

Working Paper  
**The Evolution of Civil Society Engagement to face Global Challenges**

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**Abstract:**

The research question this paper addresses is the identification of the subjects that can be embraced under the term ‘civil society’ and the attempt to clarify who is encompassed by this category and who is excluded. Firstly, this paper aims to define the concept of civil society and examine the definition of civil society provided at the international level. Secondly, it focuses on the active role played by civil society actors in claiming for the protection of human rights. Thirdly, it aims at analyzing the requirements it must meet in order to participate in legal proceedings before international and regional courts. In lack of a universal definition, each court or tribunal sets its own standards for their recognition and admission. Finally, the paper focuses on the specific and growing role of civil society in climate litigation, where third-party interventions have become a strategic means of influencing legal reasoning.

## 1. THE NOTION OF ‘CIVIL SOCIETY’

### 1.1 The Origin of the Concept

It would be an understatement demanding a unique definition of civil society.<sup>2</sup> It is a concept that has evolved over the years, denoting different phenomena according to the various contexts in which it itself has been implemented.

Its origin can be traced primarily to John Locke, who presents a comprehensive definition of civil society, asserting that:

‘Where-ever therefore any number of men are so united into one society, as to quit everyone his executive power of the law of nature, and to resign it to the public, there and there only is a political, or civil society’.<sup>3</sup>

Although for the following decades civil society was defined ‘a peaceful political order governed by law’,<sup>4</sup> during the revolutionary period,<sup>5</sup> the meaning of *societas civilis* underwent a radical shift. The pivotal role played in this evolution by the French Revolution has to be traced in the dismantling of the hierarchical structures of the Ancien Régime. Moreover, it started to promote the idea of popular sovereignty and the emergence of an inclusive concept of citizenship, based on the values of democracy. Civil society alluded to a realm of social life, which was distinct from government institutions, and included, among all, market transactions, nonprofit groups, voluntary associations and independent religious institutions.<sup>6</sup>

After 1850, the idea of civil society gradually lost its significance in intellectual debates due to several factors related to socio-political developments.

First of all, during the 19th and the 20th centuries ideologies emphasizing the central role of the state in societal organization emerged. Corporatism was advocating for the organization of society by corporate groups, thus subordinating individual and associative freedoms and rights to the interests of the state instead of the interests of individuals.

Secondly, Marxism and socialist ideologies focused on class conflict and on the role of the working class in dismantling capitalist systems, thus leading to the marginalization of the concept of civil society, perceived as a ‘bourgeois construct lacking revolutionary potential’.<sup>7</sup> As a consequence, the term started to be viewed with indifference and skepticism and became even less preeminent in both academic and political discussions, due to the prevalence of state-centric or class-focused ideologies.

A reborn interest emerged only in the latter half of the 20th century, which represented the period of the manifestation of a vibrant civil society which aimed at promoting democratic values, human rights, and social well-being. It was ‘defined in terms of what it is not’,<sup>8</sup> thus meaning that it was not seen in terms of institutions of state power, economic markets, or

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<sup>2</sup> Fries, R 2005, ‘The Legal Environment of Civil Society’, in M Glasius, M Kaldor & H Anheier (eds.), *Global Civil Society 2004/5*, SAGE Publications, London, pp. 158-176.

<sup>3</sup> John Locke, *Second Treatise of Government*, Sect. 89, available at: <https://www.gutenberg.org/files/7370/7370-h/7370-h.htm>.

<sup>4</sup> Keane, J 2009, ‘Civil Society, Definitions and Approaches’, in HK Anheier & S Toepler (eds.), *International Encyclopedia of Civil Society*, Springer, New York, pp. 461-464.

<sup>5</sup> The Revolutionary Period goes from 1750 to 1850.

<sup>6</sup> Keane, J 2009, ‘Civil Society, Definitions and Approaches’, in HK Anheier & S Toepler (eds.), *International Encyclopedia of Civil Society*, Springer, New York, pp. 461-464; Armstrong, D & Bello, V 2010, *Civil Society and International Governance: The Role of Non-State Actors in Global and Regional Regulatory Frameworks*, Routledge, London, p. 21.

<sup>7</sup> Karl, M, Engels, F & Moore, S (Trans.) 2015, *The Communist Manifesto*, Penguin Books, London.

<sup>8</sup> Armstrong, D & Bello, V 2010, *Civil Society and International Governance: The Role of Non-State Actors in Global and Regional Regulatory Frameworks*, Routledge, London, p. 21.

private and domestic spheres. On the contrary, it focused on voluntary, non-state, and non-market forms of social interaction aimed at promoting collective action, democratic participation, and the public good.

The essence of civil society has to be understood in this way also nowadays, since, in part, it alludes to legally protected nongovernmental institutions that tend to be nonviolent, self-organizing, self-reflexive, and exist in a constant state of tension, not only with one another, but also with the governmental institutions that shape, limit, and facilitate their actions.<sup>9</sup> To resemble its nature, Frank Schartz uses an emblematic expression, by stating that ‘civil society cannot be understood in isolation, but it must be understood in relation to the State, not in opposition to it’.<sup>10</sup>

Numerous scholars contend that it is impossible to definitively delineate the boundaries of civil society, in contrast to the more precise concept of the state. Although this concept resists a straightforward definition due to its inherent complexity and the necessity for it to be adapted to specific contexts, this does not imply that there have not been several scholars who have made significant contributions aimed at defining its essence.

Among all, John Keane, who stated that: ‘civil society has no natural innocence; it has no single or eternally fixed form’.<sup>11</sup>

Although the expression ‘civil society’ leads to conceptual misunderstanding, its use should not be supplanted. Instead, the solution would be to clarify its nature in the specific context in which it is implemented. Indeed, the concept of civil society is fluid, and it can relate to economic spheres, non-economic spheres, or both. It may encompass elements of the state or exist independently of it. It can be entirely private or public and may include or exclude aspects of personal life and family. Furthermore, it may not involve religious or ethnic aspects, thus being universal, or it can reflect particularistic dimensions including ethnicity and religion.<sup>12</sup>

## 1.2 The Obsolescent Nature of the Term Civil Society

Among all the difficulties regarding the concept of civil society, one of the most relevant in contemporary discourse is that it is predominantly applied within the context of Western European states, which leads to an association with a specific model of democracy rooted in that particular sphere.

Consequently, many scholars contend that the term has become outdated, only relevant when viewed from this specific standpoint.<sup>13</sup> Furthermore, the critique is not limited to the non-western contexts. Even in the West, where civil society originated and was once considered a pillar of democratic life, there is growing concern about the erosion of civic institutions. For these reasons, Seligman affirms that nowadays the idea of civil society should be neglected and abandoned in both those cultures.<sup>14</sup>

Other scholars, such as Fisher, offer a more optimistic view. He argues that the vibrancy of civil society is not necessarily dependent on liberal democratic structures. Indeed, civil society organizations ‘may increase in numbers in proportion to their restrictive political culture in

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<sup>9</sup> Keane, J 2009, ‘Civil Society, Definitions and Approaches’, in HK Anheier & S Toepler (eds.), *International Encyclopedia of Civil Society*, Springer, New York.

<sup>10</sup> Schwartz, F & Pharr, SJ 2003, *The State of Civil Society in Japan*, Cambridge University Press, Cambridge, p. 28.

<sup>11</sup> Keane, J 1988, *Democracy and Civil Society*, Verso, London.

<sup>12</sup> James, H 2007, *Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion*, Routledge, London.

<sup>13</sup> Armstrong, D & Bello, V 2010, *Civil Society and International Governance: The Role of Non-State Actors in Global and Regional Regulatory Frameworks*, Routledge, London.

<sup>14</sup> Seligman, AB 1995, *The Idea of Civil Society*, Princeton University Press, Princeton.

which they are established,<sup>15</sup> thus meaning that civil society groups emerge in restrictive political environments, where they may play a vital role in showing opposition to authoritarianism justice, and meanwhile giving voice to marginalized groups.<sup>16</sup>

In order to achieve the result of being robust, the institutions of global governance ‘need to heed the voices of civil society in restoring that desirable balance and common sense seen to be essential to the art of keeping the peace’.<sup>17</sup>

Particular attention has to be drawn to those contexts that are nowadays characterized by a strong civil society activism. In particular, in Asia, there is a notable connection between civil society and the state, especially in the countries where there has been the establishment of more structured democracies, such as Japan, South Korea and Taiwan.<sup>18</sup> However, as it has been noted by Eun Joeng Soh, even though North Korea has ‘absolutely no visible civil society or independent social movements’, there still exist ‘types of informal life politics’, whose aim is to trigger the method according to which the population reaches decision that may affect their futures.<sup>19</sup> Nonetheless, liberal thinkers argue that the concept of civil society should be neglected in most of Asia due to the lack of a space sufficiently independent from the State.<sup>20</sup> However, this consideration is intertwined with the definition of civil society as ‘in opposition to the state’. On the contrary, by developing the concept of civil society in different terms - namely, in relation to the state and not in opposition to it (p. 4), it would be possible to recognize the active role of civil society even in contexts where there is a pervasive influence of the State. Some scholars, such as Gramsci, considered civil society ‘an integral part of the state’.<sup>21</sup> Echoing his perspective, far ‘from being inimical to the state is, in fact, its most resilient constitutive element’.<sup>22</sup> Civil society is perceived as the ground where freedom is exercised. Given these premises, for the purpose of this paper, it is interesting to note that in China environmental civil society actors started to gain a notably role from the 1980s onwards. In particular, the relationship between the state and these associations follows the specific policy paradigm of ‘authoritarian environmentalism’, thus implying that only in limited and specific cases public participation is allowed in the sector of policy making.<sup>23</sup> The reason for this model lies in the presumption of public ignorance in reference to the peculiarities of environmental issues.<sup>24</sup> However, NGOs involved in climate change have anyway been able to affect policy making.<sup>25</sup>

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<sup>15</sup> Fisher J 2003, ‘Local and Global: International Governance and Civil Society’, *Journal of International Affairs*, Vol. 51, No. 1, pp. 19-39; James, H 2007, *Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion*, Routledge, London.

<sup>16</sup> Fisher J 2003, ‘Local and Global: International Governance and Civil Society’, *Journal of International Affairs*, Vol. 51, No. 1, pp. 19-39.

<sup>17</sup> James, H 2007, *Civil Society, Religion and Global Governance: Paradigms of Power and Persuasion*, Routledge, London, p. 5.

<sup>18</sup> Chiavacci, D & Grano, SA 2020, ‘A New Era of Civil Society and State in East Asian Democracies’, in D Chiavacci, S Grano & J Obinger (Eds.), *Civil Society and the State in Democratic East Asia: Between Entanglement and Contention in Post High Growth*, Amsterdam University Press, pp. 9-30, p. 9.

<sup>19</sup> Morris-Suzuki, T & EJ Soh 2017, *New Worlds from Below: Informal Life Politics and Grassroots Action in Twenty-first-Century Northeast Asia*, Canberra, ANU Press, p. 13.

<sup>20</sup> Weiss, ML & Hansson E 2018, ‘Civil Society in Politics and Southeast Asia in Civil Society’, in A Ogawa (ed.), *Routledge Handbook of Civil Society in Asia*, London, Routledge, p. 3.

<sup>21</sup> Buttigieg, JA 1995, ‘Gramsci on Civil Society’, in *Boundary 2*, Vol. 22, No. 3, p. 4.

<sup>22</sup> *Ibid.*

<sup>23</sup> Gilley B 2012, ‘Authoritarian Environmentalism and China’s Response to Climate Change’, *Environmental Politics*, Vol. 21, No. 2, pp. 287-307.

<sup>24</sup> *Ibid.*, p. 292.

<sup>25</sup> For example, the ‘26 degrees Campaing’, promoted in 2004 by a group of NGOs, has led to the adoption of a law. See also: <https://toda.org/global-outlook/2022/civil-society-climate-action-and-the-state-in-china.html>.

The opening to environmental association that dates back to the 1980s is perceived by the scholars as an opening to the wider phenomenon of civil society development, an essential component that would have helped the Chinese government to face not only environmental but also social problems. In 1994, this led to the adoption of regulations that recognized the legal status of independence to NGOs. Environmental associations represented the first group that registered, which renders nowadays environmental groups the most developed sector of civil society organizations in China.<sup>26</sup>

## 2. INTERNATIONAL LAW AND THE NOTION OF CIVIL SOCIETY

The participation of civil society in international governance dates back to the League of Nations, although it was only with the creation of the United Nations in 1945 that its role was formally institutionalized.<sup>27</sup> Article 71 of the UN Charter empowers the Economic and Social Council (ECOSOC) to consult with NGOs concerned with its mandate.<sup>28</sup> This established the legal basis for structured civil society involvement in global affairs. In particular, the system was constructed on the assumption that NGOs serve a consultative role, thus implying, on the one hand, exclusion from the deliberative process and, on the other, the right to participate into meetings and interact by making statements and influencing the agenda item.<sup>29</sup>

Despite formal inclusion, NGO engagement has been significantly restricted during the Cold War, due to the totalitarian regimes that were ‘suppressing dissident voices’.<sup>30</sup> It was not until the 1970s that NGOs acquired a relevant role and participation at the international level.

Their influence became particularly evident in two sectors, respectively related to human rights defense and environmental protection, where they played a crucial role in shaping these areas. In 1972, NGOs were invited to participate in the United Nations Conference on the Human Environment. From the 1990s onwards, the involvement of NGOs reached its highest point. Furthermore, the United Nations actively supported and encouraged NGOs to assume more prominent roles in shaping policy agendas.

Over the past 30 years, there has been a notably increase in the number of NGOs. Among the reasons that led to a major participation of NGOs in the decision-making process, the globalization of the economy detaches. The roots of this increase must be traced into the shift in perspective, where civil society ceased to be confined within national borders and instead expanded on an international and global scale.

The role played by NGOs is fundamental:

‘International organizations and movements have been very influential in shaping the discourse within which international decision-making and action occurs’.<sup>31</sup>

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<sup>26</sup> Ewoh, AIE & Rollins M 2011, ‘The Role of Environmental NGOs in Chinese Public Policy’, *Journal of Global Initiatives: Policy, Pedagogy, Perspective*, Vol. 6, No. 1, Art. 3, pp. 45-46.

<sup>27</sup> Charnovitz, S 1997, ‘Two centuries of participation: NGOs and International Governance’, *Michigan Journal of International Law*, Vol. 18, no. 183, pp. 185-286; Dupuy PM & Vierucci L 2008, *NGOs in International Law: Efficiency in Flexibility?*, Edward Elgar Publisher, Cheltenham/Northampton, p. 23.

<sup>28</sup> United Nations 1948, *Charter of the United Nations*, art. 71: ‘The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.’

<sup>29</sup> Dupuy PM & Vierucci L 2008, *NGOs in International Law: Efficiency in Flexibility?*, Edward Elgar Publisher, Cheltenham/Northampton, p. 24.

<sup>30</sup> Kimber, LR 2024, *Civil Society and Intergovernmental Negotiations at the United Nations. Exclusion Despite Inclusion*, Bristol University Press, Bristol, p. 16.

<sup>31</sup> Otto, D 1996, ‘Nongovernmental Organizations in the United Nations System: The Emerging Role of the International Civil Society’, *Human Rights Quarterly*, Vol. 18, No. 1, pp. 107-141, p 127.

The ECOSOC coordinates the relationship between the UN and NGOs, granting them consultative status and defining participation modalities by providing a set of rules that define the modalities according to which NGOs interact with the UN.<sup>32</sup> It serves as the primary platform for NGOs to interact with the UN system, offering a structured framework for participation.

Although in the past the debate centered on ‘whether’ civil society should be included in the context of the UN, nowadays it is untroubled that the answer is affirmative. However, the original idea that NGOs should be regarded merely as passive observers within the limited framework of ECOSOC is no longer sufficient due to the increasing involvement in more complex interactions with international organizations, particularly from the 1990s onwards.

The significant impact of civil society has also prompted a shift in perspective in relation to the entities that could legitimately exert influence at the international level. In fact, as previously highlighted, at the definitional level, the concept of NGOs is reductive to the term CSOs, given that NGOs represent a subcategory of the broader category of civil society. The need to extend participation to a broader spectrum of actors has been manifested within international documents.<sup>33</sup> Therefore, although Article 71 of the UN Charter explicitly refers to NGOs as the entities eligible for consultation with the ECOSOC, in current UN practice, the term civil society is understood in a more comprehensive sense than NGOs.

According to the Cardoso Report adopted in 2004,<sup>34</sup> NGOs are considered a subcategory of civil society. They are typically formal organizations not established by intergovernmental decisions that serve the public good through advocacy or services. On the other hand, civil society, as illustrated above, more broadly includes a wide spectrum of participants, including not only ‘mass organizations (such as organizations of peasants, women or retired people), trade unions, professional associations, social movements, indigenous people’s organizations, religious and spiritual organizations, academe’.<sup>35</sup>

Despite the formal consultation framework under Article 71 applies specifically to NGOs, in practice and through the evolution of UN mechanisms, the concept of consultation has expanded to include a much wider spectrum of civil society actors.

In innumerable multilateral processes, including the Universal Periodic Review (UPR)<sup>36</sup> and the 2030 Agenda for Sustainable Development,<sup>37</sup> the UN actively encourages the direct involvement of civil society representatives beyond the narrow category of NGOs, although these actors do not hold official consultative status.

Moreover, the legitimacy of the participation of civil society is guaranteed not only at the international, but also at the regional level. Article 15 of the Treaty on the Functioning of the European Union specifies that:

‘In order to promote good governance and ensure the participation of civil society, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt regulations concerning access to documents. These regulations shall apply to all EU institutions, bodies, offices, and agencies’.<sup>38</sup>

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<sup>32</sup> Working With Civil Society, available at: <https://ecosoc.un.org/en/what-we-do/working-civil-society>.

<sup>33</sup> Dupuy PM & Vierucci L 2008, *NGOs in International Law: Efficiency in Flexibility?*, Edward Elgar Publisher, Cheltenham/Northampton, p. 37.

<sup>34</sup> United Nations General Assembly, ‘Report of the Panel of Eminent Persons on United Nations, Civil Society Relations - We the Peoples: Civil Society, the United Nations and Global Governance’, 11 June 2004, UN Doc. A/58/817, p. 8.

<sup>35</sup> *Ibid*, p. 8; Constantinides, A & Zaikos, N 2009, *The Diversity of International Law*, Brill Nijhoff, Leiden, p. 77.

<sup>36</sup> Human Rights Council, ‘Universal Periodic review Mechanism’, 18 June 2007, UN Doc. A/HRC/RES/5/1.

<sup>37</sup> UNGA, ‘Transforming our World: The 2030 Agenda for Sustainable Development’, 25 September 2015, UN Doc. A/RES/70/1.

<sup>38</sup> Consolidated Version of the Treaty on European Union, 7 June 2016, OJ C 202/47, Art. 15.

Lastly, another fundamental aspect is that nowadays a controversial point refers to the extension according to which civil society is granted access. The ‘rise to power’ of civil society typical of most recent times can be explained in light of the need of arresting the economic development, which is steadily increasing.<sup>39</sup> Inclusion alludes to participation into international negotiations, although some scholars highlight a fundamental aspect:

‘Shouldn’t inclusion, [...] also offer an analysis of the extent to which civil society’s values and priorities have been included – inscribed with their specific words or sentences – in the ultimate text?’<sup>40</sup>

## 2.1 Introduction to the Main Sub-Categories

At present, defining the concept of civil society from a legal and regulatory perspective constitutes a complex task. Although numerous scholars have examined its nature, yet no uniform or consistent definition has emerged, as its meaning tends to adapt according to the historical context in which it is situated.

In the absence of a specific legislative definition identifying the entities encompassed by the term civil society, this working-paper aims to provide an analysis of those actors that may, in abstract terms, fall within its scope.

The selected sub-categories of civil society are presented following a criterion of decreasing institutionalization. The order, indeed, reflects the level of formal recognition and normative structure of each actor, ranging from highly institutionalized organizations, including NGOs and National Human Rights Institutions, to more informal or hybrid actors, such as social movements and the family. The analysis begins with NGOs, as they represent the most widely and studied component of civil society, and then proceeds with less renowned but equally relevant actors that have consistently and significantly contributed to civil society engagement in international, regional and national contexts.

It should be noted, however, that the prerequisites and conditions for civil society participation vary depending on whether the intervention takes place before an international, regional, or national court.

Moreover, a crucial point must be taken into consideration: although this working-paper views civil society as a resource for supporting democracy, peace, and the protection of human rights, it is not uncommon for various associations to narrow their scope of action and focus on defending the cultural, economic, or religious interests of only a few limited groups. Inevitably, their influence will be limited due to their elitist nature.<sup>41</sup>

## 2.2 Non-Governmental Organizations (NGOs)

Particularly in international contexts, the expression non-governmental association (NGO) is employed as an equivalent to civil society organization (CSO). However, this equivalence has the consequence of eliminating conceptual and functional distinctions. It is true that all NGOs fall within the broader category of CSOs, but not all CSOs qualify as NGOs. NGOs must be considered a subset of CSOs, and they are those organizations engaged in development cooperation, humanitarian assistance, advocacy, or service delivery.<sup>42</sup>

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<sup>39</sup> Biagiotti, I, Conaré, D, Costesec, C & Mongruel, S 2002, *Global Civil Society: Its Rise to Power*, Solagrat et Unesco-Most, Paris, p. 1

<sup>40</sup> Kimber, LR 2024, *Civil Society and Intergovernmental Negotiations at the United Nations. Exclusion Despite Inclusion*, Bristol University Press, Bristol, p. 3.

<sup>41</sup> Edwards, M 2009, *Civil Society* (2<sup>nd</sup> Edition), Polity Press, Cambridge.

<sup>42</sup> Tomlinson B 2013, *Working with Civil Society in Foreign Aid - Possibilities for South-South Cooperation?*, United Nations Development Programme, Beijing, Annex 1, p. 124.

The formal currency of the term NGOs was gained in 1945, with the drafting of the United Nations Charter, which required a distinction between intergovernmental agencies and private international actors. Within the UN framework, a broad range of private bodies may qualify as NGOs, provided they meet core criteria: they must be independent of government control, non-criminal, non-profit, and must not function as political parties or focus exclusively on adversarial human rights advocacy.<sup>43</sup>

Despite the institutional adoption of the term, defining NGO remains a complex task. The NGO sector is often described as heterogeneous, composed of organizations with highly diverse goals, structures, and motivations.<sup>44</sup> Nevertheless, according to the Commission of the European Communities,<sup>45</sup> NGOs generally share several fundamental characteristics. First of all, they are not created to generate personal profit and are formed voluntarily. Moreover, they possess legal statutes and an institutional form that defines the mission, and the objectives pursued. These organizations operate autonomously and exist not to serve individual but collective interests.

Therefore, although the term NGO is broadly employed, it should be noted that it refers only to a specific category within the broader and more inclusive field of CSOs. Recognizing the distinctiveness of NGOs alongside other CSO forms is essential for analyzing the prerequisites imposed by the court in order for civil society to grant access.

Faith based NGOs are considered a specific subcategory within the broader framework of NGOs. Although they share the core characteristics of NGOs, they are distinguished by their explicit reference to religious values and faith-driven missions.

According to the Office of the High Commissioner for Human Rights (OHCHR), ‘if we can reinforce human rights commitments through the language of spiritual texts, we may be able to reach both the minds and hearts of the more than six billion people around the globe who identify with a religious tradition’.<sup>46</sup>

Only a limited number of organizations that intervene in legal proceedings can be classified as faith-based NGOs.<sup>47</sup> The mandate of these organizations is to promote explicitly religious values. Among all, one of the most relevant is the European Centre for Law and Justice (ECLJ), an international non-governmental organization which mainly advocates for the protection of religious freedom. According to the Preamble of the Statute of the Council of Europe, the ECLJ grounds its action on ‘the spiritual and moral values which are the common heritage of European peoples and the true source of individual freedom, political liberty and the rule of law-principles which form the basis of all genuine democracy’.<sup>48</sup>

Another important faith-based NGO worth of mention is the Alliance Defending Freedom (ADF) based in the United States. It has intervened in different cases, including in the abovementioned Lautsi and Others v. Italy case, in which it submitted an amicus curiae brief in support of the Italian government. Italy was bringing an action in front of the ECHR

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<sup>43</sup> Willets P 2003, ‘What is a Non-Governmental Organization?’, *UNESCO Encyclopaedia of Life Support Systems*, Article 1.44.3.7, available at: <https://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM>.

<sup>44</sup> Commission of the European Communities, ‘The Commission and non-governmental organisations: building a stronger partnership’, Commission Discussion Paper, 18 January 2000.

<sup>45</sup> Willets P 2003, ‘What is a Non-Governmental Organization?’, *UNESCO Encyclopaedia of Life Support Systems*, Article 1.44.3.7, available at: <https://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM>, p.3.

<sup>46</sup> OHCHR, ‘Faith-based Cooperation is Vital to Uphold Human Rights for All’, available at: <https://www.ohchr.org/en/stories/2025/02/faith-based-cooperation-vital-uphold-human-rights-all>.

<sup>47</sup> Etzelmüller G 2017, ‘Religious communities, Churches and Civil Society’, in M Welker, N Koopman, JM Vorster (eds.), *Church and Civil Society: German and South African Perspectives*, SUN Press, Cape Town, pp. 107-126.

<sup>48</sup> Council of Europe 1949, *Statute of the Council of Europe*, ETS No. 001, available at: <https://coe.int/en/web/conventions/-/council-of-europe-statute-of-the-council-of-europe-ets-no-001-translations>

appealing a domestic ruling that had ordered to remove crucifixes from public school classrooms. The European Court of Human Rights (ECHR) ultimately overturned the domestic decision, holding that Italy could legitimately display crucifixes in public schools, which is ‘emphatically part of the European heritage.’<sup>49</sup>

This intervention emphasized that such religious symbols need not be viewed as a violation of secular principles. Supporting this position, ECHR Judge Giovanni Bonello, in his concurring opinion, wrote:

‘The Convention has given this Court the remit to enforce freedom of religion and of conscience but has not empowered it to bully states into secularism’.<sup>50</sup>

This case illustrates that faith-based NGOs may advocate not only for the protection of religious expression, but also for a broader interpretation of human rights that integrates cultural and spiritual values within the public sphere.

### **2.3 National Human Rights Institutions (NHRI) and Ombudspersons**

NHRIs are legitimated by national legislation. As a consequence, they have legal status and an official mandate.<sup>51</sup> The importance of the influence exercised by NHRI has been recognized by the Council of Europe Member States in The Copenhagen Declaration. Paragraph 18:

‘Reiterates the significant role that national human rights structures and stakeholders play in the implementation of the Convention, and calls upon the States Parties, if they have not already done so, to consider the establishment of an independent national human rights institution in accordance with the Paris Principles’.<sup>52</sup>

The relevance of the submissions of ENNHIs has led The European Network of National Human Rights Institutions (ENNHIs) to develop a guide to third-party intervention before the European Court of Human Rights (ECtHR).<sup>53</sup>

Not only are ENNHIs legitimater to intervene, but also ombudspersons, who have room for submitting submissions, if the court would be willing to enhance this possibility.<sup>54</sup>

### **2.4 Academic Institutions**

The broader classification of CSOs includes non-profit universities and research institutes, which are generally entitled to submit *amicus curiae* briefs. These interventions often carry significant and analytical weight, since they are typically produced by persons with recognized expertise in the relevant field. Therefore, they represent an added value and may enrich the courts with independent and research-based insights that enhance the understanding of complex legal or policy issues. In particular, this kind of submission may be presented by individual

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<sup>49</sup> ECHR, ‘Lautsi and Others v. Italy’, 18 March 2011, Appl. No. 30814/06, para. 3.3.

<sup>50</sup> ADF International, ‘Lautsi and Others v. Italy: Europe’s highest human rights court says Christian crosses can stay in Italy’s classrooms’, available at: <https://adffinternational.org/lautsi-and-others-v-italy/>.

<sup>51</sup> Bürl N 2017, *Third-Party Interventions before the European Court of Human Rights*, Intersentia, Cambridge, p. 125.

<sup>52</sup> High Level Conference, ‘Copenhagen Declaration’, adopted in 2018.

<sup>53</sup> European Network of National Human Rights Institutions (ENNHRI), ‘Third Party Interventions before the European Court of Human Rights: Guide for National Human Rights Institutions’: “This publication originated from a training session requested by National Human Rights Institutions (NHRIs) active in the ENNHRI Legal Working Group on how to design and conduct meaningful, expert Third Party Interventions before the European Court of Human Rights (ECtHR).”

<sup>54</sup> Laffranque, J 2020, ‘The Ombudsman in the Eyes of the European Court of Human Rights’, *Juridica International*, Vol. 29, pp. 95-107.

academics acting in their personal capacity, or on behalf of the academic institution to which they belong. The form of representation, individual or institutional, can affect both the perceived authority of the submission and its procedural admissibility, depending on the rules of the court or tribunal in question.

### 2.5 Representatives of Parliamentary Assemblies

Although requests for intervention from members of parliament have been relatively rare, elected representatives from the European Parliament, the Parliamentary Assembly of the Council of Europe, are entitled to represent people who are under the jurisdiction of the court. A notable example of parliamentary involvement is in the case *Lautsi and Others v. Italy*,<sup>55</sup> where 33 Members of the European Parliament jointly submitted an *amicus curiae* brief endorsing the position adopted by the government, which considered that the display of crucifixes in public school was legitimate and compatible with the European Convention on Human Rights.

‘In their view, by taking a decision whose effect would be to make it compulsory to remove religious symbols from State schools, the Grand Chamber would be sending a radical ideological message. They added that it was clear from the Court’s case-law that a State which, for reasons deriving from its history or its tradition, showed a preference for a particular religion did not exceed that margin’.<sup>56</sup>

### 2.6 Churches

In the last decades, the participation of religious organizations within civil society has grown significantly. As it has been noted, ‘Christian groups and movements, in particular, began to take part in civil society, willing to be “the voice of the voiceless”’.<sup>57</sup> Associations are sustained by the voluntary cooperation of their members, who act in pursuit of the public interest represented by the group. Interventions by churches may occur in a wide range of cases. The European Court of Human Rights (ECtHR), in particular, has shown a willingness to engage seriously with such interventions. In cases involving contentious or ideologically charged questions, the Court often provides detailed summaries of *amicus curiae* submissions.<sup>58</sup> This practice suggests that the Court attributes a certain degree of authority or epistemic value to these interventions. Moreover, the Court appears to recognize that churches and civil society actors may have deeper expertise in addressing religious matters than the Court itself.<sup>59</sup> For instance, in the case of *Lautsi and Others v. Italy*, non-governmental organizations such as the Zentralkomitee der deutschen Katholiken argued, in relation to crucifixes in public schools, that ‘presence alone could not be equated with a religious or philosophical message; it should rather be interpreted as a passive way of conveying basic moral values’.<sup>60</sup>

### 2.7 Indigenous People

In some cases, interventions by indigenous populations are admitted in proceedings as a means of promoting consultation and representation of this segment of civil society. A notable

<sup>55</sup> ECHR, Case of *Lautsi and Other v. Italy*, 18 March 2011, Application no. 30814/06.

<sup>56</sup> *Ibid.* par. 56.

<sup>57</sup> Ike, O 2007, ‘The Church and civil society: The case of Nigeria’, in G Kruip & H Reifele (eds.), *Church and Civil Society: The Role of Christian Churches in the Emerging Countries of Argentina, Mexico, Nigeria and South Africa*, Konrad Adenauer Foundation, Sankt Augustin/Berlin, pp. 111-126.

<sup>58</sup> Wiik, A 2018, *International Courts and Tribunals*, Nomos Verlagsgesellschaft, Baden-Baden, p. 44.

<sup>59</sup> Bürl, N 2017, *Third-Party Interventions before the European Court of Human Rights*, Intersentia, Cambridge.

<sup>60</sup> European Court of Human Rights (ECHR), Case of *Lautsi and Other v. Italy*, 18 March 2011, Application no. 30814/06, par. 55.

example is the Advisory Opinion on ‘Climate Emergency and Human Rights’,<sup>61</sup> which was submitted by indigenous people together with various organizations to the Inter-American Court of Human Rights. In particular, they were requesting the Court to consider the implications of the climate crisis on human rights. In this context, the support to indigenous communities provided by NGOs plays a ‘crucial role’<sup>62</sup> in advocating for and defending the rights of this category at the international level.

Another particularly significant submission in this regard came from Amnesty International, focusing on the right to consultation and consent of Indigenous peoples. In its brief to the Inter-American Court, the organization argued that states are under an obligation to obtain informed consent of indigenous communities before proceeding with development projects that affect their territories and way of life.<sup>63</sup> This right is presented as a fundamental aspect of the protection of human rights, particularly with reference to environmental justice.

## 2.8 Social Movements and Advocacy Groups

According to some scholars, through the submission of an amicus curiae, advocacy groups and social movements, who embody a crucial role in influencing political landscape,<sup>64</sup> are able to directly interact with justice. In fact, a common practice among activists who are suppressed within national confines is to form alliances with international NGOs, with the hope of exerting pressure on national governments from outside. It is a mechanism called the ‘boomerang model’,<sup>65</sup> in which domestic actors form international allies to exert pressure back onto their own state. However, not all international institutions are willing to be open to social movements activists.

## 2.9 The Hybrid Nature of the Family

The family occupies an ambiguous and contested position within the theoretical framework of civil society, since some scholars argue that it is a component civic life, meanwhile others consider it a private sphere.<sup>66</sup>

Indeed, on one hand, it could be regarded as a ‘core institution of civil society’,<sup>67</sup> describing it as the first association in which individuals learn moral and social responsibilities. Echoing this perspective:

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<sup>61</sup> Corte Interamericana de Derechos Humanos 2023, Observaciones de la Sociedad Civil: Opinión Consultiva sobre ‘Emergencia Climática y Derechos Humanos de Colombia y Chile.’

<sup>62</sup> Armstrong, D & Bello, V 2010, *Civil Society and International Governance: The Role of Non-State Actors in Global and Regional Regulatory Frameworks*, Routledge, London, p. 18.

<sup>63</sup> Amnesty International Public Statement, ‘Amnesty International Submits Amicus Curiae on the Right to Consultation and Consent of Indigenous Peoples to the Inter-American Court of Human Rights’, 22 July 2011, AMR 28/002/2011.

<sup>64</sup> ‘Understanding Advocacy Groups and Social Movements’, available at: <https://socialstudieshelp.com/app-government-and-politics/advocacy-groups-and-social-movements-political-impact/#:~:text=Advocacy%20groups%20and%20social%20movements%20play%20a%20crucial,decisions%20and%20raising%20awareness%20about%20pressing%20social%20issues>.

<sup>65</sup> Sikkink, K 2003, ‘A Typology of Relations Between Social Movements and International Institutions’, *Proceedings of the Annual Meeting (American Society of International Law)*, Vol. 97, pp. 301-305, p. 303.

<sup>66</sup> Muddiman E, Power S & Taylor C 2020, ‘The Paradoxical Positioning of the Family and Civil Society’, in E Muddiman, S Power & C Taylor (eds.), *Civil Society and the Family*, Bristol University Press, Bristol, pp. 13-24; Mikiko, E 2012, ‘Reframing Civil Society from Gender Perspectives: A Model of a Multi-Layered Seamless World’, *Journal of Civil Society*, Vol. 8, No. 2, pp. 101-121.

<sup>67</sup> Power, S, Muddiman, E, Moles, K & Taylor, C 2018, ‘Civil society: Bringing the family back in’, *Journal of Civil Society*, Vol. 14, No. 3, pp. 193-206, p. 194.

‘The family is at the heart of the moral economy, it teaches people the most precious ability of all, the ability to transcend self-interest and regards the interests of others as in some way their own. The emphasis is on cooperation rather than competition, and on long-term commitment rather than choice’.<sup>68</sup>

On the other hand, other thinkers argue against the inclusion of the family in civil society, primarily because it lacks the element of voluntariness typically associated with civil associations.<sup>69</sup> The 2008 Advisory Group on CSOs and Aid Effectiveness provides a widely referenced definition of civil society organizations (CSOs), explicitly excluding the family by defining CSOs as ‘non-market and non-state organizations outside of the family’,<sup>70</sup> that operate in the public domain. This exclusion is primarily based on the non-voluntary and unequal nature of familial relationships, which challenges the egalitarian and participatory ideals commonly associated with civil society.

However, as Mikiko Eto suggests, the family can still be understood as a pre-political or foundational space, which is separate from, yet open to, participation in civil society through associative activities.<sup>71</sup>

These examples cross ideological boundaries and show how family life can be a vehicle for civic engagement and social transformation.

Therefore, although family may not fully satisfy all the formal criteria of a voluntary association, its cultural and moral functions render it a hybrid entity, partly civic and partly private, worthy of inclusion within a broader and more pluralistic conception of civil society.

### 3. CIVIL SOCIETY ENGAGEMENT, HUMAN RIGHTS, AND CLIMATE CHANGE: INTRODUCTION AND ITS EVOLUTION

The aim of this paper is to analyze the role played by civil society at the international and regional level. This role varies depending on the degree of recognition granted to civil society actors by each respective court. In order to better understand this dynamic, the paper will examine relevant case law that has emerged in recent years. In particular, the focus will tend to be on climate change lawsuits, which in recent years have rapidly multiplied in local, national, and international courts, drawing on a broad spectrum of legal principles.<sup>72</sup>

The Intergovernmental Panel on Climate Change (IPCC) has noted that ‘Climate-related litigation, for example by governments, private sector, civil society and individuals, is growing [...] and in some cases, has influenced the outcome and ambition of climate governance’.<sup>73</sup>

The concept of climate litigation itself has been defined by the United Nations Environment Programme (UNEP):

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<sup>68</sup> Halsey, AH & Young, M 1997, ‘The Family and Social Justice’, in AH Halsey, H Lauder, P Brown & AS Wells (eds.), *Education: Culture, Economy, and Society*, Oxford University Press, Oxford, pp. 784-798.

<sup>69</sup> Walzer, M 2002, ‘Equality and Civil Society’, in S Chambers & W Kymlicka (eds.), *Alternative Conceptions of Civil Society*, pp. 34-49.

<sup>70</sup> Tomlinson B 2013, *Working with Civil Society in Foreign Aid - Possibilities for South-South Cooperation?*, United Nations Development Programme, Beijing, Annex 1, p. 123.

<sup>71</sup> Mikiko, E 2012, ‘Reframing Civil Society from Gender Perspectives: A Model of a Multi-Layered Seamless World’, *Journal of Civil Society*, Vol. 8, No. 2, pp. 101-121, p. 103.

<sup>72</sup> Osofsky, HM 2007, ‘Climate Change Litigation as Pluralist Legal Dialogue?’, *Stanford Journal of International Law*, Vol. 43, p. 181.

<sup>73</sup> IPCC 2022, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, Cambridge/New York.

‘Climate change litigation includes cases that raise material issues of law or fact relating to climate change mitigation, adaptation, or the science of climate change. UNEP further state that: such cases are brought before a range of administrative, judicial, and other adjudicatory bodies’.<sup>74</sup>

#### 4. ACTING AT THE FRONTLINE

CGOs adopt a right-based approach, which ensures that their work is conducted and guided by principles of humanitarian law. In order to achieve this goal, they implement strategies such as public mobilization, advocacy and litigation.<sup>75</sup> The basis for litigation against the states is provided by human rights law, since the primary obligations of the states are related to the ensuring and protection of human rights.<sup>76</sup>

CSOs are playing a pivotal role due to the numerous cases that they are bringing in front of the Courts. The growing participation of civil society in climate litigation may be explained according to different factors, mainly related to the lack of implementation of effective climate policies by the states and by the corporations. However, despite the various initiatives that are being taken by the CSOs, there are several legal and technical limits and impediments. The main limit concerns the so-called locus standi which determines who may sue. Indeed, for civil society to act as an actor, the prerequisites required by the court before which it appears must be met.

##### 4.1 European Court of Human Rights (ECHR)

Civil society plays a vital role in the protection and promotion of human rights, particularly through engagement with judicial bodies such as the European Court of Human Rights (ECtHR). Article 34 of the European Convention of Human Rights explicitly affirms this role:

‘The Court may receive applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right’.<sup>77</sup>

From this provision, the Court recognizes victim status not only to individual applicants but also to NGOs and associations. However, in the context of climate-related litigation, individuals and civil society actors face significant procedural barriers, particularly regarding the requirement to establish victim status. In some cases, such as Jean Asselbourg v. 78 individuals and Greenpeace Luxembourg v. Luxembourg,<sup>78</sup> the Court ruled that environmental organizations have a limited right, which is ‘to act as representatives of members and employees, in the same way that a lawyer represents the clients’.<sup>79</sup>

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<sup>74</sup> United Nations Environment Programme (2023), *Global Climate Litigation Report: 2023 Status Review*, Nairobi.

<sup>75</sup> Sethi, G 2020, ‘Climate Litigation Movement by Non-Government Organizations: Contributions & Challenges’, Vol. 29, No. 5, *European Energy and Environmental Law Review*, pp. 177-194, pp. 177-178.

<sup>76</sup> Kwan, SC 2023, ‘Climate Justice - Is Litigation a Good Way Forward?’, available at: <https://unu.edu/article/climate-justice-litigation-good-way-forward>.

<sup>77</sup> Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14 and 15, 4 November 1950, ETS No. 005.

<sup>78</sup> ECHR, Jean Asselbourg v. 78 individuals and Greenpeace Luxembourg v. Luxembourg, 29 June 1999, Application No. [29121/95](https://ssrn.com/abstract=2237677).

<sup>79</sup> Varella, MD 2013, ‘The Role of Non-Governmental Organizations in International Environmental Law’, available at: <https://ssrn.com/abstract=2237677>.

Historically, the ECHR emphasized that:

‘Article 34 of the Convention does not allow complaints *in abstracto* alleging a violation of the Convention. The Convention does not provide for the institution of an *actio popularis*, meaning that applicants may not complain against a provision of domestic law, a domestic practice or public acts simply because they appear to contravene the Convention. In order for applicants to be able to claim to be a victim, they must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur; mere suspicion or conjecture is insufficient in this respect’.<sup>80</sup>

Applicants must show how the contested measure specifically affects them, not just society generally, thus refusing lawsuits of general public interest. However, demonstrating such a direct and personal harm under Article 34 is particularly challenging in the field of climate litigation. Climate harms tend to be diffuse, gradual, and widely distributed, making it difficult to trace individualized effects within the framework traditionally required under Article 34. The fact that the Court has historically required applicants to show a specific and personal impact, makes it difficult to bring climate-related cases under traditional human rights law. Nonetheless, the Court has shown signs of adapting to these challenges.

In the landmark case of *Cordella and Others v. Italy*,<sup>81</sup> the ECHR acknowledged that environmental degradation can directly infringe upon the rights of individuals, even when it affects a broader population:

‘The Court can only take note of the continuation of a situation of environmental pollution that endangers the health of the plaintiffs and, more generally, that of the entire population residing in the areas at risk’.<sup>82</sup>

This decision was significant also because the Court recognized the overlapping nature of individual and collective harms, particularly in environmental and climate-related contexts. It marks a shift towards a more practical and effective interpretation of individual rights in response to structural and community-wide threats like pollution or climate change.

The third-party intervention by the Council of Europe Commissioner for Human Rights that was submitted in the *Duarte Agostinho v. 33 Member States* case<sup>83</sup> further depicts in a significant way the barriers to access justice.

‘Human rights are not just the victim of environmental degradation: they are also the key to rolling it back. The right to a remedy is central to a human rights approach to combating climate change. Victims of human rights violations caused by climate change face a number of barriers to accessing justice.’

In this context, the notion of victimhood under Article 34 must be interpreted dynamically and in light of evolving social and environmental realities. As the Court itself has noted:

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<sup>80</sup> Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania, Application no. 47848/08, Judgment [GC] of 17 July 2014, Reports 2014, para. 101.

<sup>81</sup> ECHR, *Cordella and Others v. Italy*, 24 January 2019, Applications No. 54414/13 and 54264/15.

<sup>82</sup> *Ibid*, para. 172.

<sup>83</sup> ECHR, *Duarte Agostinho and Others v. Portugal and 32 Other Member States*, 9 April 2024, Application no. 39371/20.

‘The term ‘victim’ in Article 34 must also be interpreted in an evolutive manner in the light of conditions in contemporary society [...] The Court cannot disregard that fact when interpreting the concept of ‘victim’. Any other, excessively formalistic, interpretation of that concept would make protection of the rights guaranteed by the Convention ineffectual and illusory’.<sup>84</sup>

This evolving approach aligns with the positions taken by numerous international human rights bodies, which have repeatedly highlighted the grave and increasing threats raised by climate change to the full enjoyment of human rights.

#### 4.1.1 Case of Verein KlimaSeniorinnen Schweiz and others v. Switzerland

A significant advancement in the jurisprudence of the ECHR is evident in the landmark case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. In this relevant decision, the ECtHR not only issued for the first time a decision related to climate change,<sup>85</sup> but also acknowledged that, in the climate litigation context, associations may obtain legal standing before the Court under specific conditions, even when they are not themselves direct victims of a violation.<sup>86</sup>

The locus standi to submit an application under Article 34 of the Convention is granted in case the association is:

- ‘(a) lawfully established in the jurisdiction concerned or have standing to act there;
- (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and;
- (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention’.<sup>87</sup>

This signs a departure from the traditional interpretation that has always been given by the Court of Article 34 of the Convention, which has typically required individual applicants to prove the direct and personal influence of the contested measure. Instead, the Court observed:

‘The specific considerations relating to climate change weigh in favor of recognizing the possibility for associations, subject to certain conditions, to have standing before the Court as representatives of the individuals whose rights are or will allegedly be affected. Indeed [...], it may be possible for an association to have standing before the Court despite the fact that it cannot itself claim to be the victim of a violation of the Convention’.<sup>88</sup>

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<sup>84</sup> ECHR, Case of Gorraiz Lizarraga and others v. Spain, 27 April 2004, Application no. 62543/00, para. 38.

<sup>85</sup> Hösli, A & Rehmann, M 2024, ‘Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: the European Court of Human Rights’ Answer to Climate Change’, *Climate Law*, Vol. 14, No. 3/4, pp. 1-22.

<sup>86</sup> ECHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Judgment Grand Chamber of 9 April 2024, Application no. 53600/20, p. 192.

<sup>87</sup> *Ibid.*, par. 502.

<sup>88</sup> *Ibid.*, par. 498; it has been previously noted by the Court in Asselbourg and Others and Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği.

This evolution is particularly important given the inherent nature of climate change, which often affects large populations in broad and long-term ways. The Court correctly highlighted that ‘collective action through associations or other interest groups may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard and through which they can seek to influence the relevant decision-making processes’.<sup>89</sup> Adverse effects are often not immediate, but are bound to develop over time, often affecting future generations in a systemic way potentially difficult to reverse. In this light, the traditional insistence on present and individual harm risks rendering climate-related human rights claims inadmissible or legally ineffective.

Moreover, climate litigation presents significant economic and procedural obstacles, particularly for individual claimants, who often lack the financial means and technical expertise required to pursue complex and protracted legal proceedings.

In this context, the recognition of victim status for environmental associations, acting as representatives of broadly shared collective interests, constitutes an essential tool to ensure effective access to environmental justice.

As Walzer suggests, too often legal and institutional discourse has focused on social formations that are distinct from, or even in competition with, civil society.<sup>90</sup> As a result, the networks, such as environmental associations, through which civility is reproduced, have traditionally been neglected. On the contrary, these networks play a fundamental role in sustaining democratic participation and in articulating rights-based claims on behalf of the public, particularly in complex contexts such as climate governance. They are also sustained by non-profit foundations, such as the Climate Litigation Network (CLN), which aims at giving a contribution to all those organizations committed into acting to adopt plans aimed at guaranteeing a sustainable climate for all.<sup>91</sup>

The Court thus recognized that rigid formalism should be supplanted by an adaptive and context-sensitive approach, especially in areas such as environmental and climate justice. It stressed the urgent need for preventive action and recognized the legitimacy of forward-looking claims rooted in future harm.

This ruling not only expands access to justice for climate-affected communities, but also strengthens the role of civil society actors, particularly associations, as critical intermediaries in climate disputes. Their ability to aggregate claims, articulate complex scientific and legal arguments, and represent vulnerable or future populations makes them essential actors in bridging the gap between environmental degradation and human rights protection.

Ultimately, the position of the Court in this case signifies a broader shift toward a more responsive and forward-looking interpretation of the Convention, in line with the evolving realities of the climate crisis.

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<sup>89</sup> ECHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Judgment Grand Chamber of 9 April 2024, Application no. 53600/20, p. 187.

<sup>90</sup> Walzer, M 2009, ‘The Concept of Civil Society’, in M Walzer (ed.), *Toward a Global Civil Society*, pp. 7–28, p. 8.

<sup>91</sup> Greenpeace International and others, *Communication pursuant to Rule 9.2: Verein KlimaSeniorinnen and Others v Switzerland (Application no 53600/20)*, 17 January 2025, available at: <https://hudoc.exec.coe.int/?i=004-65565>, p.3.

The decision of the court also focuses on the importance of the role of environmental associations under the Aarhus Convention,<sup>92</sup> which is applicable in a great majority of states of the ECHR. Moreover, it is very interesting to highlight that in occasion of the proceedings, a comparative study has been conducted, and from this, it emerged that almost all of the member states of the Council of Europe have signed the Aarhus Convention. In all of them, there seems to be ‘a theoretical possibility’<sup>93</sup> for associations or individuals directly affected by environmental hazards or industrial policies to be granted standing to promote an action in the interest of environmental. However, despite this formal recognition, there are either no cases of law or there are just some.<sup>94</sup>

To conclude, with this decision Switzerland has been acknowledged as the first country that, not having undergone appropriate action on climate change, has been declared to have violated the human rights of its citizens.<sup>95</sup>

#### **4.1.2 Case of Cannavacciulo and Others v. Italy**

Although in the case described above, the Court recognized that associations, under certain conditions, may be allowed to file claims on behalf of individuals in climate change cases, in Cannavacciulo et al. v. Italy<sup>96</sup> it reaffirmed traditional limits, holding that associations cannot claim to be directly affected by health risks from environmental pollution, since only individuals can suffer such violations.

The association based its claims on the fact that its members, founders and directors reside in municipalities that have been officially designated by national authorities as directly affected by the environmental situation in question. The association, as plaintiff, brought an action in front of the court due to a violation of the rights enshrined in Articles 2 and 8 of the European Convention on Human Rights. These provisions concern respectively the right to life and the right to respect for private and family life, and the plaintiff claimed that the state had failed in its obligation to safeguard the lives and health of the members of the association in light of the environmental threats posed by the pollution.

Nonetheless, the Court found that the application was inadmissible on the grounds that legal entities such as associations cannot themselves be considered directly affected by the health-related dangers associated with environmental degradation. According to the Court, the rights invoked in this case, endorsed in Articles 2 and 8, are inherently personal in nature and apply exclusively to natural persons. As a result, legal entities are not entitled to claim direct victim status under these specific articles of the Convention.

The Court emphasized that, where individual rights are at stake, it is incumbent upon the individuals concerned to bring their own claims before the Court. This principle was reinforced by the fact that several physical persons residing in the same municipalities mentioned in the application had indeed filed complaints in their own names, thereby demonstrating that such a route was both available and appropriate.

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<sup>92</sup> United Nations Economic Commission for Europe, *Aarhus Convention*, 25 June 1998, UNTS Vol. 2161, No. 447, 38 ILM 517.

<sup>93</sup> ECHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Judgment Grand Chamber of 9 April 2024, Application no. 53600/20, para 234.

<sup>94</sup> France, Germany, Ireland, The Netherlands, Norway, Spain, The United Kingdom.

<sup>95</sup> Hösli, A & Rehmann, M 2024, ‘Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: The European Court of Human Rights’ Answer to Climate Change’, *Climate Law*, Vol. 14, No. 3/4, pp. 1-22.

<sup>96</sup> ECHR, Case of Cannavacciulo v. Italy, 30 January 2025, App. No(s), 51567/14, 39742/14, 74208/14, 21215/15.

The only exception to this rule, the Court clarified, would be a situation in which the individual members of an association were subject to a particular vulnerability that rendered them incapable of lodging an application independently,<sup>97</sup> or where there were other compelling reasons preventing them from doing so. In such circumstances, an association might be permitted to act on behalf of its members. However, in the present case, no such ‘exceptional circumstances’<sup>98</sup> or ‘special considerations’<sup>99</sup> were established, thus the application of the association was deemed inadmissible.<sup>100</sup>

In particular, in relation to the possibility of granting access to this association, the Court specifies that:

‘Where an applicant association relies exclusively on the individual rights of its members, and without showing it has itself been substantially affected in any way, it cannot be granted victim status under a substantive provision of the Convention’.<sup>101</sup>

As a consequence, in the present case, the Court confirms the long-standing case law characterized by restrictive admission to environmental associations. In his concurring opinion, Judge Krenc questions the reasons why there has been a broadening of the requirements in Verein KlimaSeniorinnen Schweiz and Others, and affirms that this ‘easing’ of case-law has to be limited ‘to the specific context of climate change’,<sup>102</sup> thus leading to the consequence that it is not possible to extend it to other forms of environmental harm, such as environmental pollution.<sup>103</sup>

In light of what is mentioned above, the court concluded as follows:

‘The complaints lodged by the applicant associations [...] under Articles 2 and 8 are incompatible ratione personae with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 thereof’.<sup>104</sup>

It is interesting to analyze the dissenting opinion of the Judge Serghides, who affirmed that ‘there were specific circumstances in the present case requiring the granting of legal standing to the applicant associations’.<sup>105</sup> In particular, he argues that in this specific context, there are many factors which justify the adaptation of the locus standi test for NGOs that was announced in Verein KlimaSeniorinnen Schweiz and Others v Switzerland.

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<sup>97</sup> See: ECHR, Case Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği, 7 December 2021, App. No. 37857/14.

<sup>98</sup> Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 112, ECHR 2014.

<sup>99</sup> ECHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Judgment Grand Chamber of 9 April 2024, Application no. 53600/20.

<sup>100</sup> See: Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği.

<sup>101</sup> ECHR, Case of Cannavacciulo v. Italy, 30 January 2025, App. No(s), 51567/14, 39742/14, 74208/14, 21215/15, para. 218.

<sup>102</sup> ECHR, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Judgment Grand Chamber of 9 April 2024, Application no. 53600/20, par. 540.

<sup>103</sup> ECHR, Case of Cannavacciulo v. Italy, 30 January 2025, App. No(s), 51567/14, 39742/14, 74208/14, 21215/15, Concurring Opinion of Judge Krenc, para. 4.

<sup>104</sup> ECHR, Case of Cannavacciulo v. Italy, 30 January 2025, App. No(s), 51567/14, 39742/14, 74208/14, 21215/15, para. 222.

<sup>105</sup> ECHR, Case of Cannavacciulo v. Italy, 30 January 2025, App. No(s), [51567/14](#), [39742/14](#), [74208/14](#), [21215/15](#), Partly Concurring, Partly Dissenting Opinion of Judge Serghides, para. 2.

#### **4.2 Court of Justice of the European Union (CJEU)**

The possibilities for civil society to bring a claim before the CJEU are limited and in the context of climate change no interventions were found in the period 2015-2020.<sup>106</sup> Only in 2021, the Court of Justice of the European Union started to address climate change mitigation cases. According to Article 263 paragraph 4 of the Treaty on the Functioning of the European Union (TFEU):

‘Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures’.<sup>107</sup>

A significant case is Armando Carvalho and Others v The European Parliament and the Council (known as The People’s Climate Case).<sup>108</sup> In this action, a coalition formed by ten families from different jurisdictions (Germany, France, Portugal, Italy, Romania, Kenya, Fiji), alongside with the Swedish Sami Youth Association Sáminuorra, challenged the adequacy of a policy of the EU. They asserted that the commitment of the EU aimed at lowering greenhouse gas emission by 40% relative to 1990 levels by 2030 was insufficient to address the climate crisis and consequently constitutes a violation of a plurality of human rights.<sup>109</sup>

Because of procedural issues, the Court decided to decline the possibility of issuing a decision related to this case. In particular, the arguments of the Court are grounded on article 263, para. 4 of the Treaty of the Functioning of the EU, which requires the prerequisite of being individually affected by the policies.

As highlighted by the Court, the appellants were not individually affected, whereas ‘the conditions of direct concern and individual concern are cumulative’.<sup>110</sup> As reiterated in the Plaumann case law, the condition of individual concern is met:

‘If the contested act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually [...].’<sup>111</sup>

In Carvalho, the applicants invoked an infringement of their fundamental rights due to climate change impacts. However, the Court ruled that this alone did not establish individual concern, as the alleged harms did not distinguish them from all other persons (Inuit Tapiriit Kanatami and Others v Parliament and Council). As stated in paragraph 49 of the Carvalho judgment:

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<sup>106</sup> Herlitz Bäckman, M 2021, ‘Adjudicating Climate Change: The Role of Human Rights Litigation in Climate Change Mitigation’ available at:

<https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9046493&fileId=9057398>.

<sup>107</sup> Consolidated Version of the Treaty on the Functioning of the European Union, 26 November 2012, OJ C 326, p. 47-390, Article 263.

<sup>108</sup> CJEU, Case Armando Ferrão Carvalho and Others v. The European Parliament and the Council, 25 March 2021, Case C-565/19.

<sup>109</sup> Negri, S 2019, *Environmental Health in International and EU Law: Current Challenges and Legal Responses* (1st ed.), Routledge, Cambridge; Herlitz Bäckman, M 2021, ‘Adjudicating Climate Change: The Role of Human Rights Litigation in Climate Change Mitigation’ available at:

<https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=9046493&fileId=9057398>.

<sup>110</sup> CJEU, Case Inuit Tapiriit Kanatami and Others v Parliament and Council, 3 October 2013, C 583/11, para. 76.

<sup>111</sup> CJEU, Case Plaumann & Co. v Commission, 15 July 1963, C 25/62.

‘It cannot be held that the acts at issue affect the appellants by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguish them individually just as in the case of the person addressed.’

Historically, the CJEU has interpreted these two requirements restrictively, as shown in Plaumann Case.<sup>112</sup> However, it has been noted that ‘this conservative approach stands in stark contrast to the creative attitude of the CJEU when it had to decide whether national law effectively implemented EU environmental law’.<sup>113</sup> This contrast is also evident when considering the Commission Notice on Access to Justice in Environmental Matters, which dates back to 2017:

‘[...] CJEU case-law recognizes that environmental associations - ‘environmental non-governmental organizations or environmental NGOs’ - play a vital role in ensuring compliance with obligations under EU environmental law’.<sup>114</sup>

Accordingly, the criteria that environmental NGOs must fulfill to gain standing should not be excessively burdensome and should consider the realities faced by small and local associations.<sup>115</sup>

While the Commission Notice of 2017 analyzes the function of national courts in granting access to justice, the restrictive admissibility requirements before the CJEU appear contradictory. However, the Court affirms that there is no gap in judicial protection. Indeed, individuals are granted the possibility to bring actions against the implementation at the national level of EU measures, thus establishing an obligation under Article 267 TFEU.<sup>116</sup> However, it is only an indirect form of intervention, which has not been considered an effective remedy.<sup>117</sup>

An analysis of the Carvalho case allows for a meaningful comparison between the criteria established by ECHR and those provided by the CJEU regarding the participation of civil society as claimants in judicial proceedings. While the ECHR has embraced a participatory model, enabling civil society actors, particularly NGOs, to intervene and contribute to the deliberations of the court, the same cannot be detached at the CJEU level.

Although civil society may, in theory, intervene in proceedings before the CJEU under certain limited circumstances, such interventions are severely constrained by the innumerable procedural rules.<sup>118</sup> In particular, the condition of ‘individual concern’ is satisfied only ‘if the contested act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually’.<sup>119</sup>

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<sup>112</sup> *Ibid.*

<sup>113</sup> Nakanishi, Y 2024, ‘Possibility of Extending Legal Standing under Article 263 (4) TFEU in the matter of Climate Litigation’, *Hitotsubashi Journal of Law and Politics*, Vol. 52, pp.1-12, p.8.

<sup>114</sup> European Commission, *Commission Notice on Access to Justice in Environmental Matters*, 18 August 2018, C 275/1, para. 38.

<sup>115</sup> *Ibid.*, para. 78.

<sup>116</sup> Consolidated Version of the Treaty on the Functioning of the European Union, 26 November 2012, OJ C 326, p. 47-390, Article 267.

<sup>117</sup> Directorate-General for Internal Policies (Policy Department Citizens’ Rights and Constitutional Affairs) 2012, *Standing Up for Your Right(s) in Europe - A Comparative Study on Legal Standing (Locus Standi) before the EU and Member States’ Courts*, p. 32.

<sup>118</sup> Nakanishi, Y 2024, ‘Possibility of Extending Legal Standing under Article 263 (4) TFEU in the matter of Climate Litigation’, *Hitotsubashi Journal of Law and Politics*, Vol. 52, pp.1-12.

<sup>119</sup> CJEU, Case Armando Ferrão Carvalho and Others v. The European Parliament and the Council, 25 March 2021, Case C-565/19, para. 46.

As a consequence, to enhance the possibility of a broader participation in climate litigation, the CJEU should consider broadening access to justice by relaxing the strict interpretation of ‘individual concern’, especially in environmental cases.<sup>120</sup>

A noteworthy development in this context is the ongoing case brought by CAN Europe and the Global Legal Action Network (GLAN) against the European Commission, which marks a strategic shift in the ways according to which NGOs seek to hold EU institutions accountable for insufficient climate action. Unlike the earlier Carvalho case, the dispute mentioned does not depend on claims of individual harm. Instead, it questions the legality of the emission targets from EU under the Effort Sharing Regulation (ESR).<sup>121</sup> In case it succeeds, it would set a precedent for broader legal standing in EU climate litigation, affirming that NGOs can bring forward procedural challenges without having to prove individual harm. It could also push the EU to align its climate policies with human rights obligations, in line with the KlimaSeniorinnen decision from the ECtHR.

Ultimately, the case could serve in order to understand whether CJEU is willing to reconsider its restrictive standing rules in light of the collective nature of climate harm. This case could demonstrate that NGOs can still impact EU climate governance by focusing on procedural accountability. The outcome will reveal whether the legal framework of the EU can represent a possible and effective answer to climate emergency or whether civil society must increasingly appeal to both domestic courts and international human rights bodies to request justice.

## 5. ACTING AS THIRD PARTY: A RENEWED INTEREST IN THE FRIENDS OF THE COURTS

Civil society can intervene in legal proceedings despite not being among the parties involved, by submitting arguments for the safeguarding of human rights. There is not a single and universally accepted legal definition of the term *amicus curiae* at the international level, thus leading to the arise of different declinations of the concept in the various legal systems.<sup>122</sup>

The literal translation from Latin is ‘friend of the court’, referring to a subject who is neither a party nor involved in a case but desires to offer suggestions or a contribution to the court. According to Crema, ‘Amici curiae are persons interested in a trial but not party to it that submit an unsolicited written brief or make an oral statement before the bench’.<sup>123</sup>

In procedural terms, an *amicus curia* does not assume the roles of plaintiff or defendant but acts as a third-party contributing opinions or expertise, usually on specific legal or factual issues. This is the reason why some procedural rules define them as ‘interested third-parties’,<sup>124</sup> where the interest is not individualistic but collective.

The controversial aspect in the field is to delineate boundaries in order to determine who could be considered part of this category. Whether or not a given body is included mostly depends on the procedural prerequisites imposed by different courts, which may be more or less stringent.

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<sup>120</sup> Krommendijk, J & Van der Pas, K 2002, ‘Third-party Interventions Before the Court of Justice in Migration Law Cases’, *EU Immigration and Asylum Law and Policy*, No. 217; Nakanishi, Y 2024, ‘Possibility of Extending Legal Standing under Article 263 (4) TFEU in the matter of Climate Litigation’, *Hitotsubashi Journal of Law and Politics*, Vol. 52, pp.1-12.

<sup>121</sup> CJEU (pending), Global Legal Action Network and CAN-Europe v Commission, Action brought on 26 February 2024, Case T-120/24; see also: <https://climaterightsdatabase.com/2024/10/14/can-europe-and-global-legal-action-network-glan-v-european-commission/>.

<sup>122</sup> Crema, L 2022, ‘Testing amici Curiae in International Law: Rules and Practice’, *The Italian Yearbook of International Law*, Vol. 22, pp. 91-132, p. 93.

<sup>123</sup> Crema, L 2022, ‘Testing amici Curiae in International Law: Rules and Practice’, *The Italian Yearbook of International Law*, Vol. 22, pp. 91-132.

<sup>124</sup> It means that the *judex* if there were but one, assumed some lawyers to assist him with their counsel.

## 5.1 THE ORIGIN OF AMICUS CURIAE AND THE ARISE IN CIVIL LAW SYSTEMS

There is an ongoing debate among scholars concerning the origins of the amicus curiae, with two primary theories dominating disputes. One perspective traces its roots back to Roman law, where magistrates would appoint a Consilium, a council of legal experts aimed at assisting in decision-making processes. The Roman judge, particularly when presiding alone, would call upon lawyers to provide counsel, as illustrated by the brocade ‘sibi advocavit, ut in concilio adessent’.<sup>125</sup> This advisory function aligns with the notion that courts require expertise beyond their own to handle the complexity of the law and judicial decision-making. This perspective aligns with the idea of Farber:

‘Due to the expansion of the law and the complexity of the judicial process, courts are not experts -and are not supposed to be experts -in all fields of knowledge presented to them. Therefore, courts require “external” information which is not only relevant to the specific proceeding before them, but which also assists them in formulating adequate legal policy by being forward-looking and anticipating the direct impacts on non-represented third parties in the proceeding’.<sup>126</sup>

On the other hand, some argue that amicus curiae developed within English common law, where it was first documented in the 9th century. It was initially defined as a disinterested bystander<sup>127</sup> who provided impartial advice to the court upon request or permission. Although at first it alluded to individuals who offered unbiased legal guidance to the courts when required, with the passing of time, this role expanded to include advocacy for broader public or legal interests, particularly in appellate cases.

Some scholars propose a hybrid origin, attributing aspects of the amicus curiae to both Roman and English common law traditions. Even though Roman law may have laid the foundation for the advisory role, it was within common law systems that the concept developed into its contemporary form, allowing amici curiae to act independently and voluntarily submit briefs or arguments.

The role of amicus briefs in common law courts and international legal proceedings has been extensively analyzed and documented, since amicus curiae briefs have long influenced legal reasoning. However, a newer and less examined development is the growing acceptance of amicus briefs in civil law jurisdictions.<sup>128</sup>

Amicus curiae expansion in civil law systems backdates to recent years, when amicus briefs have been officially integrated into their legal frameworks through legislation, judicial rulings, and procedural regulations.

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<sup>125</sup> See, for instance: European Commission, Commission Regulation (EC) No 773/2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, 27 April 2004.

<sup>126</sup> Farber, S 2019 ‘The Amicus Curiae Phenomenon - Theory, Causes and Meanings’, *Transnational Law & Contemporary Problems*, Vol. 29, No. 1, pp. 1-61, p. 32.

<sup>127</sup> Krislov, S 1963, ‘The Amicus Curiae Brief: From Friendship to Advocacy’, Vol. 72, *The Yale Law Journal*, pp. 694-721, p. 694.

<sup>128</sup> Wilk, A 2018, *International Courts and Tribunals*, Nomos Verlagsgesellschaft, Baden-Baden, p. 90; Izarova, I, Bartosz Szolc-Nartowski & Kovtun, A 2019, ‘Amicus Curiae: Origin, Worldwide Experience and Suggestions for East European Countries’, *Hungarian Journal of Legal Studies*, Vol. 60, No. 1, pp. 18-39, p. 18.

Civil law courts, indeed, have traditionally followed an inquisitorial model in which judges served as the primary investigators and decision-makers, with little reliance on external advocacy. However, since civil law courts started increasingly engaging with multifaceted legal questions that require interdisciplinary expertise, civil law courts have begun to allow third-party contributions. These external insights provided by *amicus curiae* are relevant in order to formulate appropriate legal policy by employing a proactive approach that involves the repercussions for third parties not directly represented in the proceedings.

Additionally, the rise of *amicus* briefs in civil law jurisdictions is closely intertwined with the growing impact of international and supranational legal institutions. Bodies such as the ECHR and CJEU have actively promoted or accepted *amicus* submissions, setting a precedent that national courts have increasingly followed. In addition to these tribunals, in the early 2000s international criminal courts together with *ad hoc* criminal tribunals started to allow the intervention of *amici curiae* in legal proceedings.<sup>129</sup>

This evolution reflects a broader transformation in civil law judicial culture, and this represents a step towards more responsiveness to public interest concerns. Through the values embodied by *amicus curiae*, it is often believed that their participation *a priori* strengthen the positions of courts and tribunals.<sup>130</sup>

Despite this recognition, traditionally civil law systems have maintained a strict approach to legal proceedings, limiting the intervention of only parties with a direct and legally recognized interest in participating. This procedural framework left little space for third-party intervention. However, over the past few decades, the increasing influence of international human rights law, transnational legal processes, and complex public interest litigation has contributed to a gradual shift.<sup>131</sup> Despite the absence of explicit procedural recognition, civil society organizations, academic institutions, and international bodies have begun to submit *amicus curiae* briefs in significant cases, especially the ones involving constitutional or human rights.

These interventions, while initially informal and occasionally disregarded by the courts, have helped to enrich judicial reasoning and encourage broader public debate.

In response to this growing practice, some civil law jurisdictions have started to formally recognize or at least tolerate the submission of *amicus* briefs,<sup>132</sup> even though, according to Bürli, ‘there has especially been a lack of research on the role of *amicus curiae* intervention in developing and transforming human rights protection, in the field of human rights litigation’.<sup>133</sup> In the absence of a clear definition of the concept of *amicus curiae*, there is debate concerning the nature of interventions by *amicus curiae*. Emblematic is the case of *Cestero v. Italy*:

‘The Government has also emphasized that interventions by third parties must pursue the objective of improving the Court’s knowledge by providing new information or additional legal arguments relating to general principles relevant to the resolution of the case.’

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<sup>129</sup> Farber, S 2019 ‘The Amicus Curiae Phenomenon - Theory, Causes and Meanings’, *Transnational Law & Contemporary Problems*, Vol. 29, No. 1, pp. 1-61.

<sup>130</sup> Kent, A & Trinidad, J 2017, ‘The Management of Third-party Amicus Participation before International Criminal Tribunals: Juggling Efficiency and Legitimacy’, *International Criminal Law Review*, Vol. 17, No. 4, pp. 203-224.

<sup>131</sup> Farber, S 2019 ‘The Amicus Curiae Phenomenon - Theory, Causes and Meanings’, *Transnational Law & Contemporary Problems*, Vol. 29, No. 1, pp. 1-61.

<sup>132</sup> Izarova, I, Bartosz Szolc-Nartowski & Kovtun, A 2019, ‘Amicus Curiae: Origin, Worldwide Experience and Suggestions for East European Countries’, *Hungarian Journal of Legal Studies*, Vol. 60, No. 1, pp. 18-39.

<sup>133</sup> Bürli N 2017, *Third-Party Interventions before the European Court of Human Rights*, Intersentia, Cambridge, p. 17.

However, this view would go too far in restricting the role of amicus curiae, who can instead take on a broader function, not just limited to technical or informational support. Amicus curiae are progressively being recognized as having the opportunity to contribute to a more inclusive legal debate, bringing in public interest instances, minority perspectives or specialized expertise otherwise unrepresented in the process. For these reasons, the European Court of Human Rights showed that it disagreed with the viewpoint adopted by the government in the present case.

Even though international courts and tribunals are presumed to know the law, according to the general principle ‘*iura novit curia*’, this assumption has revealed not to be enough to meet certain demands, especially arising from civil society. Indeed, there could be cases in which the parties of the dispute may be unable to provide all the necessary information for its resolution and the judge lacks sufficient expertise for its resolution. As a consequence, the intervention of amici curiae can be a vehicle of significant benefits. Such contributions can enrich the judicial process by providing technical knowledge, expert insight, or perspectives representing the broader public interest.<sup>134</sup>

When the civil society participates in the guise of amicus curiae rather than in the guise of an actor, there are ‘advantages compared to the other forms of participation’.<sup>135</sup> First, an advantage is denoted from an economic point of view, since the costs are only partially borne by the party acting as a third intervener and largely borne instead by the parties initiating the process. Precisely because the costs are normally low and the risk of exposing oneself to economic loss is rather infrequent, an intervention by the amicus curiae is appreciable. Moreover, it is necessary to specify that contribution of amici curiae is different from the one provided by experts in a given field from a professional perspective. Otherwise, amici curiae are bearers of public demands, and in this way, they ensure that the voice of the society is heard.<sup>136</sup> This is the concept of deliberative democracy, which focuses on ‘the process of discourse, communication, and cooperation which leads to the decision stage’.<sup>137</sup> According to the Joint Committee on Human Rights Report on the Criminal Justice and Courts:

‘Third party interventions are of great value in litigation because they enable the courts to hear arguments which are of wider import than the concerns of the particular parties to the case’.<sup>138</sup>

From this definition, a clear distinction should be made between two forms of third-party intervention: those aimed at advancing the public interest and those motivated by personal or private concerns. This working-paper deals exclusively with interventions intended to serve the public good.

A crucial but unresolved issue within the United Nations framework concerns the criteria used to determine whether a submission is made by an individual or by an institutional stakeholder. Similarly, there are no clear criteria to assess whether individuals affiliated with academic

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<sup>134</sup> Wilk, A 2018, *International Courts and Tribunals*, Nomos Verlagsgesellschaft, Baden-Baden, p. 43.

<sup>135</sup> Shelton, D 1994, ‘The Participation of Nongovernmental Organizations in International Judicial Proceedings’, *The American Journal of International Law*, Cambridge University Press, Vol. 88, No. 4.

<sup>136</sup> Wilk, A 2018, *International Courts and Tribunals*, Nomos Verlagsgesellschaft, Baden-Baden, p. 47; Crema, L 2022, ‘Testing amici Curiae in International Law: Rules and Practice’, *The Italian Yearbook of International Law*, Vol. 22, pp. 91-132, p. 95.

<sup>137</sup> Farber, S 2019 ‘The Amicus Curiae Phenomenon - Theory, Causes and Meanings’, *Transnational Law & Contemporary Problems*, Vol. 29, No. 1, pp. 1-61.

<sup>138</sup> Joint Committee on Human Rights Report on the Criminal Justice and Courts Bill.

institutions - such as universities or research centers - are participating in a personal capacity or on behalf of their institution. In practice, such affiliations often lead to their submissions being categorized as institutional, regardless of whether an explicit mandate exists. This overlap of roles creates the risk that academics are automatically treated as institutional stakeholders rather than individual contributors.

These ambiguities remain largely unaddressed in UN procedures, often leaving the classification of contributions to the discretion of the receiving body. Two illustrative cases highlight the fluidity of these categorizations. The *Submission to the General Discussion on the Draft General Recommendation on Equal and Inclusive Representation of Women in Decision-Making Systems*<sup>139</sup> was promoted by a group of scholars and experts in gender studies, human rights, and international law. Although the signatories were individuals affiliated with academic institutions, the submission was listed among the submission made by NGOs. A similar approach was taken in the case of the *Call for Comments on the Draft General Comment on Children's Rights and the Environment with a Special Focus on Climate Change*,<sup>140</sup> where academic and interdisciplinary contributors were classified under the broader category of stakeholders. These examples demonstrate that the UN system adopts a flexible and functional approach in order to categorize submissions, which often prioritizes the nature and perceived authority of the contribution over the formal status of its authors.

## 5.2 THE ROLE OF AMICUS CURIAE BEFORE INTERNATIONAL AND REGIONAL COURTS

### 5.2.1 International Court of Justice (ICJ)

In 1971 the ICJ withdrew the initial participation granted to NGOs. The sole provisions that refer to an external intervention in the proceedings are Articles 62 and 63 of the Statute of the Court that admit the possibility of intervention only by states and under specific conditions. From this, it can be inferred that the type of intervention permitted is that of a state party, not of an amicus curiae. Indeed, although Article 34 provides the possibility for the Court to request information from public international organizations, the Court has specified that it must necessarily be an international organization of States.<sup>141</sup> As a consequence, the ICJ does not accept the participation of CSOs, allowing only the intervention of a state party.

A step forward has been taken in 2004, with the adoption of Practice Direction XII, according to which the submitted document and (or) written submitted by an NGO is considered

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<sup>139</sup> Submission to the General Discussion on the 'Draft general recommendation on equal and inclusive representation of women in decision-making systems', CEDAW Committee, February 2023, available at: <https://www.ohchr.org/en/events/events/2023/half-day-general-discussion-equal-and-inclusiverepresentation-women-decision>.

<sup>140</sup> Submission for the 'Call for comments on the draft general comment on children's rights and the environment with a special focus on climate change' Child Committee, February 2023.

<sup>141</sup> Bartholomeusz L, 'The Amicus Curiae before International Courts and Tribunals', in A Bianchi (ed.), *Non-State Actors and International Law*, Ashgate Published Limited, Farnham, pp. 253-287, p. 257.

publication accessible by the public.<sup>142</sup> States and international organizations are legitimate to invoke such documents in the same manner as any other material that is in the public domain.<sup>143</sup>

### 5.2.2 European Court of Human Rights (ECHR)

The European Convention on Human Rights ‘was the first international human rights instrument to aspire to protect a broad range of civil and political rights both by taking the form of a treaty legally binding on its High Contracting Parties and by establishing a system of supervision over the implementation of the rights at the domestic level’.<sup>144</sup>

In the context of the European Court of Human Rights, it has been noted that there are ‘following trends’<sup>145</sup> that can be related to the influence of amici curiae. Initially the Court examines the briefs to identify key elements that support the recognition of a ‘European or international consensus’.<sup>146</sup> After having looked at legal approaches from other jurisdictions as a source of guidance, the Court employs the briefs to weigh itself the various competing interests involved in the case.

Article 36 of the Convention<sup>147</sup> and Rule 44 of the Rules of the Court<sup>148</sup> rule the discipline of third-party interventions. According to Article 36:

- ‘(1) In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant, shall have the right to submit written comments and to take part in hearings.
- (2) The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings, or any person concerned who is not the applicant to submit written comments or take part in hearings and
- (3) In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.’

According to this provision, third party intervention could be either voluntary or be requested by the President of the Court. Rule 44 states that:

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<sup>142</sup> ICJ, Practice Direction XII (July 30, 2004):

1. Where an international non-governmental organization submits a written statement and/or document in advisory proceedings on its own initiative, such statement and/or document is not to be considered part of the case file.
2. Such statements and/or documents shall be treated as publications readily available and may accordingly be referred to by States and intergovernmental organizations presenting written and oral statements in the case in the same manner as publications in the public domain.
3. Written statements and/or documents submitted by international non-governmental organizations will be placed in a designated location in the Peace Palace. All States as well as intergovernmental organizations presenting written or oral statements under Article 66 of the Statute will be informed as to the location where statements and/or documents submitted by international non-governmental organizations may be consulted.

<sup>143</sup> Charnovitz, S 2006, ‘Nongovernmental Organizations and International Law’, American Journal of International Law, Vol. 100, No. 2, pp. 348-372, p. 353.

<sup>144</sup> Van der Eynde, L 2013, ‘An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs Before the European Court of Human Rights’, *Netherlands Quarterly of Human Rights*, Vol. 31, No. 3, pp. 271-313, p. 272.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*, pag. 275.

<sup>147</sup> Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, Art. 36.

<sup>148</sup> Council of Europe, *Rules of Court*, 28 April 2005, Rule 44.

‘3. (a) Once notice of an application has been given to the respondent Contracting Party [...], the President of the Chamber may, in the interests of the proper administration of justice, [...] invite, or grant leave to, any Contracting Party which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing.’

There are several other procedural requirements that must be fulfilled. First of all, the interveners must obtain authorization from President of the Court, which is granted only if the request is reasonable, submitted in one of the official languages of the Court<sup>149</sup> and filed within twelve months prior to the notification of the case.<sup>150</sup> First and foremost, it is important to note that the submission of individuals must address legal issues of general importance that align with the interpretative and protective mandate of the Court. Therefore, individuals falling within the authority of a State subject to the jurisdiction of the European Court of Human Rights are, in abstract terms, potentially entitled to participate in such proceedings. However, it must be emphasized that Article 36 point 2 of the European Convention on Human Rights imposes a *ratione materiae* requirement for third-party interventions.<sup>151</sup> In order to be accepted, any intervention must be substantively relevant to the subject matter of the Convention and fall within the scope of the jurisdiction of the Court. Since they often focus narrowly on case-specific facts rather than engaging with broader human rights principles, individual interventions frequently do not manage to meet this standard. Consequently, such interventions tend to reflect private interests rather than a genuine effort to advance the public interest. The prevalence of these narrowly framed, fact-bound submissions has limited both their admissibility and their legal impact before the Court.<sup>152</sup>

One of the principal concerns associated with amicus curiae interventions is that, although such participation is permitted according to Article 36 of the European Convention on Human Rights, it may risk intruding within the procedural rights of the parties. Specifically, there is an apprehension that third-party submissions could undermine the ability of the parties to present their case effectively and exercise their right of defense. This concern, however, is balanced by the fact that the Court possesses wide-ranging inquisitorial powers, which enable it to investigate relevant facts and legal issues independently from the parties or interveners. These investigative powers are expressly provided for under Article 38 of the Convention, thereby reinforcing the capacity of the Court to seek the truth while maintaining fairness in the proceedings.<sup>153</sup>

‘The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.’

### 5.2.3 Court of Justice of the European Union (CJEU)

According to Article 40 of the Statute of the Court, third-party intervention may be admitted when there is an *interest of a legal nature* in the result of a case. Notably, the requirement of a mere ‘interest’ reflects a relatively flexible approach, which appears to compensate for the

<sup>149</sup> English and French are the two official languages of the Court.

<sup>150</sup> JUSTICE & Freshfields Bruckhaus Deringer LLP 2016, *To Assist the Court: Third-party Interventions in the Public Interest*, available at: <https://files.justice.org.uk/wp-content/uploads/2016/06/06170721/To-Assist-the-Court-Web.pdf>.

<sup>151</sup> Van der Eynde, L 2013, ‘An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs Before the European Court of Human Rights’, *Netherlands Quarterly of Human Rights*, Vol. 31, No. 3, pp. 271-313, p. 272.

<sup>152</sup> Van der Eynde, L 2013, ‘An Empirical Look at the Amicus Curiae Practice of Human Rights NGOs Before the European Court of Human Rights’, *Netherlands Quarterly of Human Rights*, Vol. 31, No. 3, pp. 271-313.

<sup>153</sup> Wilk, A 2018, *International Courts and Tribunals*, Nomos Verlagsgesellschaft, Baden-Baden.

stringent admissibility criteria imposed by the *Plaumann* case with respect to applications brought by individuals.<sup>154</sup>

However, under the case-law of the EU Courts, NGOs defending a public interest are permitted to intervene only if the outcome of the proceedings is capable of affecting the interests protected by the organization.<sup>155</sup> As a consequence, NGOs, that fall under the category of environmental associations, are in most of the cases prevented from intervening, as the interests they defend are typically collective in nature and not attributable to a specific group of individuals. Alternatively, such organizations must demonstrate that their position could be directly impacted by the decision at issue from an economic or legal point of view.

An illustrative example of this restrictive approach to third-party interventions is the Autonomous Region of the Azores case,<sup>156</sup> in which the region ‘sought the annulment in part of a regulation on the management of the fishing effort relating to Community fishing areas and resources’.<sup>157</sup> The applicant received the support of three different environmental organizations. While two local organizations were granted leave to intervene due to their specific mission to protect the natural heritage of the Azorean archipelago, including its fish populations and marine ecosystems, the joint application by WWF and Seas at Risk was denied.<sup>158</sup> They argued that their work on marine protection under the contested regulation gave them a legitimate interest in the proceedings, but the CJEU rejected their claim. In paragraph 69 the Court states that:

‘By contrast to the two Azorean organizations, the scope of the interests of Seas at Risk and WWF is too wide and general to be significantly affected by the outcome of the present proceedings and hence it is not of such a nature as to allow the judge hearing the application for interim measures to grant WWF and Seas at Risk leave to intervene in the present proceedings’.<sup>159</sup>

The CJEU therefore maintains a restrictive approach to third-party interventions, especially for NGOs defending collective environmental interests. While Article 40 of the Statute suggests a more flexible standard, in practice, NGOs must prove a direct legal or economic impact to be admitted. The Azores case illustrates this narrow interpretation, where broad environmental missions were deemed insufficient. This restrictive stance risks undermining meaningful civil society participation. On the contrary, a broader and more inclusive reading of ‘interest’ is needed to guarantee access to justice in climate-related litigation.

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<sup>154</sup> Alemanno, A forthcoming 2025, ‘Public Participation before the Court of Justice of the EU Enhancing Outside Party Judicial Participation via Amicus Curiae Briefs’, *Erasmus Law Review*.

<sup>155</sup> Directorate-General for Internal Policies (Policy Department Citizens’ Rights and Constitutional Affairs) 2012, *Standing Up for Your Right(s) in Europe - A Comparative Study on Legal Standing (Locus Standi) before the EU and Member States’ Courts*’, p. 11.

<sup>156</sup> CJEU, Order of the President of the Court of First Instance in Case T-37/04 R: The Autonomous Region of the Azores v. Council of the European Union, 8 July 2004.

<sup>157</sup> Directorate-General for Internal Policies (Policy Department Citizens’ Rights and Constitutional Affairs) 2012, *Standing Up for Your Right(s) in Europe - A Comparative Study on Legal Standing (Locus Standi) before the EU and Member States’ Courts*’, p. 38.

<sup>158</sup> Alemanno, A forthcoming 2025, ‘Public Participation before the Court of Justice of the EU Enhancing Outside Party Judicial Participation via Amicus Curiae Briefs’, *Erasmus Law Review*.

<sup>159</sup> CJEU, Order of the President of the Court of First Instance in Case T-37/04 R: The Autonomous Region of the Azores v. Council of the European Union, 8 July 2004.

## 6. ACTING AT INTERNATIONAL LEVEL: THE DIALOGUE WITH THE UNITED NATIONS

Nowadays it is untroubled that civil society should be included in the context of the UN, nowadays it is untroubled that the answer is affirmative.<sup>160</sup> The UN provides its own definition of civil society:

‘Civil society refers to the associations of citizens (outside their families, friends and businesses) entered into voluntarily to advance their interests, ideas and ideologies. The term does not include profit-making activity (the private sector) or governing (the public sector). Of particular relevance to the United Nations are mass organizations (such as organizations of peasants, women or retired people), trade unions, professional associations, social movements, indigenous people’s organizations, religious and spiritual organizations, academe and public benefit non-governmental organizations’.<sup>161</sup>

### 6.1 Civil Society and Access to International Human Rights Treaty Bodies

As reported by the ISHR Academy, the Human Rights Treaty Bodies are ‘committees of independent experts that monitor how States are implementing the core international human rights treaties and their optional protocols. Each State that is party to a treaty has an obligation to take steps to ensure that everyone can enjoy the rights contained in the treaty’.<sup>162</sup>

The UN Human Rights Treaty Bodies are nine,<sup>163</sup> and eight of them allow for individual petitions, either by filing an Optional Protocol or directly within the Convention itself. Although the term ‘individual petition’ is commonly used, this does not mean that only natural persons can submit a complaint. In practice, organizations may also be entitled to file a petition, either on behalf of individuals or, in certain cases, in their own name.<sup>164</sup>

While the procedures vary slightly, they generally involve a written submission through which individuals may report violations of their treaty-based rights. Both the complainant and the State party may present their facts and legal arguments, after which the Committee will determine whether a violation has occurred and, if so, recommend appropriate remedies.

This procedure constitutes a concrete way through which civil society can exert international pressure to claim the States responsible for having violated the rights they are entitled to protect. However, two conditions must be met: the State must be a party to the relevant treaty and must have ‘explicitly recognized the competence of the treaty body through ratifying the optional protocol or through making the required declaration under the appropriate article of the

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<sup>160</sup> Kimber, LR 2024, *Civil Society and Intergovernmental Negotiations at the United Nations. Exclusion Despite Inclusion*, Bristol University Press, Bristol.

<sup>161</sup> UNRIC Library Backgrounder: Civil Society, available at: <https://unric.org/en/unric-library-backgrounder-civil-society/>.

<sup>162</sup> ISHR Academy, ‘Understanding the Treaty Bodies’, available at: <https://academy.ishr.ch/learn/treaty-bodies/the-basics-1>.

<sup>163</sup> The description of the Treaty Bodies is available at: <https://www.ohchr.org/en/treaty-bodies>; Committee on the Elimination of Racial Discrimination (CERD), Committee on Economic, Social and Cultural Rights (CESCR), Human Rights Committee (CCPR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Committee on the Rights of the Child (CRC), Committee on Migrant Workers (CMW), Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Committee on the Rights of Persons with Disabilities (CRPD).

<sup>164</sup> Schoner, RJ 2024, ‘Naming and Shaming in UN Treaty Bodies: Individual Petitions’ Effect on Human Rights’, *The Review of International Organizations*.

respective convention'.<sup>165</sup> Furthermore, the principle of exhaustion of domestic remedies is expressly recognized, thus meaning that the complainant must have pursued all reasonable legal avenues within the domestic law before adhering to the international ones.

Only in recent times have human rights treaties been employed to guarantee environmental protection. Indeed, they were not conceived to achieve this specific purpose, and nowadays they are being invoked in order to address gaps in environmental governance, since they provide 'supranational remedies'.<sup>166</sup> These mechanisms can be strategically valuable, especially given that domestic courts are sometimes less willing to hold their own governments accountable.

In July 2022, the United Nations General Assembly issued Resolution 76/300,<sup>167</sup> which marked a significant development in this area, formally recognizing the human right to a clean, healthy, and sustainable environment. Although not legally binding, this resolution strengthens the implementation of human rights into environmental frameworks and global policymaking. When a committee finds a violation, the State is invited to file a report outlining the steps it has taken to implement the recommendations.<sup>168</sup> In case violation is found or the complaint is rejected, the case is declared definitely closed.

Until 2021, the international human rights body had never ruled on a case specifically involving climate change. However, this is changing. According to the Global Climate Litigation Report of the UNEP from 2023,<sup>169</sup> several petitions have since been filed before various UN bodies. These international fora are attractive because they offer a mix of soft law strategies and perceived neutrality, especially in situations where domestic courts may be reluctant to impose obligations on national governments.

Among all cases, Sacchi et al. v. Argentina et al.<sup>170</sup> detaches. In 2021, sixteen children lodged a petition with the Committee on the Rights of the Child, asserting that Argentina, Brazil, France, Germany, and Türkiye had failed to adopt sufficient rules to diminish greenhouse gas emission, thereby breaching their obligations under the Convention on the Rights of the Child.<sup>171</sup> The Committee dismissed the case on the ground that the applicants had not exhausted all available domestic remedies. The petitioners maintained, however, that pursuing proceedings in each of the five states 'would have been unduly burdensome for them, unreasonably prolonged and unlikely to bring effective relief'.<sup>172</sup>

Despite the dismissal, the legal reasoning of the court was significant, since it affirmed that the harm from the emissions of the States were reasonably foreseeable and that they contribute to

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<sup>165</sup> ISHR Academy, 'Understanding the Treaty Bodies', available at: <https://academy.ishr.ch/learn/treaty-bodies/the-basics-1>.

<sup>166</sup> Luporini, R & Savaresi, A 2022, 'International Human Rights Bodies and Climate Litigation: Don't Look Up?', *The Review of European, Comparative & International Environmental Law (RECIEL)*, pp. 1-2.

<sup>167</sup> GA, Resolution adopted by the General Assembly: The human right to a clean, healthy and sustainable environment, UN Doc. A/RES/76/300, 1 August 2022.

<sup>168</sup> The State has to submit the report within 180 days.

<sup>169</sup> United Nations Environment Programme 2023, *Global Climate Litigation Report: 2023 Status Review*, Nairobi.

<sup>170</sup> Committee on the Rights of the Children, 'Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning Communication No. 104/2019', 11 November 2021, UN Doc. CRC/C/88/D/104/2019.

<sup>171</sup> Luporini, R 2023, 'Climate Change Litigation before International Human Rights Bodies: Insights from Daniel Billy et al. v. Australia (Torres Strait Islanders Case)', *The Italian Review of International and Comparative Law*, Vol. 3, No. 2, pp. 238-259, p. 246.

<sup>172</sup> Committee on the Rights of the Children, 'Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning Communication No. 104/2019', 11 November 2021, UN Doc. CRC/C/88/D/104/2019, para. 10.18.

global harm regardless of where they originate.<sup>173</sup> Moreover, it also found that the children had demonstrated a personal experience of serious harm due to climate change.<sup>174</sup> This decision laid, therefore, the groundwork for further rights-based environmental litigation.

Following this, the same group of children submitted a petition to the UN Secretary-General, requesting the declaration of a ‘climate emergency’ and activate a UN-wide crisis response mechanism. This petition is still pending.<sup>175</sup>

Another landmark case is Daniel Billy et al. v. Australia,<sup>176</sup> brought in 2022 before the Human Rights Committee by members of the Indigenous Torres Strait Islanders community. The Committee determined that Australia had breached its obligations to under the International Covenant on Civil and Political Rights by failing to shield the claimants from the adverse effects of climate change. Specifically, the violation concerned the rights to private life, family life, and enjoyment of culture.<sup>177</sup> This was the first time that a body from the UN found a State in violation of human rights law due to inadequate climate action, and the first recognition of Indigenous cultural rights being at risk from climate change.<sup>178</sup> This judgment marked the first time in which a UN body held a State accountable under human rights law for insufficient climate action, as well as the first formal acknowledgment that the indigenous culture faces threats posed by climate change. Therefore, the Committee urged Australia to implement robust climate adaptation measures, thereby strengthening the connection between climate policy and human rights within the international jurisprudence.

## 6.2 The Mechanism of the Shadow Report

The Treaty Bodies verify whether the State that has ratified one of the aforementioned treaties is making progress and is implementing the obligations undertaken. Among its obligations, the State must provide an annual report that will be analyzed by the Treaty Body which will then deliver ‘concluding observations/ recommendations to assist States in implementing their obligations’.<sup>179</sup>

One aspect of the work of the Human Rights Treaty Bodies that could be substantially improved is the coordination of their periodic reporting process. At present, each committee sets its own timetable, requiring States to submit individual reports to every Treaty Body separately.

This fragmented structure results in a lack of coherence, both in the reporting process and in the outcomes of the procedures.

At present, there is no systematic coordination among the various reporting obligations, which leads to significant overlap and duplication. In many instances, the questions posed by the different committees are repetitive, as are the responses provided by States and the concluding

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<sup>173</sup> *Ibid*, para. 10.5: ‘Court further noted that accordingly, it can be concluded that the obligation to prevent transboundary environmental damage or harm is an obligation recognized by international environmental law, under which States may be held responsible for any significant damage caused to persons outside their borders by activities originating in their territory or under their effective control or authority.’

<sup>174</sup> *Ibid*, para. 10.13: ‘The Committee considers that, as children, the authors are particularly affected by climate change, both in terms of the manner in which they experience its effects and the potential of climate change to have an impact on them throughout their lifetimes, particularly if immediate action is not taken.’

<sup>175</sup> ‘Children’s Petition to the United Nations Secretary-General to Declare a Climate Emergency’, available at: [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211110\\_15000\\_petition.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211110_15000_petition.pdf).

<sup>176</sup> Human Rights Committee (HRC), Daniel Billy et al. v. Australia, Communication No. 3624/2019, 22 September 2022, UN Doc. CCPR/C/135/D/3624/2019.

<sup>177</sup> *Ibid*, par. 7.4.

<sup>178</sup> See ‘Daniel Billy and others v Australia (Torres Strait Islanders Petition)’, available at: <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/>.

<sup>179</sup> ISHR Academy. *Understanding the Treaty Bodies - Periodic reviews - What do the Treaty Bodies do?*, available at: <https://academy.ishr.ch/learn/treaty-bodies/periodic-reviews---what-do-the-treaty-bodies-do>, p. 13.

observations formulated by each body. This procedural redundancy has contributed to what many States have described as ‘reporting fatigue’, reflecting the effort of producing multiple similar reports for different Treaty Bodies.<sup>180</sup>

In response to these challenges, several reform proposals have been advanced. Among the most notable is the suggestion to introduce a common reporting mechanism, whereby States submit a single comprehensive report covering their obligations under multiple treaties.<sup>181</sup>

This type of reform could reduce the burden on States, eliminate unnecessary duplication, and promote major efficiency across the treaty body system. This could reinforce the effectiveness of the human rights monitoring framework.

As mentioned above, the Treaty Bodies analyze these reports and respond with concluding observations, which identify areas of concern and issue recommendations for further action. These may involve reforming laws, improving access to remedies, reallocating resources, or creating institutional safeguards. However, in many cases, the information submitted by States lacks detail, specificity, or show disaggregated data, thereby limiting the effective ability of the Committees to conduct a comprehensive rights-based evaluation.<sup>182</sup>

This explains why to address this gap, CSOs play a crucial complementary role through the submission of shadow reports (also referred to as parallel reports). These documents offer alternative perspectives and highlight omissions or inaccuracies in the State reports. Committees typically welcome this input, and the reports are often made publicly available on the website of the Committee, unless confidentiality is requested.

An illustrative instance comes from South Africa, where CSOs were engaged during the preparation of the report that the State would have submitted to the Committee on Economic, Social and Cultural Rights (CESCR)<sup>183</sup>. In 2018, a coalition of NGOs developed a parallel report highlighting the situation of human rights defenders, with a particular emphasis on those working in the mining industry. The findings were directly reflected in the concluding observations issued by the CESCR. Among them, the most valuable are three tailored recommendations addressing the risks faced by defenders of economic, social, and cultural rights.<sup>184</sup> This case demonstrates the impact and significance of civil society participation in enhancing the accountability and responsiveness of international human rights mechanisms.

### 6.3 The Universal Periodic Review Process (UPR)

Because a Treaty Body can operate only when a State has ratified the convention and accepted its jurisdiction over it, the United Nations promoted in 2006 a mechanism subjecting every Member State to peer review conducted by its counterparts.

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<sup>180</sup> Yuval, S & Cleveland SH, ‘Treaty Body Reform 2020: Has the time come for adopting a Global Review Calendar?’, Working Paper, p. 2.

<sup>181</sup> *Ibid.*

<sup>182</sup> International Service for Human Rights, ‘A Simple Guide to the UN Treaty Bodies’, available at: [https://ishr.ch/sites/default/files/article/files/ishr\\_simpleguide\\_eng\\_web.pdf](https://ishr.ch/sites/default/files/article/files/ishr_simpleguide_eng_web.pdf).

<sup>183</sup> CESCR, ‘Concluding observations on the Initial Report of South Africa’, 29 November 2018, UN Doc. E/C.12/ZAF/CO/1.

<sup>184</sup> *Ibid.*, p. 3, point. 13.

The Universal Periodic Review Working Group considers all human rights ‘universal, indivisible, interdependent and interrelated,’ and believes that the value of democracy and human rights should be built and promoted through these principles.<sup>185</sup>

According to the Resolution adopted by the General Assembly in 2006, the Council shall:

‘Undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies; the Council shall develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session’.<sup>186</sup>

The review is composed of three distinct written sources. The first is the national report, defined as a ‘self-assessment of the human rights situation in the domestic context’.<sup>187</sup> The remaining two are external assessments of the human rights obligations of the States. Whereas one report is ‘a collection of information provided by a number of United Nations bodies to the Office of the High Commissioner for Human Rights (OHCHR)’,<sup>188</sup> the other report contains verified and reliable contributions from COSs, which the Council is expected to take into consideration while issuing the review.<sup>189</sup>

The Universal Periodic Review (UPR) mechanism aims at promoting an ongoing participation of civil society, and this role has been recognized by the UN and highlighted in the abovementioned decision. CSOs and human rights defenders are pivotal in ensuring that the UPR translates into tangible advance in reference to the protection and promotion of human rights worldwide.

As seen in Uganda,<sup>190</sup> the UPR is also a powerful instrument for raising awareness of human rights issues within a country. In Uganda, a live screening event was organized to strengthen the understanding of the participants on how the Universal Periodic Review (UPR) mechanism

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<sup>185</sup> Human Rights Council, ‘Universal Periodic review Mechanism’, 18 June 2007, UN Doc. A/HRC/RES/5/1, para 3(a): The universal periodic review should promote the universality, interdependence, indivisibility and interrelatedness of all human rights.

<sup>186</sup> General Assembly, Resolution adopted by the General Assembly, 3 April 2006, UN Doc. A/RES/60/251, Point E.

<sup>187</sup> Human Rights Council, ‘Universal Periodic Review Mechanism’, 18 June 2007, UN Doc. A/HRC/RES/5/1, Annex 1 section 15 (a).

<sup>188</sup> Patel, G 2017, ‘How “Universal” Is the United Nations’ Universal Periodic Review Process? An Examination of the Discussions Held on Polygamy’, *Hum Rights Rev*, Vol. 18, pp. 459-483, p. 462.

<sup>189</sup> Universal Periodic Review Info 2017, *The Civil Society Compendium: A comprehensive guide for Civil Society Organisations engaging in the Universal Periodic Review*, available at: [https://upr-info.org/sites/default/files/documents/2017-04/upr\\_info\\_cso\\_compendium\\_en.pdf](https://upr-info.org/sites/default/files/documents/2017-04/upr_info_cso_compendium_en.pdf).

<sup>190</sup> UPR Info, ‘The Year at a Glance’: ‘In March and August this year UPR Info, with its Regional Offices, hosted in-country Pre-Sessions on Thailand and Uganda respectively. These events were a great success in engaging local and national NGOs in lobbying and reporting at the UPR, before the Pre-Sessions and Review in Geneva. This project will be developed by UPR Info in 2017’, available at: [https://upr-info.org/sites/default/files/documents/2017-10/2016\\_the\\_year\\_at\\_a\\_glance.pdf](https://upr-info.org/sites/default/files/documents/2017-10/2016_the_year_at_a_glance.pdf); Universal Periodic Review Info 2017, *The Civil Society Compendium: A comprehensive guide for Civil Society Organisations engaging in the Universal Periodic Review*.

functions.<sup>191</sup> The focus was placed on the connection between CSOs submissions and the recommendations issued to Uganda. The event was attended not only by civil society stakeholders but also by government representatives, which enabled a constructive dialogue aimed at developing a future plan for collaboration on the implementation of the recommendations.<sup>192</sup>

## 7. CONCLUSION

Civil society represents an added value at the international level, and its activism in the protection of human rights highlights the need for its recognition. The scope pursued is the integration of human rights principles into law, not only at the international level, but also in each government. It is necessary to consider a fundamental assumption: only the voice of civil society can serve as the voice of grassroots social demands. It is the bearer of collective interests, and aims to protect safeguard common good, looking beyond individual interests. Since it is rooted in the social context, civil society is the most appropriate subject entitled to identify the interests of minority groups. It pursues the objective of promoting their protection, in order to give voice to people that would otherwise go unheard.

The adoption of the Systematic Ongoing Direct Civil Society Engagement (ODCSE) offers a valuable mechanism for integrating civil society into the examination of Human Rights Justifications (HRJs). This would foster sustained dialogue with state representatives regarding the modalities according to which human rights are implemented and interpreted. As it has been noted, ‘climate litigation provides a compelling context in which to apply the ODCSE methodology’.<sup>193</sup> The reason lies in the fact that most of the cases that have been brought in front of the courts by CSOs are grounded in human rights frameworks, and the states have often found justifications closely related to human rights in order to reject the claims. In particular, they have positioned their actions as being consistent with or even required by human rights. As a consequence, there is the need for the engagement of civil society in these legal and political processes. It serves to scrutinize whether the justifications of the states are genuinely consistent with established human rights standards, or whether they are invoked with the sole purpose of justifying inappropriate policies that undermine fundamental rights.

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<sup>191</sup> Universal Periodic Review Info 2017, *The Civil Society Compendium: A comprehensive guide for Civil Society Organisations engaging in the Universal Periodic Review*, available at: [https://upr-info.org/sites/default/files/documents/2017-04/upr\\_info\\_cso\\_compendium\\_en.pdf](https://upr-info.org/sites/default/files/documents/2017-04/upr_info_cso_compendium_en.pdf), p. 24.

<sup>192</sup> Universal Periodic Review Info 2017, *The Civil Society Compendium: A comprehensive guide for Civil Society Organisations engaging in the Universal Periodic Review*, available at: [https://upr-info.org/sites/default/files/documents/2017-04/upr\\_info\\_cso\\_compendium\\_en.pdf](https://upr-info.org/sites/default/files/documents/2017-04/upr_info_cso_compendium_en.pdf), p. 14.

<sup>193</sup> Cristani, F & Fornalé, E 2025, ‘Confronting Human Rights Justifications in Climate Litigation: Developing a New Methodological Approach for the Systematic Ongoing Direct Civil Society Engagement’, *Juridical Tribune – Review of Comparative and International Law*, Vol. 15, No. 2, pp. 208-229.

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