysis
 - assessment of cassation complaints 529-30
 - class action suits 516
 - climate change, dangers of 502-5
 - Court’s right to order compliance with obligations 530-2
 - State’s choice of means 531-4
 - ECHR 1 (obligation to secure rights to “everyone within their jurisdiction”) 505
 - ECHR 2 (right to life)/ECHR 8 (private/family life), State’s positive obligation to take appropriate steps to protect
 - acts by third parties 505-6
 - acts or omissions in relation to a natural or environmental disaster 505-6
 - climate change, applicability to 511-12
 - due diligence requirement 508-9
 - joint/shared responsibility of States/obligation to cooperate (CCC) 512-16
 - long-term risks 506, 511-12
 - margin of appreciation/choice of means 507
 - as obligation to society 507
 - overlapping ECHR 2/ECHR 8 obligations 507
 - “real and imminent risk”/State’s awareness 506
 - “reasonable and appropriate measures” 506
 - serious environmental pollution affecting private/family life 506
 - ECHR 13 (effective remedy before national courts), requirements 510-11

- interpretation of ECHR
 - applicability of “any relevant rules of international law applicable in the relations between the parties” 509
 - current scientific views and accepted standards 511
 - effectiveness principle 509
 - ordinary meaning in context/good faith (VCLT 31(1)) 509
- Court’s determination of State’s obligations 517-18
- Court’s obligation not to engage in political considerations 533
- Court’s right to assess compliance of State’s measures with obligations 518
- international consensus on urgent need for Annex I countries to reduce emissions by 25-40% by 2020 519-24
 - absence of justification for the Netherlands’ lower reduction rate 524-6
 - rejection of State’s argument that lower 2020 reduction rates could be offset by later measures 526-8
- non-binding rules, applicability 518