**The UN Human Rights Committee’s *Torres Strait Islanders* Decision:**

**‘True’ Climate Change Litigation?**

By Vassilis P Tzevelekos

Our paths crossed with Lindy Melman almost six years ago, when, with my good friend, colleague at the University of Liverpool, and co-founder/editor of the *ECHR Law Review*, Kanstantsin Dzehtsiarou, we approached BRILL with a proposal to establish and run the *ECHR Law Review*. Lindy not only saw the potential of our proposal, but also helped us to improve and then implement it. Her generous support has been continuous; always provided in a manner that combines the highest standards of professionalism with utmost cordiality. Lindy is very experienced. On numerous occasions she has offered her perspective, whilst also affording us freedom and control over the decisions that we ultimately made. The short critical note that follows is written for Lindy as a token of appreciation and gratitude.

1. **Introduction**

On 21 July 2022, the UN Human Rights Committee (HRC, the Committee) adopted its views on communication No 3624/2019 against Australia concerning the latter’s alleged ‘[f]ailure to take mitigation and adaptation measures to combat the effects of climate change’ suffered by the authors of the communication –acting in their personal capacity and on behalf of their children–, who live on the Torres Strait Islands.[[1]](#footnote-1) *Mitigation* aims at addressing the root causes of climate change, so that, for instance, by lowering the emissions of greenhouse gases, climate change stops progressing and is ideally reversed. On the other hand, *adaptation* refers to adjustment to and protection from the adverse effects of climate change. The *Torres Strait Islanders* decision has been ‘labelled’ and, indeed, ‘celebrated’ as successful climate change litigation through human rights law before an international human rights monitoring institution.[[2]](#footnote-2) Indeed, an increasingly large number of climate change cases have recently been brought to[[3]](#footnote-3) and are currently pending[[4]](#footnote-4) before such institutions. Scholarship has been somewhat divided in this respect. Certain authors are favourable to ‘opening’ the regime of human rights law to climate change litigation and are making suggestions as to how this regime can effectively accommodate said area in a meaningful manner that will make an impact[[5]](#footnote-5) –which is so urgently required, but which also raises a number of challenges for international human rights (quasi-)judicial instances.[[6]](#footnote-6) Other scholars have expressed scepticism,[[7]](#footnote-7) questioning, *inter alia*, if human rights rules and monitoring mechanisms are fit for purpose.

 In the lines that follow, I develop a set of arguments explaining the reasons why, in my view, although climate change lies at the heart of the HRC decision in *Torres Strait Islanders*, ultimately, this is *not* an instance of ‘true’ climate change litigation. I appreciate that, by the sound of it, this is quite a controversial argument. Yet, I trust, or at least hope, that the reasons provided below justify the conclusion that *Torres Strait Islanders* contributes close to –but not just– nothing to combatting anthropogenic climate change and that human rights rules in this decision perform their usual function without being pulled away from their ‘comfort zone’ and/or being transformed into environmental protection standards. Before developing the arguments supporting my ‘reading’ of *Torres Strait Islanders*, I spend a few words on the specifics of the case and on the reasoning that supports the HRC decision.

1. **The *Torres Strait Islanders* Decision**

The authors of the communication to the HRC belong to the indigenous minority group of the Torres Strait Islands. These low-lying islands are seriously affected by climate change to such an extent that their very existence is being endangered –a fact that increases the authors’ vulnerability.[[8]](#footnote-8) Climate change has an impact on very many and the most important aspects of human life in the area. For instance, flooding and erosion destroy infrastructure and houses, and render land impossible to cultivate, thereby impacting land-based food production systems and marine industries.[[9]](#footnote-9) Among other issues raised with their communication to the HRC, its authors complained that the respondent state ‘has failed to implement an adaptation programme to ensure the long-term habitability of the islands’,[[10]](#footnote-10) and that it ‘has also failed to mitigate the impact of climate change.’[[11]](#footnote-11) That is, their complain concerned both mitigation and adaptation. Accordingly, the authors complained that the respondent’s omissions amount to a violation of their rights to life –protected by Article 6 of the International Covenant on Civil and Political Rights (ICCPR[[12]](#footnote-12))–, to private, family, and home life –protected by Article 17 ICCPR–, and to enjoy their culture –protected under Article 27 ICCPR.[[13]](#footnote-13) The authors of the communication also complained on the basis of Articles 2 and 24(1) ICCPR.[[14]](#footnote-14) However, for reasons that do not need to be discussed here, the former was declared inadmissible by the HRC,[[15]](#footnote-15) whereas the latter, given the Committee’s findings that the respondent has breached Articles 17 and 27, was deemed unnecessary to examine.[[16]](#footnote-16)

 On the merits of the case, the HRC began by acknowledging the risks that climate change poses with respect to the authors’ lives and the positive obligations that such risks entail for states to proactively protect human life through appropriate measures.[[17]](#footnote-17) However, the HRC noted that, real as the risk for the future may be, the authors presently do not ‘face adverse impacts to their own health or a real and reasonably foreseeable risk of being exposed to a situation of physical endangerment or extreme precarity that could threaten their right to life’.[[18]](#footnote-18) This, combined with the fact that the respondent has in place a programme/policy that will lead to the construction and upgrading of infrastructure as a means to address coastal erosion and storm surge impacts, in addition to other adaptation and mitigation measures,[[19]](#footnote-19) led the HRC to essentially conclude that the respondent has not been negligent. Australia has ahead of it the time that is needed to continue demonstrating due diligence and to apply appropriate positive measures with a view to ‘protect and, where necessary, relocate the alleged victims’.[[20]](#footnote-20) Thus, the Committee held that ‘it is not in a position to conclude that the adaptation measures taken by the State party would be insufficient so as to represent a direct threat to the authors’ right to life with dignity.’[[21]](#footnote-21) Therefore, Australia did not breach its obligations under Article 6 ICCPR with respect to the positive dimension of the right to life.

 However, the HRC found the respondent liable on the basis of Articles 17 and 27 ICCPR. With regard to the former provision, the Committee relied on the positive dimension of the rights that Article 17 enshrines.[[22]](#footnote-22) As to the measures applied by the respondent to address the adverse impact of climate change on the enjoyment of the rights at issue, the HRC took note of the respondent’s actions, including measures aiming at mitigating climate change, such as low emission policies and strategies,[[23]](#footnote-23) and, focusing on the delay in the construction of seawalls, concluded that the respondent has breached Article 17 in that it had ‘fail[ed] to discharge its positive obligation to implement adequate adaptation measures to protect the authors’ home, private life and family’.[[24]](#footnote-24) This amounts to typical state fault stemming from the absence of due diligence, that is, from the respondent’s negligence to construct adequate seawalls in a timely fashion. For the same reason, namely because of the delays in the construction of seawalls, the HRC established a breach of Article 27 ICCPR too, owing to the respondent’s failure ‘to protect the authors’ collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources’[[25]](#footnote-25) as elements of their minority culture.

 Thus, to summarise, the HRC found no negligence on behalf of the respondent with regard to the right to life, but expected it to have promptly built more seawalls as a means to remedy the adverse impact that climate change has on the ability of the authors of the communication to fully enjoy their rights to private life, family, and home, considering in particular the special cultural ties that they have as indigenous people with their land. Now, is this an instance of ‘true’ climate change litigation and, if –as I argue– no, why so?

1. **‘True’ Climate Change Litigation?**

*Prima facie*, the *Torres Strait Islanders* decision is all about climate change. Undoubtedly, this is the dominant element or theme in the case. The suffering of the authors of the communication to the HRC can only indirectly be attributed to the respondent’s omissions or lack of proactiveness to alleviate them.[[26]](#footnote-26) The direct cause of their suffering is climate change. But, does this connection between climate change and the authors’ suffering suffice to make *Torres Strait Islanders* an instance of ‘true’ climate change litigation in the sense of ‘extending’ the semantic field of human rights to support environmental protection standards pertaining to climate change? This question shall be answered in the negative, as the *Torres Strait Islanders* decision primarily concerns the omissions of the respondent to alleviate the authors’ suffering. That their suffering ultimately owes to climate change is almost extrinsic or incidental to the legal issues of the case.

 This might appear to be an oxymoron, in the sense that, indeed, the root cause in *Torres Strait Islanders* is climate change. It is the latter that compromises the enjoyment of human rights. In turn, the impact of climate change on human rights generates a due diligence duty for the respondent state *vis-à-vis* the affected persons who are under its jurisdiction. It is, however, important to highlight that the HRC decision and the standards of diligence on behalf of the respondent that it identifies do not primarily concern the root cause, namely climate change. That is, they do not really concern the *mitigation* of climate change, consisting in measures, such as reducing carbon emissions, aimed at fighting the causes of climate change or climate change itself.[[27]](#footnote-27) Rather, the findings of the HRC in *Torres Strait Islanders* and the reason why the respondent has been found liable concern *adaptation* to climate change, that is, standards of diligence that the respondent shall demonstrate to remedy the consequences of climate change or, in other words, what the respondent is expected to do under human rights law in order to alleviate the impact of climate change on the enjoyment of rights. Thus, in *Torres Strait Islanders,* due diligence concerns adaptation to climate change through the alleviation of its adverse consequences, not the mitigation of and fight against climate change itself. This is the reason why, in my view, *Torres Strait Islanders* s not ‘true’ climate change litigation.

 But why, unlike global climate change moderation, local adaptation to it is not ‘true’ climate change litigation? *Torres Strait Islanders* is a great example in this respect, in that it shows that adaptation measures do not ‘stretch’ human rights rules or transform them into environmental protection rules/standards. Indeed, human rights rules develop no unusual effects in *Torres Strait Islanders.* That is, the involved human rights rules, such as the right to life, function in the same way irrespective of the root cause of their endangerment, that is, irrespective of whether what threatens the rights of the authors of the communication is anthropogenic climate change, environmental pollution caused by another actor, such as a multinational corporation, or environmental disasters caused by natural phenomena, such as an earthquake, tsunami, volcano eruption, or a meteorite hitting the Torres Strait Islands. From the perspective of human rights law, what matters when it comes to adaptation to climate change is that, regardless of the author/source of human rights risks/suffering, the state(s) that exercise(s) jurisdiction develop(s) appropriate protective measures to the best of its/their ability to fight the consequences of the problem. In light of this, it becomes clear, I think, that, in a sense, climate change is not the ‘protagonist’ in *Torres Strait Islanders*. As soon as mitigation is excluded, climate change does not even translate into a ‘proper’ or autonomous legal issue in the case. It is ‘playing’ in the background as the inner cause of human rights endangerment or as the source of human rights suffering; it becomes legally relevant to the ‘performance’ of human rights rules to the extent that the measures that the respondent state is expected to adopt shall be fit for purpose and adequate[[28]](#footnote-28) to remedy the effects of climate change –not climate change itself.

 However, this does not mean that the *Torres Strait Islanders* could not have been an instance of ‘true’ climate change litigation. Had the case shifted from localised adaptation remedying the impact of climate change to global mitigation fighting the causes of climate change, this would have made *Torres Strait Islanders* an instance of ‘true’ climate change litigation. The difficulties[[29]](#footnote-29) that are inherent to this task might explain why –wisely enough, in my view– the HRC demonstrated self-restraint in *Torres Strait Islanders,* in that it focused on adaptation. However, it also chose –fairly understandably– to give a climate change mitigation ‘allure’ to its decision, which nevertheless remains deprived of legal effects and significance, beyond the impressions that it creates and any ‘meta-messages’ that it may be read as carrying.

 In the following three sub-sections, I unpack these three points, namely, self-restraint, the climate change mitigation allure, and the ‘meta-messages’ that it possibly carries.

* 1. **Self-Restraint**

Starting with self-restraint, had the HRC wished to exercise scrutiny over any alleged failures of the respondent state to fight the root causes of the authors’ suffering, that is, to pursue the mitigation –rather than adaption to the impact– of climate change on the enjoyment of human rights, this would have been possible.[[30]](#footnote-30) For instance, the respondent state, in its efforts to evidence the standards of diligence and pro-activeness that it had demonstrated, pointed to a series of mitigation policies aiming at reversing climate change and/or preventing it from further evolving. To that end, the respondent referred, *inter alia*, to the ‘reduction of its carbon emissions by 20.1% (from 2005 to 2020) and by 46.7% per person (from 1990 to 2020); [and to the] investment of an estimated $20 billion in low emissions technologies (2020-30) and $3.5 billion in the Emissions Reduction Fund’.[[31]](#footnote-31) These are ‘core’ climate change mitigation policies aiming at stopping and/or reversing climate change. They do not directly address or remedy the adverse consequences of climate change, but rather address climate change itself as the root cause of the adverse consequences that result in human rights suffering. Had the HRC desired to widen the ambit of its scrutiny, it would have assessed the adequacy of these mitigation policies. Whether human rights experts such as the HRC members possess the ‘tools’, knowledge, and skills to proceed with such an assessment is a good, albeit different, question. Nevertheless, the point that I am making here is that this was an option in *Torres Strait Islanders*; a possible path –to my understanding, perhaps a slippery path–, that the HRC chose not to take. However, the respondent’s submissions made this possible, which, as a fact, might be telling as to how the respondent perceived this case, that is, as a case that contained elements of ‘true’ climate change litigation in the sense of employing human rights rules to address the root causes of the problem (i.e., anthropogenic climate change itself) and possibly set standards of environmental protection aiming at the mitigation of climate change.

 Thus, a more ‘activist’ HRC could have opened the *Torres Strait Islanders* case to mitigation measures aiming at fighting/reversing climate change by widening the scope of its scrutiny of the measures adopted by the respondent and possibly finding its authorities negligent in the sense of not doing enough to mitigate climate change. Instead, the HRC *took note* ‘of the other adaptation and mitigation measures mentioned by the State party’,[[32]](#footnote-32) as well as ‘of [its] extensive and detailed information that it has taken numerous actions to address adverse impacts caused by climate change and carbon emissions generated within its territory.’[[33]](#footnote-33) The HRC did not assess the actions/measures at issue, but it took note of them, whilst, apparently, considering them relevant and important enough to include in its decision. Of all the mitigation and adaptation actions/measures of the respondent that it took note of, the HRC then singled out one adaptation measure, namely seawalls, and assessed it, finding the state negligent in this respect. The assessment of the appropriateness and adequacy of mitigation action, such as carbon emission policies as a measure against climate change, requires knowledge and inputs from other disciplines, such as environmental science. Quite the contrary, seawalls as an adaptation policy/measure are something that any layperson can appreciate as a solution to an island being gradually swallowed up by the rising sea levels that climate change generates. This might be a reason why the HRC chose to merely take note of certain mitigation measures against climate change, but felt confident enough to assess seawalls as a remedy to the adverse impacts of climate change.

* 1. **The Climate Change Mitigation Allure**

Moving to the climate change mitigation allure that, in my eyes, *Torres Strait Islanders* contains, the starting point is that the object of the case was construed by the HRC in a manner that in essence excluded mitigation elements against climate change from scrutiny, focusing instead on adaptation measures aiming at remedying human rights suffering, that is, at offering protection from the impact of climate change. However, this did not prevent the HRC from ‘disguising’ parts of its decision –albeit in a manner that is in principle deprived of tangible legal effects– as a climate change mitigation case. This is what I term here as the HRC giving a ‘climate change mitigation allure’ in its decision.

 First, the fact that the HRC takes note of the respondent’s policies on carbon emissions gives the impression that this is part of the ‘equation’. Yet, from a legal point of view, the HRC did not assess these mitigation policies and it certainly did not make them part of the positive human rights obligations that states have *vis-à-vis* people under their jurisdiction. Yet, these mitigation policies are in the text of the decision as part of the broader ‘toolkit’ developed by the respondent. For now, they stay in the text in a dormant manner, waiting for another decision by the HRC or by another authority that will wish to refer to them and possibly treat them in a different manner, and which may even assign them certain legal significance.

 *Mutatis mutandis*, when assessing the admissibility of the communication in *Torres Strait Islanders*, the HRC holds that ‘the State party is and has been in recent decades among the countries in which large amounts of greenhouse gas emissions have been produced [and] that the State party ranks high on world economic and human development indicators.’[[34]](#footnote-34) This statement gives a climate change mitigation ‘veneer’ in the case. The respondent (co-)causes climate change, which is the reason why the authors of the communication are unable to fully enjoy their rights under the ICCPR. Yet, this point by the HRC is ‘toothless’, in the sense that, as I already argued and hopefully demonstrated, it bears no legal consequences in the direction of the state having a duty under human rights law to reduce emissions or otherwise act in a manner that will mitigate, combat, or reverse climate change. Whether the respondent (co-)causes climate change or the extent to which it does so are irrelevant to its human rights duty to strive to protect persons under their jurisdiction from the adverse effects of climate change, that is climate change adaptation –which is what the *Torres Strait Islanders* decision mostly concerns. What generates the respondent’s duty to offer protection is not that it (co-)caused the adverse human rights consequences, but the fact that these exist and produce results on its territory, affecting, subsidiarily, its nationals. Australia has a duty to protect from the impact of climate change in its islands for the benefit of their residents, who are also its nationals. The same duty would apply irrespective of whether it is a big polluter or not.

 Yet, the HRC refers to the respondent’s record in terms of greenhouse gas emissions in order to establish jurisdiction. Right after noting this record, the HRC holds: ‘In view of the above, the Committee considers that the alleged actions and omissions fall under the State party’s jurisdiction under articles 1 or 2 of the Optional Protocol and therefore, it is not precluded from examining the present communication.’[[35]](#footnote-35) This justifies the point that I am making here, namely that the HRC chose to deprive climate change mitigation –the inner cause of the respondents’ suffering– from generating legal effects from the perspective of and on the basis of human rights law, but wished to give its decision a climate change mitigation allure. What the HRC appears to imply is that jurisdiction is established on the basis of the fact that, as a polluter, the respondent has human rights duties *vis-à-vis* the victims. However, causality is relevant to extraterritorial jurisdiction.[[36]](#footnote-36) In the *Torres Strait Islanders* case, jurisdiction is territorial, such that causality is irrelevant to it. Thus, employing causality (i.e., that the respondent causes the suffering of the victims and therefore has a duty to protect them) to establish the respondent’s jurisdiction and the ensuing duty to demonstrate diligence with a view to protect the affected human rights was unnecessary, if not erroneous. Yet, the reference to the respondent’s poor record in terms of pollution/emissions generating climate change in the part of the decision discussing jurisdiction and admissibility enables the HRC to bring emissions (that is, climate change mitigation) into the text of its decision in an ultimately ‘inoffensive’ or legally inconsequential manner, in the sense that it generates no duties on the basis of human rights law for the respondent to commit to concrete standards concerning the reduction of carbon emissions –which would have made the case a ‘true’ climate change case in the sense of involving climate change mitigation duties.

* 1. **The ‘Meta-Messages’ –Instead of a Conclusion**

So, to sum up and give the big picture, the way I see it, the *Torres Strait Islanders* decision of the HRC covers the human rights duty of the respondent to adopt measures adequately protecting against the impact that climate change has on the enjoyment of human rights –which corresponds to the concept of local adaptation to climate change. The decision does not extend to human rights rules serving as the basis for environmental protection duties aiming at fighting/reversing climate change –which corresponds to the concept of global mitigation of climate change. Yet, certain parts of the decision refer to environmental protection measures relevant to fighting/reversing climate change, that is, to climate change mitigation, albeit in a manner that is legally inconsequential.

 The latter, I described as the HRC giving a climate change mitigation allure in its decision. But why does the HRC do this? Why does the HRC wish to create impressions that are not supported by its findings, by the width of its scrutiny, or by the legal effects produced by its decision? A plausible explanation as to why the HRC does this is that its decision signals certain messages beyond the clearly established ones that carry tangible legal consequences and generate concrete legal effects. This may explain why *Torres Strait Islanders* has been read as ‘adding strong support to the idea that human rights law applies to climate harm’[[37]](#footnote-37) or, in similar terms, as ‘set[ting] a number of important precedents which confirm the justiciability of climate change adverse impacts before international human rights organs and vindicates the rights of indigenous peoples.’[[38]](#footnote-38) This is already a very important ‘meta-message’, signalling that the HRC is willing to contribute to the global judicial dialogue on climate change and human rights law.

 It is not only what is in the *Torres Strait Islanders* decision that matters. The potential that it carries is equally important. This is of particular significance to the mitigation of climate change dimension of the case, in respect of which I argued that the HRC demonstrated self-restraint. Yet, it is important that the text of its decision contains certain ‘soft’ elements pertaining to climate change mitigation. Like soft law rules, these do not yet have any normative force. ‘Meta-messages’, such as the one that states shall reduce carbon emissions, may not yet be embedded in human rights law; but, who knows what will happen in the future, particularly given the necessity to urgently fight climate change. The climate change mitigation allure in the HRC *Torres Strait Islanders* decision on the basis of human rights law does not suffice to transform or even aim at transforming human rights rules into rules prohibiting conduct that generates climate change or requires pro-activeness to mitigate, that is, fight/reverse climate change. Yet, the decision signals ‘meta-messages’ pertaining to the global mitigation of climate change. At this stage, these ‘meta-messages’ merely serve a primarily pedagogical function, but they also have a potential, whilst serving as a reminder that the HRC and other institutions of its kind are here to ‘take note’ (for now) of states’ records and environmental protection policies. Who knows what will follow next. Who knows how the ‘soft’ precedent set by the *Torres Strait Islanders* decision will be further elaborated on in the future? Who knows if and when it will evolve into human rights rules incorporating proper environmental protection standards aiming at climate change mitigation, rather than mere adaption to it?

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1. UN Human Rights Committee, ‘Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, Concerning Communication No. 3624/2019’ (22 September 2022) UN Doc CCPR/C/135/D/3624/2019 (hereinafter, *Torres Strait Islanders*). [↑](#footnote-ref-1)
2. For example, Monica Feria-Tinta, ‘Torres Strait Islanders: United Nations Human Rights Committee Delivers Ground-Breaking Decision on Climate Change Impacts on Human Rights’ (*EJIL: Talk!*, 27 September 2022) <https://www.ejiltalk.org/torres-strait-islanders-united-nations-human-rights-committee-delivers-ground-breaking-decision-on-climate-change-impacts-on-human-rights/> accessed 10 December 2022.  [↑](#footnote-ref-2)
3. For example, UN Committee on the Rights of the Child, ‘Decision Adopted by the
Committee on the Rights of the Child Under the Optional Protocol to the Convention on
the Rights of the Child on a Communications Procedure in Respect of Communication
No. 104/2019’ (11 November 2021) UN Doc CRC/C/88/d/104/2019
(*Chiara Sacchi and Others v Argentina* -as well as against Brazil, France, Germany and Turkey). [↑](#footnote-ref-3)
4. For instance, Duarte Agostinho and Others v Portugal and Others App No 39371/20 (ECtHR) was relinquished to the Grand Chamber on 28 June 2022 (see, ECtHR, ‘Grand Chamber to Examine Case Concerning Global Warming’ (*Press Release*, 20 June 2022) <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7374717-10079435&filename=Relinquishment%20in%20favour%20of%20the%20Grand%20Chamber%20of%20the%20case%20Duarte%20Agostinho%20and%20Others%20v.%20Portugal%20and%20Others.pdf> accessed 10 December 2022). [↑](#footnote-ref-4)
5. For example, Helen Keller and Corina Heri, ‘The Future is Now: Climate Cases Before the ECtHR’ [2022] 40 Nordic Journal of Human Rights 153; Corina Heri, ‘Climate Change Before the European Court of Human Rights: Capturing Risk, Ill-Treatment and Vulnerability’ [2022] 33 European Journal of International Law 925. On the prohibition of ill-treatment and climate change, see also, Natasa Mavronicola, ‘The Future is a Foreign Country: State (In)Action on Climate Change and the Right Against Torture and Ill-Treatment’ [2022] Europe of Rights and Liberties/Europe des droits & Libertés 211. [↑](#footnote-ref-5)
6. For example, Helen Keller and Abigail D Pershing, ‘Climate Change in Court: Overcoming Procedural Hurdles in Transboundary Environmental Cases’ [2022] 3 European Convention on Human Rights Law Review 23; Tim Eicke, ‘Climate Change and the Convention: Beyond Admissibility’ [2022] 2 European Convention on Human Rights Law Review 8; Ole W Pedersen, ‘Any Role for the ECHR When it Comes to Climate Change?’ [2022] 3 European Convention on Human Rights Law Review 17. [↑](#footnote-ref-6)
7. See, for instance, Benoit Mayer, ‘Climate Change Mitigation as an Obligation Under Human Rights Treaties?’ [2021] 115 American Journal of International Law 409; Alexander Zahar, ‘The Limits of Human Rights Law: A Reply to Corina Heri’ [2022] 33 European Journal of International Law 953. [↑](#footnote-ref-7)
8. *Torres Strait Islanders* (n 1) para 2.1. [↑](#footnote-ref-8)
9. ibid paras 2.2 - 2.6. [↑](#footnote-ref-9)
10. ibid para 2.7. [↑](#footnote-ref-10)
11. ibid para 2.8. [↑](#footnote-ref-11)
12. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. [↑](#footnote-ref-12)
13. *Torres Strait Islanders* (n 1) paras 3.1 - 3.6. [↑](#footnote-ref-13)
14. ibid paras 3.3 and 3.7. [↑](#footnote-ref-14)
15. ibid para 7.4. [↑](#footnote-ref-15)
16. ibid para 10. [↑](#footnote-ref-16)
17. ibid paras 8.3-8.5. [↑](#footnote-ref-17)
18. ibid para 8.6. [↑](#footnote-ref-18)
19. ibid para 8.7. [↑](#footnote-ref-19)
20. ibid. [↑](#footnote-ref-20)
21. ibid. [↑](#footnote-ref-21)
22. ibid para 8.10. [↑](#footnote-ref-22)
23. ibid para 8.11. [↑](#footnote-ref-23)
24. ibid para 8.12. [↑](#footnote-ref-24)
25. ibid para 8.14. See also, para. 8.10, in which the HRC embodies the special relationship of indigenous people with their territory and their indigenous traditional way of life within the rights enshrined in Article 17 ICCPR. [↑](#footnote-ref-25)
26. See, for instance, Vladislava Stoyanova, ‘Causation Between State Omission and Harm Within the Framework of Positive Obligations Under the European Convention on Human Rights’ [2018] 18 Human Rights Law Review 309, in particular 313-314; Laurens Lavrysen, ‘Causation and Positive Obligations Under the ECHR: A Reply to Vladislava Stoyanova’ 18 Human Rights Law Review 705, in particular 708. [↑](#footnote-ref-26)
27. See Christina Voigt’s analysis that criticises the HRC on this point (Christina Voigt, ‘UNHRC is Turning up the Heat: Human Rights Violations Due to Inadequate Adaptation Action to Climate Change’ (*EJIL: Talk!*, 26 September 2022) <https://www.ejiltalk.org/unhrc-is-turning-up-the-heat-human-rights-violations-due-to-inadequate-adaptation-action-to-climate-change/> accessed 10 December 2022). Valentin Büchi makes the same point concerning in particular the right to life (Valentin Büchi, ‘Tiptoeing Around the Right to Life: Climate Change and the Right to Life After the Torres Strait Islanders Decision’ (*Völkerrechtsblog,* 04 October 2022) <https://voelkerrechtsblog.org/tiptoeing-around-the-right-to-life/> accessed 10 December 2022).See also, on the same issue, n 30. [↑](#footnote-ref-27)
28. Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship Between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia 2016) 158-166. [↑](#footnote-ref-28)
29. Vassilis P Tzevelekos and Kanstantsin Dzehtsiarou, ‘Climate Change: The World and the ECtHR in Unchartered Waters’ [2022] 3 European Convention on Human Rights Law Review 1. [↑](#footnote-ref-29)
30. See, for instance, *Torres Strait Islanders* (n 1) Individual Opinion by the Member of the HRC Duncan Laki Muhumuza para 11, noting that ‘the State Party has not taken any measures to reduce greenhouse gas emissions and cease the promotion of fossil fuel extraction and use’. In similar terms, in his concurring individual opinion, the member of the HRC Gentian Zyberi holds that ‘the due diligence standard requires States to set their national climate mitigation targets at the level of their highest possible ambition and to pursue effective domestic mitigation measures with the aim of achieving those targets’ (para 3 of the Individual Opinion). [↑](#footnote-ref-30)
31. *Torres Strait Islanders* (n 1) para 8.11. [↑](#footnote-ref-31)
32. ibid para 8.6. [↑](#footnote-ref-32)
33. ibid para 8.11. [↑](#footnote-ref-33)
34. ibid para 7.8. [↑](#footnote-ref-34)
35. ibid. [↑](#footnote-ref-35)
36. For example, The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity: Interpretation and Scope of Articles 4(1) and 5(2) in Relation to Articles 1(1) and 2 of the American Convention on Human Rights), Advisory Opinion OC-23/17, Inter-American Court of Human Rights Series A No 23 (15 November 2017), in particular para 101, in which the Inter-American Court of Human Rights adopts a cause-and-effect approach regarding the exercise of extraterritorial jurisdiction in case of transboundary environmental damage. [↑](#footnote-ref-36)
37. Maria Antonia Tigre, ‘United Nations Human Rights Committee Finds that Australia is Violating Human Rights Obligations Towards Torres Strait Islanders for Climate Inaction’ (*Climate Law Blog*, 27 September 2022) <https://blogs.law.columbia.edu/climatechange/2022/09/27/u-n-human-rights-committee-finds-that-australia-is-violating-human-rights-obligations-towards-torres-strait-islanders-for-climate-inaction/> accessed 10 December 2022. [↑](#footnote-ref-37)
38. Monica Feria-Tinta, n 2.  [↑](#footnote-ref-38)