

**PETITIONING THE UNITED NATIONS CONVENTION ON
THE RIGHTS OF THE CHILD FOR RELIEF FROM
CLIMATE CHANGE**

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INTRODUCTION: A GROUNDBREAKING LAWSUIT

On September 23, 2019, a group of sixteen minors ranging in age from eight to seventeen, filed a complaint in Washington, D.C. against five countries: Argentina, Brazil, France, Germany, and Turkey.¹ This case

¹ Sacchi et al. v. Argentina, Pet’rs’ Compl., (U.N. Comm. on the Rts. of the Child filed Sept. 23, 2019).

marks the first time that children have filed a formal complaint about climate change under the United Nations Convention on the Rights of the Child (“Convention”).² The Convention “obligates its parties to draft legislation and programs to protect children . . . and to assure that the child’s voice is heard.”³ The complaint alleges multiple violations of the Convention; among them, petitioners allege violations of the Convention’s right to life (Article 6), right to health (Article 24), right to enjoyment of one’s culture (Article 30), and violations of the best interests of the child (Article 3).⁴

Critics of the lawsuit—and, perhaps more specifically, critics of Greta Thunberg, one of the named petitioners—were quick to point out that neither China nor the United States were named in the complaint, despite being two of the major emitters of greenhouse gases (GHG).⁵ The reason is a technical one: every country except the United States has ratified the Convention, and of those countries, forty-six agreed to an additional, optional protocol (“OPIC”) recognizing children’s right to petition the UN directly about treaty violations.⁶ China is not one of these forty-six countries. Of the forty-six countries participating in OPIC, respondents are the top five emitters of GHG.

This paper will analyze the anticipated issues following the Committee’s response to petitioners’ request for relief, and relatedly, how successful the lawsuit will be in effecting improvements in how nations combat climate change. In Part I, this paper will offer an in-depth exploration of the petitioners’ complaint. In Part II, this paper will provide background information on the tribunal and its procedures. Part III will offer an analysis of the underlying key protocols and treaties, and how they factor into the current litigation.

² See G.A. Res. 44/25 (May 12, 1989).

³ Linda D. Elrod, “*Please Let Me Stay*”: *Hearing the Voice of the Child in Hague Abduction Cases*, 63 OKLA. L. REV. 663, 672 (2011).

⁴ *Sacchi et al. v. Argentina*, Pet’rs’ Compl., ¶¶ 24–28.

⁵ See U.N. ENV’T PROGRAMME, EMISSIONS GAP REP. 2018 6 (2018) (Figure 2.3 illustrates how GHG emissions per type of gas and top GHG emitters).

⁶ See G.A. Res. 66/138, (Dec. 19, 2011) [hereinafter OPIC]. See also *Status of Ratification Interactive Dashboard*, U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, [https://indicators.ohchr.org/\[https://perma.cc/R692-4VTJ\]](https://indicators.ohchr.org/[https://perma.cc/R692-4VTJ]) (choose “Optional Protocol to the Convention on the Rights of the Child on a communications procedure” from the dropdown) (last updated Feb. 9, 2021).

A. THE PETITIONERS' COMPLAINT

1. General Overview

Sacchi v. Argentina introduces the petitioners, including their countries of origin and harm they have endured,⁷ and the respondents, along with their relationships with the Convention, OPIC, the Paris Agreement, the Kyoto Protocol, and the Climate Change Convention.⁸ Part IV of the complaint is the equivalent of a statement of jurisdiction (which, in this case, is OPIC).⁹ The complaint will be heard by the U.N. Committee on the Rights of the Child, which will determine if the complaint is admissible. If the complaint is deemed admissible, the Committee will gather responses from the respondents, and then make recommendations to those countries.¹⁰

2. Petitioners' Alleged Harm and Requested Relief

The *Sacchi* lawsuit involves sixteen claimants between the ages of eight and seventeen, each complaining of various harms suffered due to climate change. Part V of the complaint details those harms suffered by the petitioners. It has been widely accepted, including in the U.S. now on at least one occasion, that children have a right to a climate capable of sustaining human life.¹¹

Yet, already, petitioners have been exposed to life-threatening dangers, harming their health, and disrupting their cultural traditions.¹² For example, the complaint illustrates how extreme heat afflicts the petitioners

⁷ *Sacchi et al. v. Argentina*, Pet'rs' Compl., ¶¶ 34–49.

⁸ *Id.* ¶¶ 54–59.

⁹ *Id.* ¶ 60.

¹⁰ Ben Arnoldy, *Greta and 15 Kids Just Claimed Their Climate Rights at the UN*, EARTHJUSTICE (Sept. 23, 2019), <https://earthjustice.org/blog/2019-september/greta-thunberg-young-people-petition-UN-human-rights-climate-change> [<https://perma.cc/H7B2-K74G>].

¹¹ *See generally* *Juliana v. United States*, 217 F. Supp. 3d 1224 (D. Or. 2016). *See also*, G.A. Res. 32/33, at 3 (July 18, 2016) (“[n]oting the work of the United Nations Children’s Fund related to environmental sustainability for children, including its work to improve the enjoyment of rights by children, especially the most disadvantaged, and to promote children as critical agents of change, including its report on how children, particularly those in most vulnerable situations, are affected by climate change and the concrete steps needed to be taken to protect them[.]”); *cf.* G.A. Res. 44/25, *supra* note 2, at art. 24(2)(c),(e).

¹² *Sacchi et al. v. Argentina*, Pet'rs' Compl., ¶ 96.

from France, Argentina, Tunisia, Sweden, and Alaska.¹³ The Centers for Disease Control and Prevention (CDC) have confirmed that rising temperatures give way to severe weather (which causes injuries, fatalities, and mental health impacts) and extreme heat (which causes heat-related illness and death and cardiovascular failure).¹⁴ Wildfires have destroyed homes and killed individuals in Tunisia and the United States.¹⁵ Drought is prevalent in South Africa, Tunisia, Brazil, and India.¹⁶ In 2015, the global water crisis affected 1.6 billion people living with absolute water scarcity, and that number is estimated to increase to 2.8 billion, one-third of the world, by 2025.¹⁷ The complaint goes on to list several other harms, including dangerous air quality; storms and flooding, sea-level rise; warming oceans and threatened marine life; increased incidents of malaria, dengue fever, and other diseases; threats to cultural traditions of Indigenous communities; and emotional distress linked to present and future impacts.¹⁸

The petitioners' request for relief is not monetary in nature. Rather, they ask that the Committee recognize climate change as a children's rights crisis; find that the respondents have and continue to knowingly perpetuate climate change, thereby violating petitioners' rights to life, health, and their best interests; and make the proper recommendations to respondents regarding policy change and accelerated efforts to combat and mitigate climate change.¹⁹

B. POSSIBLE OUTCOMES FOR PETITIONERS AND RESPONDENTS' OBLIGATIONS

1. *Effects of the Convention's Obligations*

It seems that the Committee has already granted petitioners' first request for relief. On September 27, 2019, the Committee released a press

¹³ *Id.* ¶¶ 97–100.

¹⁴ *Climate Effects on Health*, CTDS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/climateandhealth/effects/default.htm> [<https://perma.cc/7DPF-QKVE>] (last updated Mar. 2, 2021).

¹⁵ *Sacchi et al. v. Argentina*, Pet'rs' Compl., ¶¶ 102–03.

¹⁶ *Id.* ¶¶ 107–10.

¹⁷ A.B.A. SEC. ENV'T ENERGY & RES., ENVIRONMENT, ENERGY, AND RESOURCES LAW: THE YEAR IN REVIEW 2015 362 (2015).

¹⁸ *See generally Sacchi et al. v. Argentina*, Pet'rs' Compl., §§ V(B)(1)–(10).

¹⁹ *Id.* at ¶¶ 325–30.

statement, commenting that “[c]hildren are already negatively impacted by pollution, droughts, other natural disasters, health risks, and degradation of ecosystems, and we welcome the passionate engagement of children in relation to these issues.”²⁰ As enthusiastic as that press release may seem, the children nevertheless face an uphill battle. The lack of effective mechanisms at the national, regional, and international level that would enable children and their representatives to challenge violations and seek remedies weakens the enforcement of all the provisions of the Convention.²¹ To put things into perspective, as mentioned before, by the year 2025, one third of the world will be living with absolute water scarcity.²² Yet, one third of the world—especially children—are not as fortunate as the instant petitioners, in that they do not have readily available access to international law firms that will take on their case pro bono.²³ Furthermore, those who *do* succeed in submitting a complaint to the Committee have few remedies available to them (that is, if the Committee deems the complaint admissible).

2. Requesting Relief from the Committee

This note will now briefly explain why complaints submitted to the Committee are uniquely complicated. Inherent in international law, all parties to a treaty who have signed, ratified, accepted, or approved said treaty have expressed its consent to be *bound* by the treaty.²⁴

Binding agreements are effective in carrying out their purpose. However, the optional protocol to the convention (“OPIC”) by which petitioners are able to bring suit is very weak in terms of what is actually binding. Excerpts from the section on Inquiry Procedure state “[i]f the Committee receives reliable information indicating grave or systematic violations . . . the Committee *shall invite the State party to cooperate in*

²⁰ Press Release, U.N. Comm. on the Rts. of the Child, UN Child Rights Committee Voices Support For Children Campaigning on Climate Change (Sept. 27, 2019).

²¹ Yanghee Lee, *Communications Procedure under the Convention on the Rights of the Child: 3rd Optional Protocol*, 18 INT’L J. CHILD. RTS. 567, 568 (2010).

²² A.B.A. SEC. ENV’T ENERGY & RES., *supra* note 17, at 350, 362.

²³ See generally *16 Young People File UN Human Rights Complaint on Climate Change*, HAUSFELD (Sept. 23, 2019), <https://www.hausfeld.com/news-press/16-young-people-file-un-human-rights-complaint-on-climate-change> [<https://perma.cc/JDW6-FFJA>].

²⁴ Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

the examination of the information and, to this end, to submit observations without delay . . . ”²⁵ Other inquiry procedures include:

- “ . . . Where warranted and *with the consent of the State party*, the inquiry may include a visit to its territory.”²⁶
- “ . . . the Committee shall transmit without delay these findings to the State party concerned, together with any *comments and recommendations*.”²⁷

And in the Follow-Up to the Inquiry Procedure:

- “The Committee *may, if necessary* . . . *invite the State party* concerned to inform it of the measures taken and envisaged in response to an inquiry . . . ”²⁸

It would seem as though, while States are bound to the Convention, they are not bound to any remedial consequences of the Convention. The Committee itself has said that “[f]or rights to have meaning, effective remedies must be available to redress violations.”²⁹ Yet, combatting climate change costs money, and contributing to climate change brings in money. Warming for economically powerful nations in temperate regions, including the U.S, China, and Japan, has pushed them into the perfect temperature ranges for economic output.³⁰ This was noted by Greta Thunberg in her widely publicized speech at the U.N., where she emotionally criticized world leaders, stating, “[w]e are in the beginning of a mass extinction, and all you can talk about is money and fairy tales of eternal economic growth.”³¹

In essence, though the Convention aims to protect children from the reckless practices of their own countries, the Convention is more or less at the mercy of those countries’ consensual cooperation. And countries that are focused on economic growth will almost certainly

²⁵ See OPIC, *supra* note 6, art. 13(1) (emphasis added).

²⁶ *Id.* art. 13(2) (emphasis added).

²⁷ *Id.* art. 13(4) (emphasis added).

²⁸ *Id.* art. 14(1) (emphasis added).

²⁹ U.N. Comm. on the Rts. of the Child, General Comment No. 5, ¶ 24, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003).

³⁰ Jason Daley, *The Rich Get Richer Under Climate Change, 50 Years of Data Shows*, SMITHSONIAN MAG. (Apr. 23, 2019), <https://www.smithsonianmag.com/smart-news/climate-change-has-worsened-income-inequality-over-last-50-years-180972021/> [<https://perma.cc/9ZDS-6YAR>].

³¹ *Transcript: Greta Thunberg’s Speech At The U.N. Climate Action Summit*, NPR (Sept. 23, 2019), <https://www.npr.org/2019/09/23/763452863/transcript-greta-thunbergs-speech-at-the-u-n-climate-action-summit> [<https://perma.cc/5W8P-JP6U>].

choose to prioritize money over protecting and preserving the climate. Never even bothering to submit to OPIC, China has made no new pledges to take stronger, preventative climate change action,³² and the U.S. withdrew from, and only recently rejoined, the Paris Agreement.³³

In the past, when the U.N. Human Rights Committee has decided cases involving climate change, outcomes favoring plaintiffs sound very much like what petitioners in this case would consider a best-case scenario: “The State party proposes to rectify the situation by a remedy that the Committee deems appropriate”³⁴ This note will expand to look for any reasons countries may be inclined to follow the recommendations of the Committee. Although not binding, concluding observations and general comments can be effective instruments of political pressure.³⁵ The lawsuit has already gained substantial publicity, in part because it is the first of its kind, but also because the young activists involved have been so successful in garnering attention to the climate change crisis on a global scale.

I. THE CONVENTION AND THE CURRENT RESPONSE TO CLIMATE CHANGE

Imagine a scenario where Person A closes the fridge, hears a loud crash, concludes that it is not their problem, and walks away. Minutes later, Person B opens the fridge only to have a Tupperware container of thick soup fall open all over their shoes, thereby suffering the consequences of Person A’s irresponsibility. Person B decides to take legal action. In the real world, the crash in the fridge represents the environment. Person A represents world leaders who will probably be dead before climate change can become life-threatening for them. Person B represents future generations and children.

³² Rick Gladstone & Alan Yuhas, *What Happened at the U.N. General Assembly*, N.Y. TIMES (Sept. 24, 2019), <https://www.nytimes.com/2019/09/24/world/united-nations-general-assembly-recap.html?searchResultPosition=13> [https://perma.cc/5LF4-BUH2].

³³ Valerie Volcovici, *U.S. Submits Formal Notice of Withdrawal from Paris Climate Pact*, REUTERS (Aug. 4, 2017), www.reuters.com/article/us-un-climate-usa-paris-idUSKBN1AK2FM [https://perma.cc/QN3A-YDRH]. Elian Peltier & Somini Sengupta, U.S. Formally Rejoins the Paris Climate Accord, N.Y. TIMES (Feb. 19, 2021), <https://www.nytimes.com/2021/02/19/world/us-rejoins-paris-climate-accord.html>.

³⁴ U.N. Hum. Rts. Comm., *Lubicon Lake Band v. Canada*, U.N. Doc. CCPR/C/38/D/167/1984, ¶ 33 (Mar. 26, 1990).

³⁵ Roberto Virzo, *The United Nations Committee on the Rights of the Child and the Protection of the “Fundamental Rights” of LGBTI Minors*, 45 SYRACUSE J. INT’L L. & COM. 59, 62 (2017).

This is reality: minors have begun suing for the harms suffered as a result of environmentally injurious practices. This is particularly interesting because climate change, as of late, has begun to be treated like a political stance instead of a hard science, despite seemingly endless evidentiary support for the reality of climate change. This characterization of climate change became widely popular under the Trump administration,³⁶ and has been used as a defense in some lawsuits. As recently as 2016, the United States, as a defendant in an environmental lawsuit, attempted (unsuccessfully) to have the case dismissed “for lack of jurisdiction because the case presents a non-justiciable political question”³⁷ Climate change is not political, and unlike astrology horoscopes or religion, it is not something that you can opt out of believing in. Those who deny climate change do so because they *want* it to be political,³⁸ or, for some of the more prominent climate-change deniers, because they are perhaps paid by fossil fuel companies to take that position.³⁹ In the end, while it is possible to wake a person who is sleeping, no amount of noise will wake a person who is pretending to be asleep.⁴⁰

But, seeing as how climate change is a global effect caused by multiple countries, how would future generations go about suing multiple countries? The following section seeks to provide an answer to this question, an explanation of the answer, and important background context.

³⁶ Paul Krugman, Opinion, *Climate Denial Was the Crucible for Trumpism*, N.Y. TIMES (Dec. 3, 2018) (“The G.O.P. wasn’t always an anti-environment, anti-science party. George H.W. Bush introduced the cap-and-trade program that largely controlled the problem of acid rain. As late as 2008, John McCain called for a similar program to limit emissions of the greenhouse gases that cause global warming.”).

³⁷ *Juliana v. United States*, 217 F. Supp. 3d 1224, 1235 (D. Or. 2016).

³⁸ See Cale Jaffe, *Melting the Polarization Around Climate Change Politics*, 30 GEO. ENV’T L. REV. 455, 468-69 (2018). (“In 2009 and 2010, efforts to strengthen a bipartisan coalition to pass cap-and-trade legislation failed in spectacular fashion. Although the Republican party’s 2008 platform acknowledged climate change and supported ‘measured and reasonable steps,’ by 2012 the GOP’s position had been transformed into an outright opposition to ‘any and all cap and trade legislation.’ Further, Republicans were committed to ‘prohibit[ing] EPA from moving forward with new greenhouse gas regulations.’ And of course, in November 2016, the country elected a Republican President who alleged that global warming was a ‘total fraud.’”).

³⁹ Krugman, *supra* note 36. Although Paul Krugman of the New York Times asserts this in his article “*Climate Denial Was the Crucible for Trumpism*,” he does not offer any concrete evidence in support of this contention. He does, however, link to a website entitled “beforetheflood.com” in which viewers can browse a list of the top ten climate deniers and, if applicable, whom they are allegedly receiving payouts from. See *Id.*; BEFORE THE FLOOD, beforetheflood.com [https://perma.cc/DK6Z-GBZ7] (last visited Mar. 20, 2021).

⁴⁰ JONATHAN SAFRAN FOER, *EATING ANIMALS* 102 (2009).

A. THE CONVENTION ON THE RIGHTS OF THE CHILD

On November 20, 1989, the General Assembly of the U.N. adopted the Convention on the Rights of the Child.⁴¹ Some countries had argued that there was a need for a comprehensive statement on children's rights that would be binding under international law.⁴² That argument was influenced by the disturbing reports of various harms suffered by children worldwide: "harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse."⁴³ As a result, the Convention begins with a statement of non-discrimination: the rights of the Convention are to apply equally to all children "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."⁴⁴ Article 3 of the Convention provides for the best interests of the child"; Article 6 provides for the "inherent right to life"; and Article 12 recognizes children's freedom "to have opinions in all matters affecting them."⁴⁵

The rights protected by the Convention sound nice, but what does any of this mean for, say, a twelve-year-old girl in Brazil whose home has been damaged during one of many extreme storms that used to be rare occurrences?⁴⁶ Perhaps she has never even met an attorney, let alone been in a financial position to retain one. This does not necessarily exclude her from enjoying the protections of the Convention. On December 19, 2011, the U.N. General Assembly approved OPIC, which allows individual children to petition the UN directly in regard to violations.⁴⁷ There are forty-six countries that have agreed to participate in OPIC.⁴⁸ In other

⁴¹ G.A. Res. 44/25, *supra* note 2.

⁴² *Fact Sheet No. 10 (Rev. 1), The Rights of the Child*, U.N. OFF. OF THE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/Documents/Publications/FactSheet10rev.1en.pdf> [<https://perma.cc/Q4WR-P4ZM>].

⁴³ World Conference on Human Rights, *Report of the World Conference on Human Rights; Report of the Secretary-General*, ¶ 48, U.N. Doc. A/CONF.157/24 (Part I) (Oct. 13, 1993).

⁴⁴ G.A. Res. 44/25, *supra* note 2, art. 2(1).

⁴⁵ *Id.* arts. 3, 6, 12.

⁴⁶ See generally *Sacchi et al. v. Argentina*, Pet'rs' Compl., ¶ 8 (U.N. Comm. on the Rts. of the Child filed Sept. 23, 2019).

⁴⁷ OPIC, *supra* note 6.

⁴⁸ *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, U.N. TREATY COLLECTION https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-dd&chapter=4&clang=_en [<https://perma.cc/RGX7-VZEG>] (last updated Mar. 20, 2021, at 11:15:50 AM).

words, children who live in one of those forty-six countries can petition the UN directly. Additionally, children who live in countries that have not agreed to participate in OPIC, or have not ratified the Convention at all (the United States is the only country that has not ratified), can still join in a suit against OPIC countries if they choose to.⁴⁹ If a child chooses to take this action, the suit will not target their own country of origin, but most children recognize that combatting climate change is a global effort,⁵⁰ and they, therefore, still have an interest in seeking a remedy.

B. PROCEDURE FOR THE CONVENTION ON THE RIGHTS OF THE CHILD

As mentioned above, children who live in OPIC-participating countries can petition the U.N. directly. Once a complaint is filed with the U.N., it is reviewed by the Committee on the Rights of the Child (“CRC”), a body of the U.N. consisting of eighteen independent experts that monitor implementation of the Convention and the Convention’s Optional Protocols.⁵¹ When nations agree to OPIC, they recognize the competence of the CRC to monitor implementation of the Convention and OPIC.⁵²

Like any treaty, and inherent in international law, all parties who have signed, ratified, accepted, or approved said treaty have expressed consent to be *bound* by the treaty,⁵³ including the Convention and OPIC. However, the binding nature of OPIC requires some further analysis, as the text of the treaty seems fundamentally optional. Excerpts from the section on Inquiry Procedure state “[i]f the Committee receives reliable information indicating grave or systematic violations . . . the Committee

⁴⁹ *Human Rights Bodies – Complaints Procedure*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx> [https://perma.cc/V8K7-WDBF] (last visited Mar. 20, 2021).

⁵⁰ Chris Mooney, *Maybe You Can Change People’s Minds About Climate Change After All*, WASH. POST (Oct. 28, 2014), <https://www.washingtonpost.com/news/wnk/wp/2014/10/28/maybe-you-can-change-peoples-minds-about-climate-change-after-all/?arc404=true> (referencing a study at North Carolina State University that sampled 378 sixth, seventh, and eighth grade students. Students were given questionnaires designed to assess their understanding of climate science (the idea that humans are causing global warming). The study found that as the students’ level of scientific knowledge about global warming increased, so did their acceptance of the idea that it is caused by humans. *Id.*

⁵¹ *Committee on the Rights of the Child*, U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx> [https://perma.cc/D4E2-9N4S] (last visited Mar. 20, 2021).

⁵² See OPIC, *supra* note 6, arts. 1(1)–(2).

⁵³ Vienna Convention on the Law of Treaties, *supra* note 24, art. 18.

shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay”⁵⁴ Other inquiry procedures include those already discussed above.⁵⁵

It would seem that while States are bound to the Convention, they are not bound to any remedial consequences of the Convention. The Committee itself has said that “[f]or rights to have meaning, effective remedies must be available to redress violations.”⁵⁶ Because the Convention was designed to reflect the interests of many countries, the language in the text is extremely broad,⁵⁷ and with this broadness comes disagreements of interpretation.⁵⁸ Thus, some countries that consent to jurisdiction of the Committee adhere to the observations and recommendations more sincerely than others.⁵⁹

Though not binding, the CRC’s concluding observations are effective instruments of political pressure because they are not confidential, and reports of the Committee are submitted to the U.N. General Assembly on a biennial basis.⁶⁰ For example, the Committee submitted concluding observations on the report submitted by Brazil under

⁵⁴ See OPIC, *supra* note 6, art. 13(1) (emphasis added).

⁵⁵ *Id.* arts. 13(2), 13(4), 14(1).

⁵⁶ U.N. Committee on the Rights of the Child, *supra* note 29, ¶ 24.

⁵⁷ See G.A. Res. 44/25, *supra* note 2 (Preamble: “. . . Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries . . .”).

⁵⁸ For an example on differing interpretations, see Karen A. McSweeney, Note, *The Potential for Enforcement of the United Nations Convention on the Rights of the Child: The Need to Improve the Information Base*, 16 B.C. INT’L & COMP. L. REV. 467 n. 47 (1993).

⁵⁹ State Parties can submit reservations to the Convention, as Iran did in 1999, stating “In signing this Convention the Islamic Republic of Iran is making reservation to the articles and provisions which may be contrary to the Islamic Shariah, and reserves the right to make such particular declaration, upon its ratification.” U.N. Secretary-General, *Reservations, Declarations and Objections Relating to the Convention on the Rights of the Child*, at 25, U.N. Doc. CRC/C/2/Rev.8 (Dec. 7, 1999). The Committee responded to Iran’s reservation, stating, “the Committee is nevertheless concerned that the broad and imprecise nature of the State party’s general reservation potentially negates many of the Convention’s provisions and raises concern as to its compatibility with the object and purpose of the Convention.” U.N. Comm. on the Rts. of the Child, *Consideration of Reports Submitted By States Parties Under Article 44 of the Convention*, ¶ 7, U.N. Doc. CRC/C/15/Add.123 (June 28, 2000). The Committee noted Iran’s lack of cooperation in a subsequent report, stating “While acknowledging that the period between the consideration of the initial report and the submission of the second report was rather short, the Committee regrets that the State party did not provide information on its follow-up actions regarding most of the Committee’s previous concluding observations . . .” U.N. Comm. on the Rts. of the Child, *Consideration of Reports Submitted By States Parties Under Article 44 of the Convention*, ¶ 4, U.N. Doc. CRC/C/15/Add.254 (Mar. 31, 2005).

⁶⁰ Virzo, *supra* note 35, at 62–64.

Article 8(1) of OPIC on the involvement of children in armed conflict on October 28, 2015.⁶¹ The document contains all of the Committee's most concerning observations, and subsequent to the observation—typically in bold—are the Committee's recommendations.

For example, Section V of the concluding observations document is titled "Prohibition and related matters."⁶² Beneath the title is a subsection called "Criminal legislation and regulations in force."⁶³ This subsection begins with a statement of concern: "The Committee is concerned that the recruitment of children under the age of 18 years by non-State armed groups, including private security companies, has still not been explicitly criminalized in the State party's legislation."⁶⁴ The statement of concern is followed by the bolded recommendation: "**The Committee recommends that the State party promptly enact in its legislation the explicit prohibition and criminalization of the recruitment of children under the age of 18 years by non-State armed groups, including private security companies.**"⁶⁵ The report contains many other observations and recommendations relating to the involvement of children in armed conflict in Brazil, but this is just one example.

Once the Committee makes its observations and recommendations, the State party concerned must submit a written response within six months providing information on action(s) taken, if any.⁶⁶ Since those concluding observations, there has not been any confirmation that Brazil did, in fact, criminalize the recruitment of minor children by non-State armed groups. However, a representative of Brazil was present and spoke at a Security Council meeting on August 2, 2019.⁶⁷ Representatives from various countries met at the meeting to stress to the Security Council that much more needed to be done to ensure the full

⁶¹ U.N. Comm. on the Rts. of the Child, Concluding Observations on the Report Submitted by Brazil under Article 8(1) of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, ¶ 1, U.N. Doc. CRC/C/OPAC/BRA/CO/1 (Dec. 28, 2015).

⁶² *Id.* at § V.

⁶³ *Id.*

⁶⁴ *Id.* ¶ 24.

⁶⁵ *Id.* ¶ 25 (emphasis added).

⁶⁶ U.N. Comm. on the Rts. of the Child, Rules of Procedure Under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, at Rule 41(3), U.N. Doc. CRC/C/62/3 (Apr. 16, 2013).

⁶⁷ Press Release, Security Council, Much More Must Be Done to Ensure Full Protection for Abducted, Detained Youngsters, Delegates Tell Security Council, in Day-Long Debate on Children and Armed Conflict, U.N. Press Release SC/13909 (Aug. 2, 2019).

protection of children abducted and detained in the course of armed conflict.⁶⁸ Brazil's representative, Ricardo De Souza Monteiro, emphasized that "challenges in this area do not result from a lack of norms, but rather implementation gaps," and went on to call, first and foremost, for efforts to guarantee that all conflict parties and States ensure respect for international law.⁶⁹ Concerningly, Monteiro concluded his comments with, "[t]he damages that armed conflict cause children might be mitigated, but never eliminated[.]"⁷⁰

C. TO DATE, GLOBAL RESPONSE TO CLIMATE CHANGE

Keeping in mind that climate change has become increasingly politicized, it remains a mystery how countries might respond to observations and recommendations by the Committee regarding their environmental practices. This article will later discuss the groundbreaking lawsuit filed earlier this year, in which children from around the world have joined together to file a complaint against five of the largest GHG emitting countries that consent to OPIC jurisdiction. It is the first time that the Convention and OPIC has been invoked to file a formal complaint about climate change. The U.N. General Assembly published an analytical study on the relationship between climate change and the full and effective enjoyment on the rights of the child, long before this groundbreaking lawsuit was filed.⁷¹ That 2017 study found that children are "disproportionately affected by changes in their environment, due to their unique metabolism, physiology, and developmental needs. Changes in temperature, air and water quality and nutrition are likely to have more severe and long-term impacts on children's health, development and well-being."⁷² The study also recognized that "alterations to the social and physical environment can have far-reaching implications for children's long-term physical *and mental health* and overall quality of life."⁷³ This is critically important, as many of the petitioners in the recent suit are

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Rep. of the U.N. Hum. Rts. Council, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, U.N. Doc. A/HRC/35/13 (May 4, 2017).

⁷² *Id.* ¶ 4.

⁷³ *Id.* (emphasis added).

alleging adverse cultural impacts, depression coupled with weight loss, and anxiety as a result of climate change.⁷⁴

Further, as noted in a panel discussion on climate change and the rights of the child at the 34th Session of the Human Rights Council, the Convention on the Rights of the Child describes the rights of the child to *survival, development, protection, and participation*.⁷⁵ The right to survival is an inherently anticipatory right, which requires action that *prevents* disaster instead of action taken in *response* to disaster that has already been inflicted and could have been avoided. Moreover, in a separate study published by the General Assembly, it is very clearly stated that “[c]limate change is real, human-made GHG emissions are its primary cause, and it contributes, among other things, to the increasing frequency of extreme weather events and natural disasters, rising sea levels, floods, heatwaves, drought and the spread of tropical and vector-borne diseases.”⁷⁶ The study lists several consequences of climate change, including altered ecosystems, disruption in food production and water supply, damaged infrastructure, and increased morbidity and mortality.⁷⁷

The U.N. does not seem to be slowing down on its approach to combatting climate change. In fact, they are doing quite the opposite. The U.N. Human Rights Council announced that

[i]n 2018–2021, as per its organizational management plan, U.N. Human Rights Council has planned to shift its overall approach and focus more intensively, across all activities, on issues which connections with human rights are not well understood or documented. *One of these issues is climate change . . . UN Human Rights . . . [is] uniquely qualified to contribute to the promotion of more effective climate action that benefits all persons.*⁷⁸

⁷⁴ *Sacchi et al. v. Argentina*, Pet’rs’ Compl., ¶¶ 134, 159, 200 (U.N. Comm. on the Rts. of the Child filed Sept. 23, 2019). See generally Susan Clayton, *Climate anxiety: Psychological responses to climate change*, 74 J. ANXIETY DISORDERS 102263, 102264 (June 26, 2020) (“Children may experience the strongest effects. Children are already more vulnerable to effects of the direct experience of climate change. On average they have stronger responses to extreme weather events, such as PTSD, depression, sleep disorders, etc., partly due to their greater dependence on adult family members and social support networks that might be disrupted by the event.”).

⁷⁵ See generally G.A. Res. 44/25, *supra* note 2, arts. 6(1), 23(1).

⁷⁶ Rep. of U.N. Human Rights Council, *supra* note 71, ¶ 4.

⁷⁷ *Id.*

⁷⁸ *Human Rights and Climate Change Factsheet*, U.N. HUM. RTS. OFF. HIGH COMM’R, (Oct. 2018), <https://www.ohchr.org/Documents/Issues/ClimateChange/FactSheetClimateChange.pdf> [<https://perma.cc/378U-4J2X>] (last viewed Apr. 5, 2021).

It is important to remember that although the General Assembly cannot enact global legislation, but simply makes recommendations, these recommendations or resolutions have the potential of carrying significant political weight. Some have influenced national choice of foreign policy alternatives.⁷⁹ A number of resolutions have put Members in the position of losing or gaining (depending on whether or not they accepted the resolutions) political friendships or understanding. This was recently demonstrated in 2016, when, during a rally, President Donald Trump promised to remove the U.S. from the Paris Agreement.⁸⁰ In response, former French president Nicolas Sarkozy called for economic repercussions should Trump go through with the withdrawal: “I will demand that Europe put in place a carbon tax at its border, a tax of 1-3% for all products coming from the United States, if the United States doesn’t apply environmental rules that we are imposing on our companies.”⁸¹

In the current day and age, humans have seen renewed concern for our changing climate. With that concern, we have seen the emergence of new policies and procedures within the U.N., as well as new innovations from private companies (solar panels, wind turbines, electric cars, etc.), new legislation within the United States and among individual states. With the passage of time comes new environmental activists. As famous environmentalists such as Al Gore, David Attenborough, and even Leonardo DiCaprio age, future generations can look up to Quannah Chasinghorse (nineteen, of the Lakota Sioux Nations, who recently won protections for the Arctic National Wildlife Refuge), Helena Gualinga (nineteen, of Sarayuku, a small community in the Amazon rainforest, who traveled to New York City to march for climate justice and Indigenous self-determination), and Greta Thunberg (eighteen, of Sweden, who began the global ‘Skolstrejk for Klimatet’ (School Strike for Climate)).

Climate change is already here, it is real, and the vast majority of the world recognizes that. The question is no longer “does [Country X]’s leader *believe* in climate change?” Now, the question is, “how is [Country X]’s world leader combatting climate change?”

⁷⁹ Gabriella Rosner Lande, *The Changing Effectiveness of General Assembly Resolutions*, 58 CAUSING COMPLIANCE WITH INT’L L. 162, 163 (1964).

⁸⁰ Benjy Sarlin, *Donald Trump Pledges to Rip Up Paris Climate Agreement in Energy Speech*, NBC NEWS (May 26, 2016, 4:13 PM CDT), <https://www.nbcnews.com/politics/2016-election/donald-trump-pledges-rip-paris-climate-agreement-energy-speech-n581236> [https://perma.cc/V7TC-SHHG].

⁸¹ Jake Flanagan, *If Trump Pulls Out of the Paris Agreement, Europe Could Institute a “Carbon Tax” on US Imports*, QUARTZ (Nov. 14, 2016), <https://qz.com/837262/if-trump-pulls-out-of-the-paris-agreement-europe-could-institute-a-carbon-tax-on-us-imports/> [https://perma.cc/9G29-KZS3].

II. ANALYSIS: INTERNATIONAL CLIMATE AGREEMENTS AND POLITICAL PRESSURE

Key to a thorough analysis of the present litigation is a close analysis of prior major cases and relevant statutes. As previously noted, however, *Sacchi v. Argentina* is the first suit of its kind. The Committee on the Rights of the Child, to whom the complaint was submitted, has authored resolutions and recommendations to the various participating State parties concerning issues such as: the involvement of children in armed conflict; the sale of children; and child prostitution and child pornography. However, this suit constitutes the first time that the CRC has considered violations of human rights in the context of “recklessly causing and perpetuating life-threatening climate change.”⁸²

The aforementioned, narrow list of issues, however, does not mean that the current litigation has been submitted to the incorrect U.N. body; the CRC monitors the implementation of *all* aspects of the Convention on the Rights of the Child. Thus, the children in *Sacchi* are able to cite to various articles in the Convention that, all together, can be molded into one complex climate change suit. Here, the children allege climate change violations through Article 6 (right to life), Article 24 (right to health), and Article 30 (right to culture).⁸³

A. UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

In 1990, President George H.W. Bush signed the Clean Air Act, and two years later, he not only signed the U.N. Framework Convention on Climate Change (UNFCCC), but also succeeded in getting Congress to ratify the treaty.⁸⁴ President Bush, recognizing that voluntary action alone is insufficient, said of climate change: “We can reverse the errors of this generation . . . [and be] mindful of the next. All of us have been given a

⁸² *Sacchi et al. v. Argentina*, Pet’rs’ Compl., ¶ 24 (U.N. Comm. on the Rts. of the Child filed Sept. 23, 2019).

⁸³ *Id.*

⁸⁴ Fred Krupp, *George H.W. Bush, Environmental Hero: He Exemplified the Real Art of the Deal*, ENVTL. DEF. FUND (Dec. 4, 2018), <https://www.edf.org/blog/2018/12/04/george-h-w-bush-environmental-hero-he-exemplified-real-art-deal> [<https://perma.cc/WD4V-6EVM>].

trust, a trust that lies in the stewardship of our planet. In this, we must not fail.”⁸⁵ This move was significant in several respects.

First, the cooperation of a Republican president in combatting climate change is something that had not been seen before. And though there have only been two additional Republican presidents since George H.W. Bush, it is certainly something that has not been seen again. Economic priorities have long since trumped any perceived obligation to combat climate change.⁸⁶ Second, when the UNFCCC became effective in 1994, there was less scientific evidence than there is now.⁸⁷ Member states were bound to act in the interests of human safety even in the face of scientific uncertainty.⁸⁸ Third, the UNFCCC requires member states to regularly report on their climate change policies and measures (this is the Convention’s mechanism for keeping tabs on fellow parties to the convention). Annex I (industrialized countries) must also submit an annual inventory of their GHG emissions.⁸⁹ In other words, the United States’ GHG emissions are no secret to the rest of the world. Regardless of whether the United States is a signatory to or ratifies any future international climate agreements, these regular disclosures are more or less a guarantee. Such disclosures contribute significantly to the waging of political pressure against various parties. Finally, the UNFCCC makes up the UN body responsible for drafting two critical agreements aimed at combatting climate change: the Kyoto Protocol and the Paris Agreement.⁹⁰

1. *The Kyoto Protocol*

Signed in 1997 and effective in 2005, the Kyoto Protocol is the Paris Agreement’s predecessor and strict parent; while climate goals in the

⁸⁵ *Id.*

⁸⁶ See Coral Davenport & Eric Lipton, *How G.O.P. Leaders Came to View Climate Change as Fake Science*, N.Y. TIMES (June 3, 2017), <https://www.nytimes.com/2017/06/03/us/politics/republican-leaders-climate-change.html> [<https://perma.cc/VMD8-8DCM>] (“The Republican Party’s fast journey from debating how to combat human-caused climate change to arguing that it does not exist is a story of big political money. . .”).

⁸⁷ *What is the United Nations Framework Convention on Climate Change?*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> [<https://perma.cc/78XM-PKZN>] (last visited Jan. 24, 2021).

⁸⁸ *Id.*

⁸⁹ United Nations Framework Convention on Climate Change, art. 4(2)(b), March 21, 1994, 1771 U.N.T.S. 172 [hereinafter Paris Agreement].

⁹⁰ See *id.*; see generally Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 148 [hereinafter Kyoto Protocol].

Paris Agreement are politically encouraged, the goals in the Kyoto Protocol are legally binding—far more “shall” provisions than “may” provisions.⁹¹ The main goals of the Kyoto Protocol are underscored in Article 2, and include but are not limited to:

Implement[ing] and/or further[ing] elaborate policies and measures in accordance with its national circumstances, such as: (i) Enhancement of energy efficiency in relevant sectors of the national economy; (ii) Protection and enhancement of sinks and reservoirs of greenhouse gases . . . promotion of sustainable forest management practices, afforestation and reforestation; (iii) Promotion of sustainable forms of agriculture in light of climate change considerations . . .⁹²

The Kyoto Protocol was signed during the Clinton administration, but did not pass the Senate.⁹³ This was no surprise, as approximately five months earlier, the Senate had unanimously passed, by a vote of 95-0, the Byrd-Hagel resolution, which stated that the United States should not sign onto a GHG emissions protocol that exempts developing countries from commitments or causes harm to the U.S. economy.⁹⁴

These sentiments were echoed by President George W. Bush in a March 13, 2001, letter to several senators, wherein he wrote:

As you know, I oppose the Kyoto Protocol because it exempts 80 percent of the world, including . . . China and India, from compliance, and would cause serious harm to the US economy. The Senate’s vote, 95-0, shows that there is a clear consensus that the Kyoto Protocol is an unfair and ineffective means of addressing global climate change concerns.⁹⁵

The President’s statement on how the Kyoto Protocol applies to developing countries like China and India is false. The introductory clause of Article 10 of the Protocol explains that “[a]ll Parties, taking into account their common but differentiated responsibilities. . . shall . . .”⁹⁶ In other words, *all* parties have responsibilities and commitments, but the Protocol

⁹¹ See generally, Kyoto Protocol, *supra* note 92.

⁹² *Id.* arts. 2(1)(a)(i)–(iii).

⁹³ The President’s power to make the United States party to an international agreement hails from the Constitution, which limits that power on the condition of a two-thirds Senate vote; the Kyoto Protocol did not achieve such votes. U.S. CONST. art. II, § 2, cl. 2 (“He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . .”).

⁹⁴ See generally, S. Res. 107, 105th Cong. (1997).

⁹⁵ Suraje Dessai et al., *International Political History of the Kyoto Protocol: from the Hague to Marrakech and Beyond*, 4 INT’L. REV. FOR ENVTL. STRATEGIES 183, 187 (2003).

⁹⁶ Kyoto Protocol, *supra* note 92, art. 10.

recognizes that some countries will need more assistance than others in adhering to them. In anticipation of this disparity, the Protocol calls on parties to cooperate in the promotion and development of, and facilitate and finance, environmentally-sound technologies pertinent to climate change, in particular for developing countries.⁹⁷ Further, parties shall provide “new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments . . . of the Convention.”⁹⁸

In truth, there are several articles in the Protocol that compel developed countries to render financial aid to developing countries—countries that are not as economically or politically advanced as the main industrial powers, and mostly located in Africa, Asia, Eastern Europe, the Middle East, and Latin and South America⁹⁹— so that they, too, can participate in the global effort to combat climate change.¹⁰⁰ Not only does the Protocol mandate financial assistance to the poorer, less fortunate countries of our world, it also contains a procedural provision that provides for the binding consequences of non-complying parties (consequences to be determined by fellow member parties),¹⁰¹ and it plainly prohibits the making of any reservations to the Protocol.¹⁰² Any one or a combination of these features of the Protocol could perhaps contribute to President Bush’s characterization of the Protocol as “unfair.”¹⁰³

All respondents to the *Sacchi* lawsuit (Argentina, Brazil, France, Germany, and Turkey) have ratified the Kyoto Protocol. The United States remains only a signatory and has not ratified the Protocol. The U.S.’s rejection of the Kyoto Protocol did not necessarily nullify it entirely, but without cooperation from the world’s largest economy, the efficacy of the Protocol is significantly limited.

2. *The Paris Agreement*

The Paris Agreement was adopted on December 12, 2015, at the Twenty-First Session of the Conference of the Parties to the UNFCCC,

⁹⁷ *Id.* art. 10(c).

⁹⁸ *Id.* art. 11(2)(a).

⁹⁹ *Developing Country*, BLACK’S LAW DICTIONARY (11th ed. 2019).

¹⁰⁰ See Kyoto Protocol, *supra* note 92, arts. 3(14), 10(c), 10(e), 11(2)(a), 11(2)(b), 11(3).

¹⁰¹ *Id.* art. 18.

¹⁰² *Id.* art. 26.

¹⁰³ Dessai, *supra* note 97.

which took place in Paris, France.¹⁰⁴ It entered into force on November 4, 2016.¹⁰⁵ The Agreement was drafted in recognition of the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge.¹⁰⁶ The Agreement also recognizes the specific needs and special circumstances of developing countries, particularly those vulnerable to the adverse effects of climate change, and the fundamental priority of safeguarding food security.¹⁰⁷

The Agreement notes “the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of ‘climate justice’, when taking action to address climate change[.]”¹⁰⁸ While there are a number of procedures and measures included in the Agreement, there is no non-compliance provision. The next best thing is represented in Article 15:

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.
2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, *non-adversarial and non-punitive*. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.¹⁰⁹

In other words, there are no binding consequences under the Agreement. As previously mentioned, the Paris Agreement seeks to reach its goals through political encouragement as opposed to legally binding provisions.

Under the Obama administration, then-Secretary of State John Kerry signed the Paris Agreement on Earth Day, 2016, and the United States formally accepted the Paris Agreement on September 3, 2016. Upon entering the Agreement, former President Barack Obama envisioned that

¹⁰⁴ Paris Agreement, *supra* note 92.

¹⁰⁵ *The Paris Agreement*, UNITED NATIONS, <https://www.un.org/en/climatechange/paris-agreement#:~:text=The%20Paris%20Agreement%20formally%20entered,189%20have%20ratified%20the%20Agreement> [https://perma.cc/YCE9-5528] (last visited Mar. 20, 2021).

¹⁰⁶ Paris Agreement, *supra* note 92, at annex.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at arts. 15(1)–(2) (emphasis added).

[I]f we follow through on the commitments that this agreement embodies, history may well judge it as a turning point for our planet . . . [o]ne of the reasons I ran for this office was to make America a leader in this mission . . . I know diplomacy *can be [isn't always] easy, and progress on the world stage can sometimes be slow. But together, with steady persistent effort, with strong, principled, American leadership, with optimism and faith and hope, we're proving that it is possible.¹¹⁰

On November 4, 2019, Donald Trump formally notified the U.N. Secretary General of his decision to withdraw from the Agreement.¹¹¹ Twelve days prior at a conference in Pittsburgh, Trump, speaking to his audience, addressed the reasoning behind his decision:

I withdrew the United States from the terrible, one-sided Paris climate accord. It was a total disaster for our country . . . [a]nd all I do is get applauded for that move, so much. It would have been so bad for our country. They were taking away our wealth . . . What we won't do is punish the American people while enriching foreign polluters. Because I can say it: Right now—and I'm proud to say it: It's called 'America first.' Finally, it's called America first. My job is to represent the people of Pittsburgh, not the people of Paris.¹¹²

However noble it may have sounded in his head, the statement on representing the people of Pittsburgh, not Paris, is erroneous. The Paris Agreement is, of course, a global effort to combat global GHG emissions—it is not some concerted effort to combat solely Paris's GHG emissions.¹¹³ The Agreement got its name from the location wherein it was adopted. Nonetheless, the mayor of Pittsburgh rejected his statement, tweeting, "I can assure you that we will follow the guideline of the Paris agreement for our people, our country & future."¹¹⁴

Because the Paris Agreement contains no enforcement mechanism and, considering that the legitimacy of withdrawal would

¹¹⁰ President Barack Obama, Remarks on the Paris Agreement on Climate Change (Oct. 5, 2016), in DAILY COMP. PRES. DOC.

¹¹¹ U.N. Secretary-General, *United States of America: Withdrawal*, C.N.575.2019.TREATIES-XXVII.7.d (Nov 4, 2019) (depository notification).

¹¹² President Donald J. Trump, Remarks at the Ninth Annual Shale Insight Conference in Pittsburgh, Pennsylvania (Oct. 23, 2019), in DAILY COMP. PRES. DOC.

¹¹³ See Paris Agreement, *supra* note 92.

¹¹⁴ Bill Peduto (@billpeduto), TWITTER, (June 1, 2017, 3:03 PM), <https://twitter.com/billpeduto/status/870370288344674304?lang=en> [<https://perma.cc/7ETS-ZEA9>].

ultimately depend on the 2020 election,¹¹⁵ Trump's withdrawal will have little to no direct impact on the environment.¹¹⁶ This has led some to believe that the announcing plans to withdraw was merely Trump's attempt at achieving positive optics, demonstrating that he intends to follow through on his campaign promises.¹¹⁷ In fact, the 2020 election, having been won by President Joe Biden, did nullify Trump's withdrawal; President Biden rejoined the Paris Agreement on his first day in office, January 20, 2021.¹¹⁸ President Biden had emphasized his commitment to fighting climate change throughout his presidential campaign, and made a statement regarding his decision to rejoin the United States to the Paris Agreement shortly after signing the executive order to do so: "We can no longer delay or do the bare minimum to address climate change. This is a global, existential crisis. And we'll all suffer the consequences if we fail."¹¹⁹

This does raise the question of whether the President can actually "unsign" treaties, and if so, where that power originates from within our law. In 2002, President Bush's attempt to "unsign" the Rome Statute had an uncertain effect on international law; the U.S. signature remained on the Rome Statute, which eventually allowed reengagement with the statute during the eight years of the Obama administration.¹²⁰

The attempted Rome Statute withdrawal is just one example demonstrating that the rest of the world is not unfamiliar with the ever-changing foreign policy of the United States. Harold Hongju Koh, an international law professor at Yale Law School opines that Trump's

¹¹⁵ Paris Agreement, *supra* note 92, arts. 28(1)-(2) ("At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary. Any such withdrawal *shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal*, or on such later date as may be specified in the notification of withdrawal.") (emphasis added). See also Paolo Olavario, *Is Withdrawal from the Paris Climate Agreement Merely a Matter of Optics?*, GEO. ENV'T. L. REV. (APR. 3, 2017), <https://gielr.wordpress.com/2017/04/03/is-withdrawal-from-the-paris-climate-agreement-merely-a-matter-of-optics/> [<https://perma.cc/D4AN-Z54G>].

¹¹⁶ Olavario, *supra* note 117.

¹¹⁷ *Id.*

¹¹⁸ U.N. Secretary-General, *United States of America: Acceptance*, C.N.10.2021.TREATIES-XXVII.7.d (Jan 20, 2021) (depositary notification).

¹¹⁹ Elian Peltier & Somini Sengupta, *U.S. formally rejoins the Paris climate accord*, N.Y. Times, (Feb. 19, 2021) <https://www.nytimes.com/2021/02/19/world/us-rejoins-paris-climate-accord.html>.

¹²⁰ Harold Hongju Koh, *The Trump Administration and International Law*, 56 WASHBURN L.J. 413, 435-36 (2017).

ongoing assault on international law has international law “fighting back.”¹²¹ Professor Koh insists that thus far, Trump is not winning the fight:

Across a broad range of policy issues—immigration and refugee law, human rights, trade diplomacy, climate change, North Korean and Iranian denuclearization, cybersecurity, Russian adventurism, and America’s wars—the law is pushing back . . . But that resilience has been battered over the last two years, and might eventually give way should Trump be re-elected.¹²²

B. POLITICAL PRESSURE AS A MECHANISM FOR ENFORCING INTERNATIONAL LAW

For most international agreements and treaties, compliance can be coerced via political pressure.¹²³ For many agreements, indeed, it is the only hope for exacting compliance. Nations around the world applied significant pressure on the United States on two relevant occasions: when President Bush refused to make the U.S. party to the Kyoto Protocol, and again when President Trump announced the U.S.’s withdrawal from the Paris Agreement.¹²⁴ On both occasions, the efforts were unsuccessful.¹²⁵

This dilemma—the failure of political pressure to ensure compliance—creates the question: “now what do we do?” This is precisely the dilemma faced by the petitioners in *Sacchi*. Article 7(e) of the OPIC makes complaints inadmissible when: “[a]ll available domestic remedies have not been exhausted. This shall not be the rule where the application

¹²¹ Harold Hongju Koh, *Is Trump’s assault on international law working?*, OXFORD UNIV. PRESS BLOG (Mar. 11, 2019), <https://blog.oup.com/2019/03/trumps-international-law/> [https://perma.cc/H8DF-D5FJ].

¹²² *Id.*

¹²³ Olga Avdeyeva, *When Do States Comply with International Treaties? Policies on Violence Against Women in Post-Communist Countries*, 51 INT’L STUD. Q. 877 (2007).

¹²⁴ See David E. Sanger, *Bush Will Continue to Oppose Kyoto Pact on Global Warming*, N.Y. TIMES, (June 12, 2001) <https://www.nytimes.com/2001/06/12/world/bush-will-continue-to-oppose-kyoto-pact-on-global-warming.html> [https://perma.cc/9EPN-4F37] (“...[T]he members of the European Union have deliberately manipulated the debate—and unfairly caricatured Mr. Bush as an enemy of good environmental practice...”); Lisa Friedman, *Trump Serves Notice to Quit Paris Climate Agreement*, N.Y. TIMES, (Jan. 20, 2021) <https://www.nytimes.com/2019/11/04/climate/trump-paris-agreement-climate.html> [https://perma.cc/4QAR-HTBJ] (participating in months of negotiations early in the Trump Administration to salvage U.S. support).

¹²⁵ See Zhang Yong-Xiang et al., *The Withdrawal of the U.S. From the Paris Agreement and Its Impact on Global Climate Change Governance*, 8 ADVANCES CLIMATE CHANGE RES. 213, 214 (2017).

of the remedies is unreasonably prolonged or unlikely to bring effective relief.”¹²⁶ The problem for petitioners is the nonbinding nature of the Paris Agreement and the weak enforcement of the Kyoto Protocol. Both agreements rely on pressure from foreign nations to coerce compliance, but not a single named respondent has kept to their Paris Agreement or Kyoto Protocol promises.

French President Emmanuel Macron reacted to the *Sacchi* lawsuit by describing it as “very radical” and explained that, while all the movements of our youth are helpful, they ought to “focus on those who are furthest away, those seeking to block the way.”¹²⁷ Macron emphasized that he did not feel that either the French government nor the German government were blocking the way.¹²⁸ In other words, there is already some evidence that parties to an agreement, under the impression that *they* are not the problem, will not always apply any political pressure on one another; as long as everyone is in violation, no one is in violation. This approach to international law compliance inevitably leaves the complainant without a remedy. World leaders who have GHG emissions violations in common can simply engage in a mafia-like loyalty towards one another, effectively rendering the agreements worthless. The “less liable equals not liable” mindset among developed nations will be extremely dangerous to anyone seeking redress.

If individual nations are not going to hold each other to their respective Paris Agreement and Kyoto Protocol goals and targets, then the next step is to petition the appropriate U.N. body. For petitioners, this U.N. body is the Committee on the Rights of the Child. Petitioners may only target parties that have agreed to the OPIC procedure.¹²⁹ Of those parties who submit to the OPIC, petitioners have targeted five of the top GHG emitters. In a way, these child petitioners represent a last-ditch effort to achieve compliance with climate change agreements. To petitioners, the adults of the world have failed and are presently failing to get the job done or hold each other responsible.

The primary uncertainty moving forward is how the Committee will respond to the suit. Next, this note will turn to an analysis of prior

¹²⁶ OPIC, *supra* note 6, art. 7(e).

¹²⁷ Sophie Levy Ayoun & Qayyah Moynihan, *French President Emmanuel Macron says Greta Thunberg will 'antagonize societies' after she filed a lawsuit accusing France of inaction on global warming*, BUS. INSIDER (Sept. 24, 2019, 7:38AM), <https://www.businessinsider.com/french-president-reacts-to-greta-thunbergs-climate-change-lawsuit-2019-9> [<https://perma.cc/Z7SH-MFHT>].

¹²⁸ *Id.*

¹²⁹ Ayoun & Moynihan *supra*, note 121. OPIC, *supra* note 6, art. 22.

cases submitted and adjudicated by the Committee, especially those cases that concern Article 6 (right to life), Article 24 (right to health), and Article 30 (right to culture).

C. THE CASE LAW

The Committee on the Rights of the Child has conveniently provided on their website a link to all of their recent jurisprudence, and organizes the reports and concluding observations by date and by relevant Articles.¹³⁰ The recent jurisprudence consists mainly of views adopted by the Committee in response to communications submitted by the child authors of the various complaints.¹³¹ Typically, the adopted views are organized as either facts submitted by the author, the complaint, the State party's response, and issues and proceedings before the Committee.¹³² Oftentimes there is back and forth between the author's comments on the State party's comments, and the State party's comments on the author's comments, and so on.¹³³ In some cases there are third-party comments.¹³⁴

The section entitled "issues and proceedings before the Committee" constitutes the Committee's adopted views. The Committee always begins by considering the admissibility of the complaint. Communications to the Committee are considered inadmissible when they are, for example, anonymous, not in writing, or manifestly ill-founded or not sufficiently substantiated.¹³⁵ Communications are also often deemed inadmissible if the author has not yet exhausted all available domestic remedies (except where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief), or when the same matter has already been examined by the Committee, or has been or is being examined under another procedure of international investigation or

¹³⁰ See generally *Jurisprudence*, UNITED NATIONS HUM. RTS. OFF. HIGH COMM'R, <https://juris.ohchr.org/en/search/results?Bodies=5&sortOrder=Date> [<https://perma.cc/3VSG-84A6>] (last visited Jan. 30, 2021).

¹³¹ *Id.*

¹³² See U.N. Comm. on the Rts. of the Child, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 17/2017*, **, U.N. Doc. CRC/C/80/D/4/2016 (May 15, 2015).

¹³³ See *id.*

¹³⁴ See generally *id.* ¶¶ 10.1–10.3; U.N. Comm. on the Rts. of the Child, Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication, ¶ 9, No. 17/2017*, **, U.N. Doc. CRC/C/82/D/17/2017 (Nov. 5, 2019).

¹³⁵ OPIC, *supra* note 6, arts. 7(a)–(c).

settlement.¹³⁶ Often, claims under certain Articles will be deemed inadmissible while other claims under other Articles are admissible. Claims that are considered admissible will then advance to the next stage: consideration of the merits.¹³⁷

The Committee, a relatively new U.N. body, has a limited amount of precedent involving Articles 6, 24, and 30; but the precedent that exists is generally not very promising for the current petitioners. In May of 2018, the Committee responded to a communication involving three individuals, J.Y., Z.Y., and their son.¹³⁸ Z.Y.'s parents had not consented to the couple getting married, prompting the couple to flee to Turkey from their home country of Afghanistan.¹³⁹ The couple's son, A.Y., was born in Turkey in 2014.¹⁴⁰ That same year, all three traveled to Canada to seek protection,¹⁴¹ but were stopped in transit by Danish police at Copenhagen airport.¹⁴² They filed for asylum in Denmark and converted to Christianity.¹⁴³ Their application for asylum was rejected, as was their application for review.¹⁴⁴

In their complaint, the authors allege that their son's return to Afghanistan would seriously limit his possibilities of survival, in violation of Article 6 (right to life) of the Convention.¹⁴⁵ In consideration of admissibility, the Committee plainly stated that the claim "based on article 6 of the Convention, referring to an alleged risk to their son's survival, has never been raised before national authorities . . ." and thus declared it inadmissible under Article 7(e) of OPIC, failure to exhaust all available domestic remedies.¹⁴⁶

¹³⁶ *Id.* arts. 7(e)–(f).

¹³⁷ See generally OPIC, *supra* note 6.

¹³⁸ U.N. Comm. on the Rts. of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communication procedure, concerning communication. No. 7/2016*, **, U.N. Doc. CRC/C/78/D/7/2016 (Aug. 9, 2018) [hereinafter *Z.Y v. Denmark*].

¹³⁹ *Id.* ¶ 2.1.

¹⁴⁰ *Id.* ¶ 1.1.

¹⁴¹ *Id.* ¶ 2.2 ("...[A]rgu[ing] a fear that the female author's uncle would kill the male author because the couple had left Afghanistan, that the male author would be considered an 'enemy of the Islamic State in Iraq and the Levant' for being of Hazara ethnicity and of Shia Muslim faith, and that he would be killed for having converted to Christianity.").

¹⁴² *Id.*

¹⁴³ *Id.* ¶¶ 2.1, 2.4, 2.5.

¹⁴⁴ *Id.* ¶ 2.6.

¹⁴⁵ *Id.* ¶ 5.3.

¹⁴⁶ *Id.* ¶ 8.4.

Interestingly enough, the Committee in *Z.Y. v. Denmark* recognized the deteriorating human rights situation in Afghanistan, but felt that the authors had failed to justify a *personal* risk of a serious violation of A.Y.'s rights upon return to Afghanistan.¹⁴⁷ As a result, the communication was also deemed insufficiently substantiated and, thus, inadmissible, under Article 7(f) of OPIC (the communication is manifestly ill-founded or not sufficiently substantiated).¹⁴⁸ Similar reasoning has been used in the United States to dismiss suits based on climate change. In February of 2019, a District Court in Pennsylvania held that a plaintiff's "anxiety over climate change . . . is not a particularized injury" and that "[p]laintiffs' anticipated injuries are not imminent or certain."¹⁴⁹

Even more recently, on January 17, 2020, the United States Court of Appeals for the Ninth Circuit dismissed a suit that had a cause of action based on climate change. However, in that case, the court stated a different reason for dismissal.¹⁵⁰ *Juliana v. United States* had been an ongoing battle since 2015. The plaintiffs requested relief in the form of an order requiring the government to develop a plan to "phase out fossil fuel emissions and draw down excess atmospheric CO₂."¹⁵¹ The court reluctantly concluded that "such relief is beyond our constitutional power . . . the plaintiffs' impressive case for redress must be presented to the political branches of government."¹⁵² The court *had* found particularized injuries (one plaintiff was forced to leave her home due to water scarcity), and rejected the government's argument that the injuries are not particularized "because climate change affects everyone."¹⁵³ They quoted a United States Supreme Court case: "it does not matter how many persons have been injured" if the plaintiffs' injuries are "concrete and personal."¹⁵⁴

The dissenting opinion in *Juliana* expressed frustration with the majority's sentiment that the absence of power to grant relief should necessarily mean denial of relief.¹⁵⁵ Given that the suit was dismissed for want of standing, the majority conceded that the suit alleged enough facts

¹⁴⁷ *Id.* ¶ 8.13.

¹⁴⁸ *Id.*

¹⁴⁹ *Clean Air Council v. United States*, 362 F. Supp. 3d 237, 246 (E.D. Pa. 2019).

¹⁵⁰ *Juliana v. United States*, 947 F.3d 1159, 1175 (9th Cir. 2020).

¹⁵¹ *Id.* at 1165.

¹⁵² *Id.*

¹⁵³ *Id.* at 1168.

¹⁵⁴ *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007).

¹⁵⁵ *Juliana v. United States*, 947 F.3d at 1177 (Stanton, J., dissenting).

to proceed at the trial level on the first two aspects of injury-in-fact and traceability.¹⁵⁶ The suit failed because the majority felt that the relief sought would not suffice to stop climate change, and because the court lacked the power to award such relief.¹⁵⁷ Dissenting Judge Staton then argued that “. . . a federal court need not manage all of the delicate foreign relations and regulatory minutiae implicated by climate change to offer real relief, and the fact that this suit cannot alone halt climate change does not mean that it presents no claim suitable for judicial resolution.”¹⁵⁸ She suggested that even a partial or temporary reprieve would constitute meaningful redress, especially considering that plaintiffs are seeking to prevent the nation’s collapse.¹⁵⁹

Clearly, the Committee on the Rights of the Child is also looking for personal, particularized injuries, because complaints that are so lacking are deemed inadmissible under Article 7(f).¹⁶⁰ It is unclear what *would* overcome a finding of “manifestly ill-founded” or “not sufficiently substantiated,” given that the authors in *Z.Y. v. Denmark* had included in their complaint the fear that their son would be killed if deported to Afghanistan, because he would be considered an illegitimate child born out of wedlock.¹⁶¹ Such danger appears to be both particularized and imminent.

In another case decided by the Committee in late September of 2019, the author of the complaint was a national of Pakistan born in 2008 and living in Denmark.¹⁶² He and his mother were facing deportation back to Pakistan.¹⁶³ The boy’s parents had divorced, and the father allegedly suffered from a “mental disability” that rendered him incapable of caring for the child.¹⁶⁴ Back in Pakistan, the boy’s paternal family was angry about the divorce and about the fact that the father had “lost his status as

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 1175.

¹⁵⁹ *Id.* at 1176.

¹⁶⁰ OPIC, *supra* note 6, art. 7(f) (“The communication is manifestly ill-founded or not sufficiently substantiated;”).

¹⁶¹ *Z.Y. v. Denmark*, *supra* note 127, ¶ 2.4.

¹⁶² U.N. Comm. on the Rts. of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communication procedure, concerning communication. No. 36/2017*, **, ¶ 1.1, U.N. Doc. CRC/C/82/D/36/2017 (Sept. 26, 2019).

¹⁶³ *Id.*

¹⁶⁴ *Id.* ¶ 2.1.

head of the family.”¹⁶⁵ The paternal family members had allegedly made threats toward the boy and his mother from Pakistan.¹⁶⁶

But the Committee rejected the boy’s Article 6 (right to life) claim on the grounds that it was “general in nature and [did] not provide any information or arguments to justify how his rights under the invoked provision[] would be violated in the event of his deportation to Pakistan.”¹⁶⁷ The Danish Refugee Appeals Board and the Immigration Appeals Board assessed the boy’s ground for requesting asylum—the threats from his paternal family—but found it to be unreliable and elaborative, and found that the boy had not shown that the lower court’s assessment of the facts and evidence was arbitrary or otherwise amounted to a denial of justice.¹⁶⁸

A thorough search through the Committee’s recent jurisprudence reveals that all of the claimed violations of Article 6 that have been presented were deemed inadmissible under Article 7, usually under 7(f). There has been only one claim alleging violation of Article 30 (right to culture), and it, too, was deemed inadmissible under Articles 7(c), 7(d), and 7(f).¹⁶⁹ And of the five claims alleging violations of Article 24 (right to health), only one has been found to be admissible.¹⁷⁰ In that case, the State party had essentially eyeballed the child and declared him an adult, thereby excluding him from national protection as a child. The Committee noted:

... the author’s claims, unrefuted by the State party, regarding the State’s failure to provide protection in response to his situation as an unprotected, highly vulnerable unaccompanied child migrant who was ill, as well as the contradiction inherent in declaring the author to be an adult while at the same time requiring him to have a guardian in order to receive medical treatment and vaccinations. The Committee observes that this lack of protection occurred even after the author submitted identity documents to the Spanish authorities proving he

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* ¶ 9.3.

¹⁶⁸ *Id.* ¶¶ 9.7–9.8.

¹⁶⁹ U.N. Comm. on the Rts. 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 communication procedure in respect of communication., No. 6/2016**, ***, ¶¶ 4.9, 4.10, 4.15, U.N. Doc. CRC/C/81/D/6/2016 (May 15, 2019).

¹⁷⁰ U.N. Comm. on the Rts. of the Child, Views adopted by the Comm. under art. 10 of the Optional Protocol, concerning communication No. 22/2017*, **, ¶ 3.10, U.N. Doc. CRC/C/81/D/22/2017 (May 31, 2019).

was a child. It is of the view that the foregoing constitutes a violation of articles 20 (1) and 24 of the Convention.¹⁷¹

Having found a violation of the child's right to health, the Committee specified that the State party must provide the author with effective reparation for the violations, including by providing him with an opportunity to regularize his administrative status in the State party.¹⁷² The Committee also obligated the State to prevent similar violations in the future.¹⁷³ The State Party was asked to follow up with the Committee as soon as possible and within 180 days of the decision, to provide the Committee with information about the measures it has taken to give effect to the Committee's Views.¹⁷⁴ The State Party must also publish the adopted Views and disseminate them widely.¹⁷⁵

1. *Distinguishing Sacchi*

Overall, the Committee can appropriately be described as conservative when it comes to finding actual violations under the CRC. Despite the fact that the Committee's findings are not legally binding on any State Party, they do carry significant political weight, which may explain why the Committee sets such high standards for admissibility. But this should not deter the hopes of any of the young petitioners in the present litigation. The *Sacchi* case is distinguishable in many respects.

First, the petitioners should be able to easily overcome any accusation that their claims are "manifestly ill-founded or not sufficiently substantiated." Throughout the ninety-seven page complaint, petitioners cite empirical studies and data from globally respected institutions, including the Intergovernmental Panel on Climate Change, the U.S. EPA, Climate Analytics Report, NASA, the UN Environmental Programme, the World Meteorological Organization, the National Snow and Ice Data Center, the World Health Organization, and many, many more, all of which lend support to petitioners' complaint that the Earth is warming at a rate that will render it uninhabitable for future generations.¹⁷⁶

¹⁷¹ *Id.* ¶ 13.11.

¹⁷² *Id.* ¶ 14.

¹⁷³ *Id.*

¹⁷⁴ *Id.* ¶ 16.

¹⁷⁵ *Id.*

¹⁷⁶ See *Sacchi et al. v. Argentina*, Pet'rs' Compl., (U.N. Comm. on the Rts. of the Child filed Sept. 23, 2019).

Moreover, petitioners alleged personal injuries are far from general or insufficiently substantiated. Paragraphs five through eleven of the complaint detail all of the physical and mental injuries suffered by petitioners as a result of global climate change.¹⁷⁷ Hotter temperatures have led to children being hospitalized for asthma and certain infectious diseases that thrive in hotter environments, such as mosquito-borne diseases and dengue fever.¹⁷⁸ Dengue fever, when it becomes life-threatening, involves severe abdominal pain, persistent vomiting, bleeding gums and nose, blood in urine, stool, and vomit, and bleeding under the skin—which looks like bruising, difficult, rapid breathing, and fatigue.¹⁷⁹ Others have been hospitalized for weeks at a time due to smoke inhalation from wildfires that have destroyed communities. Droughts and violent storms have forced families out of their homes. Flooded bodies of water have increased the risk of infectious diseases.

These are a few of the injuries of which petitioners complain. The Centers for Disease Control and Prevention confirms that: (1) climate change will cause “some existing health threats [to] intensify”; (2) “new health threats will emerge”; (3) “[n]ot everyone is equally at risk”;¹⁸⁰ and (4) the results can lead to “increased respiratory and cardiovascular disease, injuries, and premature deaths related to extreme weather events, changes in the prevalence...of food- and water-borne illnesses and...threats to mental health.”¹⁸¹

Second, petitioners have a viable chance at overcoming the Article 7(e) prohibition on claims that have not exhausted all domestic remedies. As a reminder, the exception to Article 7(e) applies in cases where the “application of the remedies is unreasonably prolonged or unlikely to being effective relief.”¹⁸² Petitioners first detail how “[c]hildren’s special and dependent status creates real difficulties for them in pursuing remedies

¹⁷⁷ *Id.* ¶¶ 5–11.

¹⁷⁸ *Id.* ¶ 5; KIM KNOWLTON ET AL., *FEVER PITCH: MOSQUITO-BORNE DENGUE FEVER THREAT SPREADING IN THE AMERICAS* at iv (2009).

¹⁷⁹ *Dengue fever, Symptoms & Causes*, MAYO CLINIC (Nov. 18, 2020), <https://www.mayoclinic.org/diseases-conditions/dengue-fever/symptoms-causes/syc-20353078> [<https://perma.cc/DX5N-5XNR>].

¹⁸⁰ *Climate Effects on Health*, *supra* note 14. Factors such as age, economic resources, and location are important considerations. *Id.* For example, the Mayo Clinic lists some preventative measures that can be taken, the first one being “[s]tay in air-conditioned or well-screened housing”—a suggestion not financially available to many of the individuals at risk for dengue fever. *Dengue fever, Symptoms & Causes*, *supra* note 179.

¹⁸¹ *Climate Effects on Health*, *supra* note 14.

¹⁸² *Sacchi et al. v. Argentina*, Pet’rs’ Compl., ¶ 310.

for breaches of their rights.”¹⁸³ This may not be persuasive, as the CRC has received complaints from children all over the world, whether they are represented by counsel or not.

But what *will* likely be persuasive is petitioners’ global-scale argument. The case involves injuries to sixteen children worldwide and misconduct of five different countries (respondents) through their individual and collective actions. Thus, the claims implicate foreign sovereign immunity. As the complaint illustrates, this means that “a French court could not hear claims by French petitioner Iris Duquesne against Brazil concerning Brazil’s climate policies . . . no single court could provide the same remedy sought in this petition against these five sovereigns.”¹⁸⁴ Attempting to exhaust all available domestic remedies in all five sovereign states would be unduly burdensome, delayed, practically impossible, and would make any potentially available legal remedies an impossibility.¹⁸⁵ The CRC is the most appropriate forum to submit the present complaint to, precisely because it is what unifies the five respondents.

Third, unlike the Court of Appeals in *Juliana v. United States*, the Committee *does* have the requisite power to provide the relief sought. In the complaint, the petitioners make six requests for relief. The first three are requested findings—that the Committee find that climate change is a children’s rights crisis; that each respondent is knowingly perpetuating the climate crisis; and that by doing so, each respondent is violating petitioners’ rights to life, health, and the prioritization of the child’s best interests.¹⁸⁶ If the Committee does find violations of Article 6’s right to life, it will be the first time they have done so. And they will have done so after many rejected prior claims alleging violations of the right to life. But the Committee has emphasized that the Convention does extend to protections from climate change, as evidenced by harsh concluding observations to Australia:

... the effects of climate change have an undeniable impact on children’s rights, for example the rights to life, survival and development, non-discrimination, health and an adequate standard of living . . . The Committee expresses its concern and disappointment that a protest led by children calling on government to protect the

¹⁸³ *Id.* ¶ 312.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* ¶¶ 325–28.

environment received a strongly worded negative response from those in authority, which demonstrates disrespect for the right of children to express their views on this important issue.¹⁸⁷

Thus, the Committee has essentially announced its willingness to find a violation of the right to life in the climate change realm. In their report, the Committee urged Australia on two measures: ensure that the children are listened to, and work to reduce emissions of GHG through targets and deadlines.¹⁸⁸

The Committee's response to Australia is more or less just what the children petitioners of the current lawsuit are looking for. After their three requested findings, the petitioners request the Committee to make three recommendations: (1) that respondents review and amend their laws and policies to ensure acceleration of mitigation and adaptation efforts (which includes making the interests of the child a primary consideration and allocating the costs and burdens of climate change mitigation and adaptation); (2) that each respondent initiate cooperative international action—and increase efforts with existing international cooperatives—to establish binding and enforceable measures to mitigate climate change; and (3) that respondents ensure the child's right to be heard and to express their views freely.¹⁸⁹ After ninety-seven pages, the complaint does not ask for a single penny to go into the pockets of the children. It also does not ask for any sort of punishment as a response to the violations. The petitioners are very plainly seeking change.

Given the strong likelihood that the Committee will respond favorably to petitioners, the real enduring mystery will be how the respondents modify their emissions, if they choose to accept the recommendations at all. The lawsuit has demonstrated that the children are serious about climate change, and that they know they have a right to be heard. Despite the fact that the petitioners are children and have nothing to gain financially from this experience, they have received substantial backlash and criticism, namely from adults who have much to gain financially from not cooperating in the fight to mitigate climate change.

The worst possible outcome would be that all of the countries that are supposed to hold each other responsible for following through on their climate change commitments just cease to do so, each country simply unwilling to use leverage or political pressure to ensure compliance.

¹⁸⁷ U.N. Committee on the Rights of the Child, *supra* note 11, ¶ 40.

¹⁸⁸ *Id.* ¶ 41.

¹⁸⁹ *Sacchi et al. v. Argentina*, Pet'rs' Compl., ¶¶ 329–31 (U.N. Comm. on the Rts. of the Child filed Sept. 23, 2019).

Currently, French President Emmanuel Macron and German Chancellor Angela Merkel are both being criticized for their respective countries' inadequate plans to combat climate change. This is a bit worrisome: both are world leaders who have openly supported climate scientists and the fight against climate change. To alienate those who have been consistently receptive to warnings from environmentalists would be a huge mistake.

While speaking with French broadcaster Europe 1, Macron criticized young climate activist and named petitioner Greta Thunberg for taking such a radical and incompatible approach: "All movements among our youth . . . are useful. But now they must concentrate on . . . those who are trying to block [sustainable initiatives]. These radical positions will naturally antagonize our societies."¹⁹⁰ Angela Merkel was more optimistic in her disagreement, saying, "I would like to take the opportunity to strongly contradict her in one matter. She did not adequately address the way technology and innovation, especially in the energy sector but also in energy conservation, raise possibilities of reaching our goals."¹⁹¹ The two world leaders have a well-known strong relationship, and it would not be surprising if they came to the defense of one another in the face of negative observations from the Committee. The non-legally binding recommendations of the CRC—or any other U.N. body armed only with the power of suggestion—will fail to be effective if countries are willing to turn a blind eye when one comes under fire for recklessly perpetuating climate change. The Committee will naturally be torn between representing the interests of the children and recognizing that combatting climate change is a slow-moving effort, which should not be considered the fault of any cooperating countries.

III. CONCLUSION

The United Nation's concern for the underrepresented children of the world is evident through the establishment of the Committee on the Rights of the Child. Historically, the Committee's case law has not been kind to child petitioners seeking relief under Articles 6, 24, or 30. However, the recent shift in jurists' attitudes toward the intensifying threat of global climate change, coupled with the Committee's apparent eagerness to use their authority to acknowledge such a threat, demonstrates

¹⁹⁰ Ivan Pentchoukov, *Leaders of France, Germany, Australia Rebuke Greta Thunberg*, EPOCH TIMES (Sept. 26, 2019), https://www.theepochtimes.com/leaders-of-france-germany-and-australia-rebuke-greta-thunberg_3097308.html [<https://perma.cc/NX4D-ZXY7>].

¹⁹¹ *Id.*

a promising outcome for the children in *Sacchi*. Though this case is the first of its kind, if it results in the Committee's affirmation of the alleged harm, and if the respondent countries then submit to the advice of the Committee, the children will have discovered a new way to effect real change and enforce real participation in the global fight against climate change.