

Well-Being as a Cross-Cutting Principle in Sustainability: Towards a Common Standard in International Law?

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Abstract

International legal instruments do not explicitly recognize well-being as an autonomous legal concept with a clearly defined meaning, scope, or normative implications for fundamental rights and other areas of international law. Although its legal status remains insufficiently explored, well-being has gained increasing significance through the interpretation of international courts and judicial bodies, particularly in the fields of human rights protection, environmental law, and climate litigation. The absence of a universally accepted definition raises important questions concerning its legal nature and potential recognition as a principle of international law. This article examines the conceptual foundations and evolving significance of well-being in international law, with particular emphasis on the jurisprudence of the International Court of Justice and other international and regional judicial bodies. Through an analysis of relevant legal instruments and case law, it explores whether well-being can be regarded as an emerging legal principle, an interpretative standard, or primarily a policy-oriented objective. The analysis highlights the multidimensional character of well-being, encompassing physical and mental health, economic stability, social inclusion, and environmental conditions, and examines its growing relevance within the broader framework of sustainable development and international legal obligations.

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1. Introduction

Well-being is a notion frequently used, especially after the Covid 19 pandemic², when mental health has become an important debate topic. It is unclear if it is a legal concept, part of *soft law*, or just an instrument of states policies concerning health in all its dimensions. In sustainability discussions, well-being is often used to justify policy

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² Makane Moïse Mbengue and Jean d’Aspremont, eds., *Crisis Narratives in International Law* (Brill Nijhoff, 2022), 161, 192, <https://doi.org/10.1163/9789004472365>.

choices, economic decisions, and environmental protection measures, which leads to questions on its nature, if it is only a political or a legal concept, respectively. The legal literature review is scarce; scholarly papers primarily address various forms and dimensions of sustainability and sustainable development or the right to development. Addressing namely different forms and dimensions of sustainability and sustainable development or the right to development. When it comes to well-being, the analysis is typically conducted through the lenses of other fields of science such as psychology, sociology, or economics, rather than law. Often, well-being is connected to health and for this reason, it is unclear if it is a component of health or the other way around. In unfolding some of these uncertainties, an analysis of legal provisions and case law related directly or indirectly to well-being is necessary. The result will be that well-being is a multidimensional³ notion encompassing physical health, mental health, economic stability, social inclusion, and environmental conditions and strongly connected to sustainable development⁴. Sustainability and sustainable development are notions very often used, in different contexts, they became a paradigm of the present, and an omnipresent feature of current policies and measures undertaken at the national or international level, having as a goal the advance of human dignity⁵. It interconnects social, environmental and economic elements⁶, the so called “triangle of sustainability”⁷. At its core, the concept of sustainability⁸ reflects a comprehensive

³ Marcus Düwell, “Human Dignity and Human Rights,” in *Humiliation, Degradation, Dehumanization: Human Dignity Violated*, ed. Paulus Kaufmann, Hannes Kuch, Christian Neuhäuser, and Elaine Webster (Springer, 2011), https://doi.org/10.1007/978-90-481-9661-6_15; Katalin Lörincz et al., “The Power of the Place We Live: What Roles Do Home and the Community Play in Well-Being?,” *Economics and Sociology* 16, no. 1 (2023): 31, <https://doi.org/10.14254/2071-789X.2023/16-1/2>.

⁴ Markus Vogt and Christoph Weber, “Current Challenges to the Concept of Sustainability,” *Global Sustainability* 2 (2019): e4, <https://doi.org/10.1017/sus.2019.1>.

⁵ James R. May and Erin Daly, “The Role of Human Dignity in Achieving the UN Sustainable Development Goals,” in *International Environmental Law-making and Diplomacy Review 2019*, ed. Tuula Honkonen and Seita Romppanen (Joensuu: University of Eastern Finland, 2020), 15–32; Daniel A. Hojman and Álvaro Miranda, “Agency, Human Dignity, and Subjective Well-Being,” *World Development* 101 (2018): 1–15, <https://doi.org/10.1016/j.worlddev.2017.07.029>.

⁶ Justice Mensah, “Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review,” *Cogent Social Sciences* 5, no. 1 (2019): 1653531, <https://doi.org/10.1080/23311886.2019.1653531>; Otto Spijkers, “The Sustainable Human Right to Water as Reflected in the Sustainable Development Goals,” *Utrecht Law Review* 16, no. 2 (2020): 18–19, <https://doi.org/10.36633/ulr.560>.

⁷ Felix Ekardt, “Sustainability and a New Concept of Liberty,” in *Sustainable Development in International and National Law: What Did the Brundtland Report Do to Legal Thinking and Legal Development, and Where Can We Go from Here?*, ed. Hans Christian Bugge and Christina Voigt (Europa Law Publishing, 2008), 69–70, https://www.europalawpublishing.com/101-1_Sustainable-development-in-national-and-international-law; Ethan D. Schoolman et al., “How Interdisciplinary Is Sustainability Research? Analyzing the Structure of an Emerging Scientific Field,” *Sustainability Science* 7, no. 1 (2012): 67–80, <https://doi.org/10.1007/s11625-011-0139-z>.

⁸ Julia E. Moore et al., “Developing a Comprehensive Definition of Sustainability,” *Implementation Science* 12, no. 1 (2017): 110, <https://doi.org/10.1186/s13012-017-0637-1>; Minna Laurell Thorslund and Ola Leifler, “Exploring Assumptions about Sustainability: Towards a Constructive Framework for Action in Sustainable HCI,” in *Proceedings of the 2025 CHI Conference on Human Factors in Computing Systems* (Association for Computing Machinery, 2025), 1–13, <https://doi.org/10.1145/3706598.3714001>.

global approach to development, aiming to satisfy present needs without jeopardizing the capacity of future generations to meet their own, yet without presenting a universal or regional clear definition⁹. While this principle may appear straightforward, it aligns with many of today's pressing concerns of states and other stakeholders¹⁰, particularly in light of the far-reaching effects of climate change¹¹, but not limited to these. Sustainable development paradigm is now mainstream¹² even in international law. And the concept of well-being is part of this mainstream. The status of sustainable development in international law and connections with international customary law were the subject of previous analyses¹³, state practice and *opinio juris*, its constitutive elements¹⁴, being demonstrated though the examination of international and domestic rules, judgments issued by international and national judicial bodies. Well-being considered separately was not yet directly qualified as having this legal status. However, its presence in different types of legal instruments and its strong connections with other notions make very strong arguments for the idea that this will be the evolution of well-being.

Well-being has transitioned from a peripheral role to a central focus in legal analysis due to its interconnectedness with other health components. The Human Development Index¹⁵ which is generally accepted, further underscores this by integrating health, education, economic factors and has a focus on human well-being, rather than economic development¹⁶. This people-centered approach aligns with sustainable development goals, aiming to achieve a general state of well-being that

⁹ Marie-Claire Cordonier Segger, "Sustainable Development in International Law," in *Sustainable Development in International and National Law: What Did the Brundtland Report Do to Legal Thinking and Legal Development, and Where Can We Go from Here?*, ed. Hans Christian Bugge and Christina Voigt (Europa Law Publishing, 2008), 88–89, https://www.europalawpublishing.com/101-1_Sustainable-development-in-national-and-international-law.

¹⁰ George B. Wyeth and Beth Termini, "Regulating for Sustainability," *Environmental Law* 45, no. 3 (2015): 663, <https://law.lclark.edu/live/files/20064-45-3wyethpdf>.

¹¹ Gina Vidal Marcílio Pompeu and Kalyl Lamarck Silvério Pereira, "Climate Litigation and Public Participation in Socio-Environmental International Law," *Veredas do Direito* 22, no. 1 (2025): e222768, <https://doi.org/10.18623/rvd.v22.2768-ing>.

¹² Claiton Fyock, "What Might Degrowth Mean for International Economic Law? A Necessary Alternative to the (Un)Sustainable Development Paradigm," *Asian Journal of International Law* 12, no. 1 (2022): 40, <https://doi.org/10.1017/S2044251322000030>.

¹³ Virginie Barral, "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm," *European Journal of International Law* 23, no. 2 (2012): 377–400, <https://doi.org/10.1093/ejil/chs016>; Cordonier Segger, "Sustainable Development in International Law," 89.

¹⁴ James Crawford, *Brownlie's Principles of Public International Law*, 8th ed. (Oxford University Press, 2012), 23–28; Antonio Cassese, *International Law*, 2nd ed. (Oxford University Press, 2005), 156–62; Rudolf Bernhardt, "Customary International Law," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt (North-Holland, 1984), 61–66; Michael Wood and Omri Sender, "Customary International Law," *Max Planck Encyclopedias of International Law*, last updated October 2024, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1393>.

¹⁵ United Nations Development Programme, "Human Development Index," *Human Development Reports*, accessed October 8, 2026, <https://hdr.undp.org/data-center/human-development-index>.

¹⁶ Cordonier Segger, "Sustainable Development in International Law," 90.

allows individuals to enjoy a high quality of life, also referred to as human well-being¹⁷.

Although inseparable from contemporary environmental crises, and climate rights litigation, the origins of sustainability and well-being discourse, however, predate environmental crises. As early as the beginning of the 20th century, concerns were expressed about the depletion of natural resources and the accelerating degradation of the environment¹⁸. In this sense, sustainability, sustainable development and well-being are not new issues, what has changed is the growing awareness within the international community of the profound, long-term impact of environmental harm on both present and future generations.

A pivotal moment in this evolution was the publication of the Brundtland Commission's 1987 report, *Our Common Future*¹⁹. Named after its chairwoman, Gro Harlem Brundtland, the Report articulated and popularized the modern definition of sustainable development as: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

The Commission, officially called the World Commission on Environment and Development, was established by the United Nations in 1983²⁰. Its mandate, as outlined by the United Nations General Assembly, was to formulate a "global agenda for change" in response to mounting environmental and developmental challenges. Sustainability is thus connected to development and to change and it is not a static concept, but constantly evolving, depending on time, area and other factors²¹.

2. From Political Aspiration to Legal Omnipresence

At the 2024 Annual Visit to Sixth Committee, the President of the International Court of Justice, Judge Nawaf Salam emphasized the human-centered nature of international law, stating that: "The ultimate concern of international law is indeed the human being," and further noted the Court's role in promoting peoples' rights to pursue economic, social and cultural development, providing examples from its jurisprudence²².

This a strong declaration and acknowledges the fact that humans are in the

¹⁷ Tadhg O'Mahony, "Toward Sustainable Wellbeing: Advances in Contemporary Concepts," *Frontiers in Sustainability* 3 (2022): 2–3, <https://doi.org/10.3389/frsus.2022.807984>.

¹⁸ United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Resolution 70/1, A/RES/70/1, adopted September 25, 2015, <https://docs.un.org/en/A/RES/70/1>.

¹⁹ World Commission on Environment and Development, *Our Common Future*, annex to A/42/427, August 4, 1987, chap. 2, para. 1, <https://digitallibrary.un.org/record/139811>.

²⁰ United Nations General Assembly, "Process of Preparation of the Environmental Perspective to the Year 2000 and Beyond," Resolution 38/161, December 19, 1983, <https://docs.un.org/en/A/RES/38/161>.

²¹ Barral, "Sustainable Development in International Law," 377; Anna Salomaa and Sirkku Juhola, "How to Assess Sustainability Transformations: A Review," *Global Sustainability* 3 (2020): e24, <https://doi.org/10.1017/sus.2020.17>.

²² United Nations, "In Annual Visit to Sixth Committee, International Court of Justice President Stresses 'Ultimate Concern of International Law Is Indeed the Human Being,'" *Meetings Coverage and Press Releases*, October 25, 2024, <https://press.un.org/en/2024/gal3730.doc.htm>.

center of normative international rules, may they be legally binding treaties, general principles or customary international law. Although the discourse does not expressly use the term well-being, the notions connected to the rights of human beings are in fact suggesting the relationship with well-being and other components of the sustainable development goals.

At the moment, well-being serves, directly or indirectly, as a transversal concept integral to the framework of sustainability²³. Although the SDGs are non-binding, they provide a widely accepted framework²⁴ and serve as a benchmark for states in different fields, they are multidimensional and politically supported²⁵. There are multiple correlations between SDG Goal 3 and other goals within the 2030 UN Agenda, suggesting that many determinants of well-being or supportive factors are pervasive aims of the entire development agenda²⁶.

Since 2015, when the 2030 United Nations Agenda²⁷ was adopted, various concepts related to well-being have been indirectly connected to international law. Well-being was not mentioned as such by the *Millennium Declaration* from 2000²⁸. Over time, the meaning and scope of well-being have evolved, encompassing all Sustainable Development Goals (SDGs), beginning with eradication of poverty (SDG Goal 1) and zero hunger (SDG Goal 2). Notably, SDG Goal 3, which aims to “ensure healthy lives and promote well-being for all at all ages,” lacks a comprehensive definition, particularly from a legal standpoint. Specifically, the content of the targets in this SDG are on health and various special aspects related to health that are associated with well-being. SDG Goal 3 is considered a restatement of one of the principles of the Alma-Ata Declaration²⁹, to which, health is “a fundamental human right” and “a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector”³⁰. Since the Covid-19 pandemic, one preoccupation of international institutions was to analyze its impact on

²³ Farley Simon Nobre, “Unleashing Virtuous Cycles of Sustainable Development Goals and Well-Being,” *Business and Society Review* 130, no. S1 (2025): S158–S189, <https://doi.org/10.1111/basr.12339>.

²⁴ Gitanjali Nain Gill, “Just Sustainabilities and Sustainable Development Goals in the Time of Covid-19,” *Law, Environment and Development Journal* 16, no. 2 (2020): 155–57, <https://doi.org/10.25501/SOAS.00033483>.

²⁵ William F. Lamb and Julia K. Steinberger, “Human Well-Being and Climate Change Mitigation,” *WIREs Climate Change* 8, no. 6 (2017): 6, e485, <https://doi.org/10.1002/wcc.485>.

²⁶ Jan-Emmanuel De Neve and Jeffrey D. Sachs, “Sustainable Development and Human Well-Being,” in *World Happiness Report 2020*, ed. John F. Helliwell, Richard Layard, Jeffrey D. Sachs, and Jan-Emmanuel De Neve (Sustainable Development Solutions Network, 2020), <https://worldhappiness.report/ed/2020/sustainable-development-and-human-well-being/>.

²⁷ United Nations General Assembly, *2030 Agenda*.

²⁸ United Nations General Assembly, *United Nations Millennium Declaration*, Resolution 55/2, September 8, 2000, <https://docs.un.org/en/A/RES/55/2>.

²⁹ World Health Organization, *Declaration of Alma-Ata*, September 12, 1978, sec. I, <https://www.who.int/docs/default-source/documents/almaata-declaration-en.pdf>.

³⁰ Obiajulu Nnamuchi, “The Sustainable Development Goals (SDGs) and the Right to Health: Is There a Nexus?,” *Florida Journal of International Law* 32, no. 2 (2020): 158–59, <https://scholarship.law.ufl.edu/fjil/vol32/iss2/1/>.

health, namely the regress in ensuring the protection in this field³¹.

Typically, well-being in its individual dimension³² is linked to health or the state of good health, as defined by the Constitution of the World Health Organization³³ (WHO) in 1946: “Health is a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.”

The WHO Constitution's definition of health, despite being considered utopian and unattainable by some scholars³⁴, remains the only legal text having this objective. Its ambiguous nature necessitates clarifications, potentially arising from a systemic analysis of legal acts addressing well-being and health as well as other components of human rights.

The Organization for Economic Cooperation and Development (OECD) expands on this by mapping well-being through parameters including health, education, environment, housing, and life satisfaction, in accordance with the UN Agenda³⁵. OECD adopted in 2013 an instrument called *Guidelines on Measuring Well-Being*³⁶, focused on subjective well-being and using broader metrics beyond economic indicators³⁷. The Guidelines treat the notions of subjective well-being and happiness together and provide a very broad definition of the first, taking into consideration the elements used before and the evolution of its significance from Aristotle to the present³⁸.

In the realm of fundamental rights law, health's characteristics are more readily identifiable, facilitating its classification within the framework of fundamental rights. However, the relationship between health and well-being remains ambiguous; whether health is a component of well-being or vice versa is unclear. Upon closer examination, well-being emerges as a component of good health, albeit not exclusively. To determine whether well-being constitutes a concept within international law, a multifaceted analysis of various instruments and normative layers is required. On the other hand,

³¹ United Nations, *The Sustainable Development Goals Report 2024* (United Nations, 2024), 12–18, <https://unstats.un.org/sdgs/report/2024/The-Sustainable-Development-Goals-Report-2024.pdf>.

³² Azadeh Chalabi, “The Right to Development as a Human Right to an Enabling Environment for Collective Well-Being,” *Journal of Human Rights* 25, no. 2 (2026): 253–71, <https://doi.org/10.1080/14754835.2026.2636291>.

³³ World Health Organization, *Constitution of the World Health Organization*, adopted July 22, 1946, entered into force April 7, 1948, 14 U.N.T.S. 185, preamble, <https://www.who.int/about/governance/constitution>.

³⁴ Raphael Rauch, “Attempts to Reform the WHO Definition of Health (1997–1999),” in *The Spirit of Global Health: The World Health Organization and the “Spiritual Dimension” of Health, 1946–2021* (Oxford University Press, 2022), <https://doi.org/10.1093/oso/9780192865502.003.0008>; Thomas Schramme, “Health as Complete Well-Being: The WHO Definition and Beyond,” *Public Health Ethics* 16, no. 3 (2023): 210, <https://doi.org/10.1093/phe/phad017>.

³⁵ Ewa Latoszek and Agnieszka Kłos, eds., *Global Public Goods and Sustainable Development in the Practice of International Organizations: Responding to Challenges of Today's World* (Brill, 2023), 314–15, <https://doi.org/10.1163/9789004687264>.

³⁶ Organisation for Economic Co-operation and Development (OECD), *OECD Guidelines on Measuring Subjective Well-Being* (OECD Publishing, 2013), 28–29, <https://doi.org/10.1787/9789264191655-en>.

³⁷ OECD, *OECD Guidelines on Measuring Subjective Well-Being*, 29.

³⁸ OECD, *OECD Guidelines on Measuring Subjective Well-Being*, 28–29.

international law is an idea³⁹. It evolved over time and changed in various areas. Well-being is an idea as well and there is no compelling impediment to consider it as part of international law. It encompasses financial, social, economic, and sociological dimensions, and very different fields and requires physical and psychological integrity⁴⁰. It is also an element of collective security, peace and human rights, as the United Nations Security Council directly stated in its 1674 Resolution from 2006: “Acknowledging that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing in this regard that development, peace and security and human rights are interlinked and mutually reinforcing, (...)”⁴¹

From the perspective of rules of international criminal law, it is worth mentioning that the Preamble of the Rome Statute of the International Criminal Court asserts that the crimes within the subject-matter jurisdiction of the ICC “threaten the peace, security and well-being of the world.”⁴², considering the collective dimension of well-being. The explicit inclusion of well-being in the Preamble of the Rome Statute shows its status as a legally relevant value within the international legal system. By placing well-being on an equal footing with peace and security, the Statute suggests a normative linkage between the prevention of international crimes and the protection of collective human well-being.

3. The Normative Shift: Well-Being within Legally Binding Instruments

The integration of well-being into sustainability governance can be considered a relatively recent development in international law. Although there is no universal treaty explicitly defining well-being as a legally binding principle, various legal instruments and judicial interpretations have incorporated well-being considerations into environmental law, climate litigation, human rights law, and economic governance. Hence, they may be considered general law or international customary law, in the sense of Article 38 para 1 b) of the Statute of the International Court of Justice⁴³.

³⁹ Thomas Schultz, “International Law in the Minds: On the Ideational Basis of the Making, the Changing, and the Unmaking of International Law,” *Leiden Journal of International Law* 37, no. 3 (2024): 667, <https://doi.org/10.1017/S0922156524000165>.

⁴⁰ Linda Hajjar Leib, *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives* (Martinus Nijhoff Publishers, 2011), 139, <https://brill.com/display/title/19130>.

⁴¹ United Nations Security Council, Resolution 1674 (2006), S/RES/1674, April 28, 2006, preamble, [https://docs.un.org/en/S/RES/1674\(2006\)](https://docs.un.org/en/S/RES/1674(2006)).

⁴² *Rome Statute of the International Criminal Court*, July 17, 1998, 2187 U.N.T.S. 90, preamble, para. 3, <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>; Alexandre Skander Galand, *UN Security Council Referrals to the International Criminal Court: Legal Nature, Effects and Limits* (Brill Nijhoff, 2019), 37, <https://doi.org/10.1163/9789004342217>.

⁴³ *Statute of the International Court of Justice*, June 26, 1945, art. 38, <https://www.icj-cij.org/statute>. Article 38 provides: “1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists

This is not the innovation of the most recent instruments, the notion of well-being was used before and recognized by the Universal Declaration on Human Rights⁴⁴, in its Article 25 para 1: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

The *International Covenant on Economic, Social and Cultural Rights*⁴⁵ (ICESCR), in its Article 12, obligates states to ensure “the highest attainable standard of physical and mental health.” The next paragraph provides a series of measures to be undertaken by states, in very specific field in order to accomplish this goal. Unlike the Universal Declaration, the Covenant does not use the right to health, but a different notion physical and mental health.

According to *General Comment no. 14 to Article 12 of the ICESCR*⁴⁶, the standard of the highest attainable standard comprises a series of complex elements, the individual’s biological and socio-economic preconditions and a State’s available resources⁴⁷.

This idea is correspondent to that expressed in the 1986 *Declaration on the Right to Development* of the United Nations General Assembly⁴⁸ which states that the persons are the beneficiaries of development. According to Article 2 para 3 “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.”

In the light of this text, well-being appears to be an outcome of the right to development⁴⁹. The concepts evolved from a colonial and post-colonial perspective and meaning to a new sense, development and sustainability, notions that are at the center of the present concerns at the international level and within the United Nations. The list presented in this paper is not an exhaustive one.

Well-being and development are directly and strongly connected to

of the various nations, as subsidiary means for the determination of rules of law. 2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.”

⁴⁴ United Nations General Assembly, *Universal Declaration of Human Rights*, Resolution 217 A (III), December 10, 1948, art. 25(1), <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>.

⁴⁵ *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, 993 U.N.T.S. 3, art. 12, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

⁴⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/2000/4, August 11, 2000, <https://digitallibrary.un.org/record/425041>.

⁴⁷ Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, para. 9.

⁴⁸ United Nations General Assembly, *Declaration on the Right to Development*, Resolution 41/128, December 4, 1986, art. 2(3), <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>.

⁴⁹ Chalabi, “Right to Development,” 256.

fundamental principles of international law, such as self-determination and sovereignty, and this is what the Declaration emphasizes in Article 1 para 2: “The human right to development also implies the full realization of the right of peoples to self-determination, which includes... the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”

The Declaration is relevant for several reasons: it places individual and collective well-being at the heart of the right to development, echoing modern sustainability principles; it frames development as holistic, combining economic, social, cultural, political dimensions; it introduces State obligations to actively promote well-being through both domestic policies and international cooperation⁵⁰.

Some of the environmental treaties and *soft law* instruments are directly recognizing well-being as a central part of these fields. The 1972 Stockholm Declaration⁵¹, which is considered the origin of modern global environmental law⁵² recognizes the “fundamental right to freedom, equality, and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being”. According to Principle 1 “Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social, and spiritual growth . . . Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights even the right to life itself.”

Principle 2 adds: “The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.”

In 1992, the United Nations Conference on Environment and Development (UNCED), or the Rio ‘Earth Summit’ had broad participation from states and concluded with the adoption of several instruments that shaped and interconnected environment protection, climate change and human rights in general⁵³ and had a significant contribution to the understanding of sustainable development⁵⁴: Agenda 21 (a blueprint of recommendation), the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity; and the Declaration on the principles of forest management, the creation of the Commission on Sustainable Development, the holding of first world conference on the sustainable development of small island developing States in 1994, and other instruments followed.

The Kyoto Protocol for the reduction of greenhouse gases followed in 1997⁵⁵.

⁵⁰ United Nations General Assembly, *Declaration on the Right to Development*, art. 3.

⁵¹ United Nations Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, Stockholm, June 16, 1972, A/CONF.48/14/Rev.1, proclamation, paras. 1–2, and principle 1, <https://docs.un.org/en/A/CONF.48/14/Rev.1>.

⁵² Nnamuchi, “Sustainable Development Goals,” 158–59.

⁵³ United Nations, “United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3–14 June 1992,” *United Nations Conferences*, accessed October 8, 2026, <https://www.un.org/en/conferences/environment/rio1992>.

⁵⁴ Cordonier Segger, “Sustainable Development in International Law,” 98–102.

⁵⁵ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, December 11,

The Aarhus Convention concluded in 1998⁵⁶ grants public access to environmental information, ensuring well-being through public participation and access to justice⁵⁷, and connects human rights to environmental rights⁵⁸. The preamble of the Convention considers environmental protection a condition of human well-being⁵⁹ and Article 1 sets well-being as the objective of the Convention in the following wording: “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

Sustainable development seems to have equal ranking to the right to a healthy environment⁶⁰.

The Paris Agreement adopted in 2015⁶¹ links climate action to human health, emphasizing the need to limit global warming for the respect of human rights, rights of the indigenous people, the right to development and intergenerational equity⁶².

At the regional level, ensuring well-being for the people is one of the aims of the European Union, as enshrined in Article 3 para 1 of the Treaty of the European Union⁶³, in the following wording: “The Union's aim is to promote peace, its values and the well-being of its peoples.”

Next, the text of this provision contains details on the measures that the European Union will undertake in order to achieve these objectives and they cover

1997, 2303 U.N.T.S. 162, https://unfccc.int/kyoto_protocol.

⁵⁶ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention), June 25, 1998, 2161 U.N.T.S. 447, <https://unece.org/environment-policy/public-participation/aarhus-convention>.

⁵⁷ Aarhus Convention, art. 1.

⁵⁸ Nathalie Bernasconi-Osterwalder, “Transparency, Participation and Accountability in International Economic Dispute Settlement: A Sustainable Development Perspective,” in *Sustainable Development in International and National Law: What Did the Brundtland Report Do to Legal Thinking and Legal Development, and Where Can We Go from Here?*, ed. Hans Christian Bugge and Christina Voigt (Europa Law Publishing, 2008), 326–27, https://www.europalawpublishing.com/101-1_Sustainable-development-in-national-and-international-law.

⁵⁹ Aarhus Convention, preamble. “Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.”

⁶⁰ Angela Schwerdtfeger, “The Human Rights Dimension: The Impact of the Right to a Healthy Environment,” in *Sustainability through Participation? Perspectives from National, European and International Law*, ed. Birgit Peters and Eva Julia Lohse (Brill Nijhoff, 2023), 300, https://doi.org/10.1163/9789004509382_012.

⁶¹ *Paris Agreement*, December 12, 2015, 3156 U.N.T.S. 79, preamble, https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

⁶² Erin Daly et al., “Common but Differentiated Constitutionalisms: Does ‘Environmental Constitutionalism’ Offer Realistic Policy Options for Improving UN Environmental Law and Governance? US and Latin American Perspectives,” in *Constitutionalism and Transnational Governance Failures*, ed. Ernst-Ulrich Petersmann and Armin Steinbach (Brill Nijhoff, 2024), 186, https://doi.org/10.1163/9789004693722_007.

⁶³ *Consolidated Version of the Treaty on European Union*, O.J. C 202 (June 7, 2016): 13, art. 3(1), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016M/TXT>.

various fields, from the creation of an area of security, freedom and justice (para 2) to the creation of an internal market (para 3), promoting non-discrimination and solidarity, the creation of a monetary union (para 4), protection of its citizens and respect for the principles of the United Nations (para 5).

The Charter of fundamental rights of the European Union⁶⁴ is directly using the notion of well-being, in connection with the rights of children, in Article 24 which states that “Children shall have the right to such protection and care as is necessary for their well-being.”

Moreover, Article 37 of the Charter of Fundamental Rights recognizes environmental protection as essential to well-being, although the term is not expressly used⁶⁵. The *European Green Deal* from 2019 integrates well-being into climate, economic, and social policies. The text explicitly refers to well-being of individuals, as one of its aims in the following wording: “It also aims to protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts”⁶⁶.

As it expressly provides, the Green Deal is ‘an integral part of the Commission’s strategy to implement the United Nation’s 2030 Agenda and the sustainable development goals’.

Similar provisions are found in other regional instruments. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)⁶⁷ affirms in Article 10 the right to ‘health, understood to mean the enjoyment of the highest level of physical, mental and social well-being’⁶⁸ and in Article 11 that “[e]veryone shall have the right to live in a

⁶⁴ *Charter of Fundamental Rights of the European Union*, O.J. C 326 (October 26, 2012): 391–407, art. 24(1), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

⁶⁵ *Charter of Fundamental Rights of the European Union*, art. 37. Article 37 provides: “A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”

⁶⁶ European Commission, *The European Green Deal*, COM(2019) 640 final, December 11, 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0640>.

⁶⁷ Organization of American States, *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights* (Protocol of San Salvador), November 17, 1988, O.A.S.T.S. No. 69, <https://www.oas.org/juridico/english/treaties/a-52.html>.

⁶⁸ Protocol of San Salvador, art. 10. Article 10 provides: “1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. 2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a. Primary health care, that is, essential health care made available to all individuals and families in the community; b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction; c. Universal immunization against the principal infectious diseases; d. Prevention and treatment of endemic, occupational and other diseases; e. Education of the population on the prevention and treatment of health problems, and f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.”

healthy environment”⁶⁹. The African Charter on Human and Peoples’ Rights⁷⁰ provides in Article 24 that “[a]ll peoples shall have the right to a general satisfactory environment favorable to their development”.

Article 38 of the Arab Charter on Human Rights⁷¹ provides that ‘Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment’, while Article 33 states on the well-being of children.

The entire list of instruments mentioned may only be construed as an expression of state practice and the normative acceptance by states of a principle or concept of well-being.

4. From a post-Colonial Concept towards a Standard of Interpretation

The United Nations Charter⁷² in Chapter XI Declaration Regarding Non-Self-Governing Territories, is explicitly using the term “well-being” in Articles 73 and 74, and the meaning is similar to that of the purpose of the mandate system in force during the League of Nations, that was: “Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories (...)”.

The text of Article 73 is clearer in comparison with the meaning of the League of Nations Covenant and the Mandate agreement, in concern of the beneficiaries, a notion that was not sufficiently clear, but now has the significance of the beneficiaries of the territories. The notion of civilization function, which was essential in the mandate system and will be analyzed later in this paper, is no longer used.

Article 74 of the United Nations Charter reads as follows: “Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.”

One can easily observe from the wording of this text that well-being presents a collective and multi-faceted dimension: it applies to the rest of the world in various fields, social, economic and commercial.

⁶⁹ Protocol of San Salvador, art. 11. Article 11 provides: “1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation, and improvement of the environment.”

⁷⁰ Organization of African Unity, *African Charter on Human and Peoples’ Rights*, June 27, 1981, 1520 U.N.T.S. 217, art. 24, <https://www.african-court.org/wpafc/wp-content/uploads/2020/04/AFRICAN-BAN-JUL-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf>.

⁷¹ League of Arab States, *Arab Charter on Human Rights*, May 22, 2004, arts. 33 and 38, <https://humanrts.umn.edu/instreet/loas2005.html>.

⁷² *Charter of the United Nations*, June 26, 1945, arts. 73–74, <https://www.un.org/en/about-us/un-charter>.

In the case *Mandate for South-West Africa*, the judgment from 1962⁷³ used the notion of well-being, as this was one of the main objectives of the mandate of South Africa (former African Union) in South West Africa. The judgment from 1966⁷⁴ and the dissenting opinions to the judgement issued in 1966 of some Judges from the Court, such as Judge Tanaka and Judge Jessup, explicitly refer to "the material and moral well-being and social progress" of inhabitants, noting this goal guides discretionary policy measures, when analyzing the aims of the mandate system established under the League of Nations.

Namely, the aim of the mandate system was, according to the Covenant of the League of Nations⁷⁵ and the Mandate⁷⁶ "...to promote the well-being and progress of the inhabitants... the Mandatory has a discretionary power to choose those ... most appropriate ...".

The said judgments and separate opinions make an extensive analysis of these goals.

Article 2 of the Union of South Africa (now, South Africa) Mandate reads: "The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as an integral portion of the Union of South Africa and may apply the laws of the Union of South Africa to the territory, subject to such modifications as local conditions may require. The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate."⁷⁷

As it is directly mentioned, well-being has two dimensions: a material and a moral one. The meaning of well-being and development is "the material and moral well-being and the social progress" and these are the objectives of "sacred trust of civilization".

Judge Jessup identifies the beneficiaries, taking into consideration the meaning and the extent of the competencies of the mandate and specifically, the class C mandate, and analyses who are the beneficiaries of the mandate system, considering the inconsistencies in the terms used, in the Covenant of the League of Nations and the Mandate, *peoples, the people, the inhabitants, natives, or indigenous populations*, respectively⁷⁸. The aim or "sacred trust" of the mandate system was to ensure the well-

⁷³ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, preliminary objections, judgment, December 21, 1962, *I.C.J. Reports* 1962, 319, <https://www.icj-cij.org/sites/default/files/case-related/46/046-19621221-JUD-01-00-EN.pdf>.

⁷⁴ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, second phase, judgment, July 18, 1966, *I.C.J. Reports* 1966, 6, <https://www.icj-cij.org/sites/default/files/case-related/46/046-19660718-JUD-01-00-EN.pdf>.

⁷⁵ League of Nations, *Covenant of the League of Nations*, April 28, 1919, art. 22, https://avalon.law.yale.edu/20th_century/leagcov.asp.

⁷⁶ League of Nations, *Mandate for German South West Africa*, December 17, 1920, art. 2(2); see *South West Africa*, preliminary objections, judgment, December 21, 1962, <https://www.icj-cij.org/case/46/judgments>.

⁷⁷ *Mandate for German South West Africa*, art. 2(2).

⁷⁸ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, dissenting opinion of Judge Jessup, July 18, 1966, *I.C.J. Reports* 1966, 325, 426, <https://www.icj-cij.org/sites/default/files/case->

being of all inhabitants and the demographical structure of the territory when it was placed under mandate⁷⁹.

Judge Tanaka emphasizes the high degree of complexity of the mandate system and the fact that it is a legal institution⁸⁰. As for the scope of the objectives of promoting of 'the well-being and social progress of the inhabitants of certain territories as a sacred trust of civilization, which is considered a criterion of interpretation of the provisions of the Mandate'⁸¹.

Judge Tanaka is the one asking himself of the meaning of the notions *well-being, progress, development*, as they are mentioned in the Covenant and the Mandate agreement but not defined. It was the opinion of judge Tanaka that the Mandate system was very complicated and presenting different parts and dimensions. As for the meaning of the terms, which are value judgments, there is no single, fixed meaning for such complex and subjective concepts. The interpretation of these ideas depends on the values and priorities of the person or system using them. Therefore, consensus is hard to achieve, especially when these values come into conflict.⁸² In its view, 'the concept of the promotion of "material and moral" progress of the inhabitants' which constitutes the objectives of the Mandate for South West Africa (Article 2, paragraph 2), is in itself of political character and cannot be recognized as susceptible of judicial determination and execution.'⁸³

The notion *sacred trust of civilisation* is, in the opinion of Judge Padilla Nervo a legal obligation, not as a moral one, included in the Covenant and it is linked to the well-being and development of the "peoples inhabiting the territories concerned"⁸⁴. The dissenting opinion emphasizes some of the arguments of the judgment of the International Court of Justice, that qualify it as a principle of international law: "*The new principle was that, as a matter of international law, the well-being and social progress of such peoples would be the responsibility of the 'organized international community', insured by legal, rather than by solely moral, considerations.*"⁸⁵

In the Advisory Opinion of the Court on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* from 2004, the Court mentioned the aim of the mandate on Palestine and the significance given in the South West Africa Advisory Opinion⁸⁶.

related/46/046-19660718-JUD-01-07-EN.pdf.

⁷⁹ *South West Africa*, dissenting opinion of Judge Jessup, 426.

⁸⁰ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, dissenting opinion of Judge Tanaka, July 18, 1966, *I.C.J. Reports* 1966, 250, 265, <https://www.icj-cij.org/sites/default/files/case-related/46/046-19660718-JUD-01-06-EN.pdf>.

⁸¹ *South West Africa*, dissenting opinion of Judge Tanaka, 265.

⁸² *South West Africa*, dissenting opinion of Judge Tanaka, 280–81.

⁸³ *South West Africa*, dissenting opinion of Judge Tanaka, 281.

⁸⁴ *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, dissenting opinion of Judge Padilla Nervo, July 18, 1966, *I.C.J. Reports* 1966, 443, 453, <https://www.icj-cij.org/sites/default/files/case-related/46/046-19660718-JUD-01-08-EN.pdf>.

⁸⁵ *South West Africa*, dissenting opinion of Judge Padilla Nervo, 454.

⁸⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion, July 9, 2004, *I.C.J. Reports* 2004, 136, para. 70, <https://www.icj-cij.org/sites/default/files/case->

5. The Judicial Frontier: Well-Being in Environmental Protection and Climate Litigation

The connection between well-being and the protection of the environment is most obvious in climate litigation and environmental protection, within the case of the International Court of Justice and other jurisdictions.

Gabcikovo-Nagymaros case refers directly to the concept of sustainable development⁸⁷, affirming that there is a 'need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.' During the procedures before the Court, the two states acknowledged that the principle of sustainability is applicable to the case at hand.

Years later, the separate opinion of Judge Cançado Trindade in the *Pulp Mills* Case, concluded by the International Court of Justice in 2010⁸⁸, mentions several times the concept of well-being, its relevance and places it in the context of imperatives of international law, together with health, in a comprehensive analysis that presents an original view of the concept. The wording of Judge Cançado Trindade is the following: "(...) the imperatives of human health and well-being of peoples, the role of civil society in environmental protection; obligations of an objective character, beyond reciprocity;(...)"⁸⁹

The classification of the obligations as belonging to the category of objective ones is a particularly strong and unequivocal assertion.

As part of his argumentation, Judge Cançado Trindade explores the evolution of the preoccupations in the field of environment protection both from the perspective of provisions of international acts such as the Stockholm Declaration, the United Nations Charter on Economic Rights and Duties of States, the United Nations General Assembly resolution 44/228 of 1989, affirmed 'that the protection and enhancement of the environment are major issues that affect the well-being of peoples and economic development throughout the world;', the United Nations Conference on Environment and Development in Rio de Janeiro in 1992 mentions well-being and the fact that it is affected by very different factors such as 'a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems'⁹⁰.

Judge Cançado Trindade also analyzes the situations in which the concept was present or used before the International Court of Justice⁹¹. The Application of Australia in the first *Nuclear Tests Case* is directly using the term well-being three times,

related/131/131-20040709-ADV-01-00-EN.pdf.

⁸⁷ *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, judgment, September 25, 1997, *I.C.J. Reports* 1997, 7, para. 140, <https://www.icj-cij.org/sites/default/files/case-related/92/092-19970925-JUD-01-00-EN.pdf>.

⁸⁸ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, judgment, April 20, 2010, *I.C.J. Reports* 2010, 14, <https://www.icj-cij.org/sites/default/files/case-related/135/135-20100420-JUD-01-00-EN.pdf>.

⁸⁹ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, separate opinion of Judge Cançado Trindade, April 20, 2010, *I.C.J. Reports* 2010, 135, para. 7, <https://www.icj-cij.org/sites/default/files/case-related/135/135-20100420-JUD-01-04-EN.pdf>.

⁹⁰ *Pulp Mills*, separate opinion of Judge Cançado Trindade, para. 153.

⁹¹ *Pulp Mills*, separate opinion of Judge Cançado Trindade, paras. 161–62.

alongside with other relevant such as ‘threat to life, health and well-being of exposed individuals and their descendants from radiations doses’ (paragraph 34), ‘threat posed by nuclear tests to the life, health and well-being of populations and of the environment and biosphere’ (paragraph 40), ‘lives, health and well-being and that of their children and future generations’ (paragraph 47). New Zealand had a similar approach on well-being invoking ‘the rights of peoples to health, well-being, to be free from anxiety and fear, in sum, to live in peace’.

In the opinion of Judge Cançado Trindade, the idea of well-being of peoples presents a long-term temporal dimension⁹². The concept is one of the imperatives that helped crystallize the International Environmental Law⁹³.

Subsequent environmental and advisory opinions adopt implicit protection of well-being via health, quality of life, and intergenerational equity

In one of the most recent advisory opinions of the International Court of Justice, on the *Obligations of States in Respect of Climate Change* from July 2025⁹⁴, the Court makes reference to previous conclusions relating the strong link between sustainability, well-being as part of this concept and the protection of the environment, such as *Legality of the Threat or Use of Nuclear Weapons*, from 1996⁹⁵. The Court underlines that “The environment is the foundation for human life, upon which the health and well-being of both present and future generations depend (...)”⁹⁶ and adds “The Court thus considers that the protection of the environment is a precondition for the enjoyment of human rights, whose promotion is one of the purposes of the United Nations as set out in Article 1, paragraph 3, of the Charter.”⁹⁷

The Advisory Opinion makes an exhaustive analysis of the obligations of states in the context of climate change, the law applicable, the rules of interpretation in relation to the extent of obligations and due diligence⁹⁸. It was much awaited and even though it does not present binding legal force, the conclusions of the Court are important and establish legal standards in these matters. The interest of states was very high, which

⁹² *Pulp Mills*, separate opinion of Judge Cançado Trindade, para. 164.

⁹³ *Pulp Mills*, separate opinion of Judge Cançado Trindade, para. 164.

⁹⁴ *Obligations of States in Respect of Climate Change*, advisory opinion, International Court of Justice, July 23, 2025, General List No. 187, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.

⁹⁵ *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion, July 8, 1996, *I.C.J. Reports* 1996 (I), 226, 241, para. 29, <https://www.icj-cij.org/sites/default/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>.

⁹⁶ *Obligations of States in Respect of Climate Change*, advisory opinion, para. 373.

⁹⁷ *Obligations of States in Respect of Climate Change*, advisory opinion, para. 373.

⁹⁸ Margaretha Wewerinke-Singh and Jorge Viñuales, “The Great Reset: The ICJ Reframes the Conduct Responsible for Climate Change Through the Prism of Internationally Wrongful Acts,” *EJIL: Talk!*, August 4, 2025, <https://www.ejiltalk.org/the-great-reset-the-icj-reframes-the-conduct-responsible-for-climate-change-through-the-prism-of-internationally-wrongful-acts/>; Jutta Brunnée, “The Advisory Opinion on Obligations of States in Respect of Climate Change: Harm Prevention under Customary International Law,” *Völkerrechtsblog*, August 6, 2025, <https://doi.org/10.17176/20250806-122343-0>; L. R. M. Siry, “The Obligations of States in Respect of Climate Change—A Landmark Opinion of Urgency and Hope,” *Maastricht University Blog*, July 28, 2025, <https://www.maastrichtuniversity.nl/blog/2025/07/obligations-states-respect-climate-change-%E2%80%93-landmark-opinion-urgency-and-hope>.

undoubtedly results from the procedure carried out before the referral to the Court and during the proceedings before the Court. The resolution of the General Assembly for requesting the International Court of Justice an advisory opinion was adopted by consensus in March 2023⁹⁹. During the written phase, 91 statements and 62 written comments from states were filed. During the two-week public hearings in December 2024, 96 States and 11 international organizations presented pleadings before the Court, an unprecedented load for the activity of the Court¹⁰⁰.

The Advisory Opinion creates a general, clear and predictable framework, for future international disputes on climate change. The obligation to prevent significant damage is a general one, applicable to all states (*erga omnes*)¹⁰¹.

The Court recognized that “(...) a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.”¹⁰²

The nexus between all these elements of human rights and environment protection is proven beyond doubt. However, the Court did not recognize their value of international customary law. In his separate opinion, Judge Aurescu argues in a convincing manner, this character in an elaborate and complex analysis that refers to numerous relevant domestic and international acts either legally binding or *soft law*, such as the General Assembly resolution 76/300 by which this political body recognized the right to a clean, healthy and sustainable environment (with 161 votes in favor, 0 against and only 8 abstentions).¹⁰³

⁹⁹ United Nations General Assembly, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*, Resolution 77/276, March 29, 2023, <https://docs.un.org/en/A/RES/77/276>.

¹⁰⁰ International Court of Justice, “Obligations of States in Respect of Climate Change: Written Proceedings, Oral Proceedings, and Other Documents,” *International Court of Justice*, accessed October 8, 2026, <https://www.icj-cij.org/case/187>; “Written Proceedings,” <https://www.icj-cij.org/case/187/written-proceedings>; “Oral Proceedings,” <https://www.icj-cij.org/case/187/oral-proceedings>; “Other Documents,” <https://www.icj-cij.org/case/187/other-documents>; *Obligations of States in Respect of Climate Change*, advisory opinion, paras. 23, 26, 31–34.

¹⁰¹ Luciano Pezzano, “Obligations Erga Omnes and Climate Change: Reflections on the ICJ Advisory Opinion,” *EJIL: Talk!*, August 8, 2025, <https://www.ejiltalk.org/obligations-erga-omnes-and-climate-change-reflections-on-the-icj-advisory-opinion/>.

¹⁰² *Obligations of States in Respect of Climate Change*, advisory opinion, para. 393.

¹⁰³ *Obligations of States in Respect of Climate Change*, separate opinion of Judge Aurescu, International Court of Justice, July 23, 2025, paras. 27–47, <https://www.icj-cij.org/sites/default/files/case-related/>

6. Integrating Well-Being through Regional Human Rights Frameworks

At the regional level, the jurisprudence of the European Court of Human Rights is expressly using the term well-being, without providing a definition, analysing issues connected to environment and climate litigation to Article 8 of the European Convention. In the judgment in the case *López Ostra v. Spain* from 1994¹⁰⁴, pollution was ruled a violation of the right to private life and well-being. The European Convention on Human Rights¹⁰⁵ does not expressly provide protection of health or the environment, therefore, the analysis of the Court was made under article 8, which protects the right to private life¹⁰⁶.

The wording of the Court is the following: “Naturally, severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.”¹⁰⁷

The tension or the conflict in this case was between the well-being of individuals and the economic well-being of the town, a situation in which the state enjoyed a margin of appreciation but failed to ensure a fair balance between the two¹⁰⁸, the analysis taking into consideration also the positive duty of the state in respecting human rights.

In *Guerra v. Italy*¹⁰⁹, the Court analysis regards pollution and the state's failure to provide necessary information for individuals to assess environmental-related health risks, confirming positive obligations regarding environmental transparency.

In its judgement, “The Court reiterates that severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (...)”¹¹⁰ and mentions its previous findings in *López Ostra* case. The Court holds, therefore, that the respondent State did not fulfil its obligation to secure the applicants’ right to respect for their private and

187/187-20250723-adv-01-11-en.pdf.

¹⁰⁴ *López Ostra v. Spain*, application no. 16798/90, European Court of Human Rights, judgment, December 9, 1994, <https://hudoc.echr.coe.int/eng?i=001-57905>.

¹⁰⁵ *Convention for the Protection of Human Rights and Fundamental Freedoms*, November 4, 1950, E.T.S. No. 5, https://www.echr.coe.int/documents/d/echr/convention_ENG.

¹⁰⁶ *European Convention on Human Rights*, art. 8. Article 8 provides: “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

¹⁰⁷ *López Ostra v. Spain*, para. 51.

¹⁰⁸ *López Ostra v. Spain*, para. 58. “Having regard to the foregoing, and despite the margin of appreciation left to the respondent State, the Court considers that the State did not succeed in striking a fair balance between the interest of the town’s economic well-being - that of having a waste-treatment plant - and the applicant’s effective enjoyment of her right to respect for her home and her private and family life.”

¹⁰⁹ *Guerra and Others v. Italy*, application no. 14967/89, European Court of Human Rights (Grand Chamber), judgment, February 19, 1998, <https://hudoc.echr.coe.int/eng?i=001-58135>.

¹¹⁰ *Guerra and Others v. Italy*, para. 60.

family life, in breach of Article 8 of the Convention. There has consequently been a violation of that provision. The reasoning of the Strasbourg Court is articulated and very clear, it emphasizes the existence of a substantive dimension and a procedural one and the Court is consistent with its previous interpretations.

Later, the Strasbourg Court noted in the *Budayeva and Others v. Russia*¹¹¹ case that the failure to prevent environmental disasters violated the right to life and well-being¹¹². The quality of the environment and the effects of the pollution generated by a factory was also analyzed by the Court in connection to another right protected by article 8, namely the right of enjoyment of one's home, in *Tătar v. Romania*¹¹³. From the perspective of the European Court of Human Rights, Article 8 of the European Convention encompasses a right for individuals to effective protection by the state authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life.

The most recent case stating this conclusion is *Verein Klima Seniorinnen Schweiz v. Switzerland*¹¹⁴ from 2024, which expanded the developing jurisprudence by finding that climate inaction breaches Article 8, in the context of the anthropogenic climate change, imposing a positive state obligation to mitigate climate risks to health and well-being¹¹⁵. This landmark judgment is a very extensive one and the argumentation is thorough and sophisticated. The Court uses together the terms *life*, *health* and *well-being* several times, in different stages of its analysis and in relation to aspects such as risks, positive obligations, finding a threshold for the applicants to be considered victims, in the sense of the Convention.

In essence, the European Court acknowledges that States have the responsibility to combat climate change in order to protect human rights and confirmed a violation of the right to respect for private and family life of Swiss elderly women because Switzerland failed to implement sufficient measures to combat climate change¹¹⁶. The Strasbourg Court is consistent with its previous interpretations.

Regarding the scope of article 8 in connection with effects of climate change, the Court clearly stated that "(...) Article 8 must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects

¹¹¹ *Budayeva and Others v. Russia*, application nos. 15339/02, 21166/02, 20058/02, 11673/02, and 15343/02, European Court of Human Rights, judgment, March 20, 2008, <https://hudoc.echr.coe.int/eng?i=001-85436>.

¹¹² *Budayeva and Others v. Russia*, para. 176. "In the present case the Court found that the measures invoked by the applicants, that is, the maintenance of the mud-defence infrastructure and the setting up of the early warning system, were vital for the protection of the lives and well-being of the civilians."

¹¹³ *Tătar v. Romania*, application no. 67021/01, European Court of Human Rights, judgment, January 27, 2009, para. 97, <https://hudoc.echr.coe.int/eng?i=001-90981>.

¹¹⁴ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, application no. 53600/20, European Court of Human Rights (Grand Chamber), judgment, April 9, 2024, <https://hudoc.echr.coe.int/eng?i=001-233206>.

¹¹⁵ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, paras. 519–48.

¹¹⁶ Marko Milanovic, "A Quick Take on the European Court's Climate Change Judgments," *EJIL: Talk!*, April 9, 2024, <https://www.ejiltalk.org/a-quick-take-on-the-european-courts-climate-change-judgments/>.

of climate change on their life, health, well-being and quality of life”¹¹⁷.

A similar interpretation can be found in the interpretation of the Inter-American Court of Human Rights, that also based its arguments on different instruments and interpretations from international bodies on the importance of well-being, when assessing the impact of oil pollution on indigenous people’s rights, in cases such as *Kichwa Indigenous People of Sarayaku v. Ecuador*¹¹⁸ and environmental destruction that harmed indigenous well-being in the case *Lhaka Honhat v. Argentina*¹¹⁹. The contexts and the holders of rights are different.

Moving towards the national dimension, one of the most interesting cases in the field of state practice is the so called South Korean Climate Case, from 2024, analyzed by the Constitutional Court. The case *Kim et al. v. South Korea*¹²⁰, in fact merged cases including “Youth 4 Climate Action” and was initiated by 255 plaintiffs, many of them children and even an unborn fetus. They challenged the 2021 Framework Act on Carbon Neutrality for lacking binding greenhouse-gas targets beyond 2030 (covering 2031–2049). The Constitutional Court unanimously ruled that the law violated Article 35 of the Constitution, that enshrines the “right to a healthy and pleasant environment”.¹²¹

The Court’s reasoning explicitly grounds environmental and climate protections in constitutional entitlements, including liberty and happiness, not merely abstract ecological goals. It constitutes one of Asia’s first major constitutional rulings linking environmental legislation to direct violations of the right to pursue happiness.

The judgment drew inspiration from Germany’s 2021 Federal Constitutional Court (*Bundesverfassungsgericht*) climate ruling, in the case *Neubauer, et al. v. Germany*¹²² which similarly framed insufficient greenhouse-gas targets in the national

¹¹⁷ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, para. 519.

¹¹⁸ *Kichwa Indigenous People of Sarayaku v. Ecuador*, merits and reparations, Inter-American Court of Human Rights, judgment, June 27, 2012, Series C, No. 245, https://www.corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf.

¹¹⁹ *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, merits, reparations and costs, Inter-American Court of Human Rights, judgment, February 6, 2020, Series C, No. 400, https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf; Stéphanie de Moerloose and C. Ignacio de Casas, “The Lhaka Honhat Case of the Inter-American Court of Human Rights: The Long-Awaited Granting of 400,000 Hectares under Communal Property Rights,” *EJIL: Talk!*, July 16, 2020, <https://www.ejiltalk.org/the-lhaka-honhat-case-of-the-inter-american-court-of-human-rights-the-long-awaited-granting-of-400000-hectares-under-communal-property-rights/>; Maria Antonia Tigre, “Lhaka Honhat Association vs. Argentina: The Human Right to Environment in the Inter-American Court,” *Global Network for Human Rights and the Environment*, 2020, <https://gnhre.org/?p=10827>.

¹²⁰ Climate and Human Rights Litigation Database, “Do-Hyun Kim et al. v. South Korea,” *Climate and Human Rights Litigation Database*, March 16, 2023, accessed October 8, 2026, <https://climaterightsdata.base.com/2023/03/16/do-hyun-kim-et-al-v-south-korea/>.

¹²¹ Aleydis Nissen, “Green Court—South Korean Constitutional Court Rules Landmark Climate Judgement,” *EJIL: Talk!*, April 29, 2025, <https://www.ejiltalk.org/green-court-south-korean-constitutional-court-rules-landmark-climate-judgement/>; Constitutional Court of Korea, *Do-Hyun Kim et al. v. South Korea*, 2020Hun-Ma389 et al., decision, August 29, 2024, English translation, Climate Litigation Database, https://www.climatecasechart.com/documents/do-hyun-kim-et-al-v-south-korea-opinion_89a9.

¹²² Federal Constitutional Court of Germany, *Neubauer et al.*, 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, and 1 BvR 288/20, order, March 24, 2021, ECLI:DE:BVerfG:2021:rs20210324.1bvr265618, <https://>

legislation as violating the freedom and fairness owed to future generations. This was also an application submitted by young people. This is clearly a link between climate litigation¹²³ and well-being, even when it is not expressly mentioned, and a genuine concern for future generations. The German Federal Constitutional Court struck down parts of the Federal Climate Protection Act adopted in 2019 because it lacked clear emissions-reduction pathways beyond 2030, meaning the bulk of the burden would fall unjustly on future generations, thereby infringing fundamental rights to life, health, freedom, and dignity under Articles 1, 2, and 20a of Germany's Basic Law. The Court introduced the intertemporal dimension of fundamental rights: rights must protect present and future generations by distributing emission-reduction responsibilities equitably over time. And it ordered legislative amendment by the end of 2022 to include post-2030 reduction targets.

7. Conclusion

There is no legal definition of well-being, the notion continues to be vague, confusing and sometimes, redundant, it is not enforceable nor justiciable. At the same time, its dynamic shows that the concrete meaning can differ from one region to another or from one field to another. The international jurisprudence does not yet treat “well-being” as a standalone legal doctrine, but it frequently engages with it indirectly through established legal principles and part of a teleological approach that seeks to protect human dignity and ecological integrity.

Well-being can be described as an umbrella or multidimensional concept encompassing and transcending physical health, mental health, economic stability, social inclusion, environmental conditions and the usual discussion on human rights. There is no direct recognition of the customary nature of well-being as such, as a standalone right. At the moment, it appears to be a borderline concept, entailing substantive and procedural elements. The trajectory of well-being, increasingly recognized in international law, and a basis for the other fundamental rights anticipates such an evolution and this would align perfectly with the spirit of protecting human dignity, the common concern for humankind. The notion of well-being evolved from a policy aspiration into a normative principle with growing legal significance.

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¹²³ Pompeu and Pereira, “Climate Litigation and Public Participation.”

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