Multinational enterprises and the Global South: defining the climate legal framework through three International Courts' Advisory Opinions

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Abstract: Imprese multinazionali e Sud globale: la definizione del quadro giuridico climatico attraverso tre International Courts' Advisory Opinions – This article examines the evolving international legal framework governing States' obligations in relation to climate change, specifically focusing on the implications for multinational enterprises. The analysis pertains to the three recent Advisory Opinions delivered by the ITLOS, IACtHR and ICJ, which shed light on the scope of States' climate obligations and their potential to influence corporate conduct. By extrapolating some key principles from these Opinions, the article seeks to identify how international law may contribute to guiding multinational enterprises toward sustainable practices, particularly in the Global South, thereby advancing a more coherent and updated legal framework for climate governance.

Keywords: State obligations under international law; Climate change law and governance; Due diligence; Advisory opinions; Multinational enterprises

1. Background

The impact on the global environmental and climate system is often associated with the activities of certain large companies responsible for significant pollution and high levels of greenhouse gases (GHG) emissions. This relationship has long been monitored by several organisations operating at domestic and international level, as well as by the scientific community and the judiciary.

Several global environmental problems may arise in this context, most notably climate change, alongside biodiversity loss, pollution and contamination of terrestrial, marine and atmospheric ecosystems, the collapse of pollinators, soil degradation and the global water crisis.

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Focusing specifically on climate change, a central role in generating these negative externalities has historically been attributed to multinational enterprises (MNEs) operating in the energy sector, across the entire chain of energy extraction, transformation, transport and conversion into energy services, including the development of the necessary infrastructure[1]. These companies are frequently characterised by significant governmental involvement: a study reveals that more than half of global CO_2 emissions from fossil fuels and cement produced in 2023 would be attributable to a small group of just 36 MNEs, 16 of which are State-owned[2].

Nowadays, this scenario is also affected by the potential risks arising from activities related to the renewable energy sector, which occur, for example, in the form of extraction of critical and strategic raw materials and production of vegetable oils for conversion into biofuels, both of which often involve large-scale changes in land use foremost for intensive agricultural exploitation and for the needs of the mining industry[3].

Such activities are frequently carried out in the context of Global South countries, largely characterised by weaker economies and legal systems, where levels of protection for human rights, the environment and the climate system tend to be lower than in most developed countries, thereby giving rise, in a number of cases, to social, environmental and climate dumping.
These countries rank among the most severely affected by the adverse impacts of climate change, first because of their geographical location in regions exposed to severe climate-related phenomena, such as desertification, floods and hurricanes; second, due to structural vulnerabilities linked to weaknesses in institutional and administrative frameworks; and, finally, because of the limited resources available to support adaptation, as well as constrained technical capacity and technological development.

This has led to severe consequences such as *inter alia* large-scale deforestation in the Amazon and in Indonesia, inability of indigenous populations to practise traditional agriculture and livestock farming to ensure their survival, and land grabbing by foreign powers.

Beyond the impacts arising from the extraction and production of energy sources, further impacts are also associated with the highly energy-intensive consumption carried out by public and private entities and individuals to meet needs such as the transport of people and goods as well as the production and use of goods and services and the utilities, which are all significant factors capable of disrupting the natural climate balance[4].

[1] IPCC, *Climate Change 2022: Mitigation of Climate Change, Working Group III Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2022. See Chapter 6: Energy systems.

[2] Carbon Majors: 2023 Data Update, 2025, available at https://carbonmajors.org/briefing/The-Carbon-Majors-Database-2023-Update-31397.

[3] P. Puoti, *Luci, ombre e scenari geopolitici della transizione verde*, in *Le Sfide. Non c'è futuro senza memoria*, 2024, 14, 72-85. A. Nepa, *Climate Smart Agriculture e commercio internazionale*, in *Com. internaz.*, 2024, 4, 743-751.

[4] IPCC, *Climate Change 2022: Mitigation of Climate Change, supra.*

In the meanwhile, it is also worth considering the challenges that are expected to be posed in the short and medium term by the global growth in energy demand associated with technological development, the demographic variables and the rising expectations of non-OECD countries, in connection with the increasing need to ensure both continuity and stability of energy supply.

This complex scenario can lead to major inequalities between different regions of the world, mainly affecting the Global South countries, also resulting in human rights violations and indigenous cultural heritage harm[5], sometimes even leading to conflicts over control of resources, as in the case of water wars, and being a cause or contributing factor of involuntary migration.

With regard to the foregoing, it is well known that environmental degradation and the adverse impacts of climate change, causing a deterioration in economic and social conditions and a deprivation of the rights of the populations living in the territories affected by these phenomena, can contribute to displacement and internal and international migration[6]: it is estimated that approximately 20 million cases of forced internal migration out of a total of approximately 26 million cases in 2023 are attributable to disasters caused by extreme weather conditions brought about by climate change or, in any case, worsened by it[7].

An upward trend in the consumption of renewable energy, energy efficiency and research and development into additional energy sources – such as hydrogen – are key factors in tackling the current climate crisis and the challenges that will be posed in the future.

At the same time, many companies are sending clear signals towards an effective implementation of sustainability commitments: for example, recently, the World Economic Forum's Alliance of CEO Climate Leaders shared an open letter to world leaders ahead of COP-30, i.e. the United

[5] For remarkable insights on these topics, see F. Lenzerini, *Investment Projects Affecting Indigenous Heritage*, in V. Vadi, B. de Witte (Eds.), *Culture and International Economic Law*, London-New York, 2015.

[6] S. Vezzani, *Climate Change-Related Migration Under the Lens of International Human Rights Law*, in S. Vezzani, M.C. Carta (Eds.), *International and european Union Law in the Face of Climate* Change, Torino, 2024. F. Amato, V. Carofalo, A. Del Guercio, A. Fazzini, V. Grado, E. Imparato, A. Liguori (Eds.), *Climate change, human rights and international migration - Cambiamento climatico, diritti umani e migrazioni internazionali*, Napoli, 2025. M. Di Pierri, M. Marano, (Eds.), *Migrazioni ambientali e crisi climatica – Speciale le rotte del clima*, 4th ed., Roma, 2025. M. Maretti (Ed.), *Mobilità umana e cambiamenti climatici. Un approccio ecologico alle migrazioni*, Torino, 2025. It is worth noting that according to the International Organisation for Migration (IOM) «[t]he difference between migration and displacement lies in the more forced (displacement) or more voluntary (migration) character of the movements, the borderline between the two concepts often being ambiguous». Cf. IOM, *Written Observations*, November 2023, 7, at para. 16 (submitted by the International Organization for Migration to the Inter-American Court of Human Rights). The United Nations High Commissioner for Human Rights has identified several scenarios in which climate change is an underlying factor behind human mobility: cf. UNGA, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, UN Doc. A/HRC/10/61, 15 January 2009, at para. 56.

[7] IDMC, *GRID - Global Report on Internal Displacement*, 2024. UNHCR, *Global Trends - Forced Displacement in 2023*, 13 June 2024.

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Nations Climate Change Conference of 2025, «stressing the commercial viability of the climate economy, and urging businesses and policy-makers to scale the historic opportunity for returns, resilience and growth»[8].

Notwithstanding the said commitment and progress, the ambition on these issues needs to be raised at a global level.

For these reasons, in order to contribute to define a legal framework allowing States, individuals and entities, especially MNEs, alone and through cooperation, to be committed in protecting the climate system, the issue of States' international legal obligations on climate change deserves careful consideration.

This article aims to examine the three well-known Advisory Opinions on climate change recently issued by the International Tribunal for the Law of the Sea (ITLOS)[9], the Inter-American Court of Human Rights (IACtHR)[10] and the International Court of Justice (ICJ)[11], which outline the

[8] Alliance of CEO Climate Leaders, World Economic Forum, *The Climate Economy is Delivering – Driving Returns, Resilience and Growth, Despite Headwinds*, Open letter, October 2025.

[9] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on climate change and international law*, Advisory Opinion, 21 May 2024, No. 31 (ITLOS Advisory Opinion). G. Cataldi, *Brevi note sul parere del Tribunale internazionale per il diritto del mare in tema di cambiamenti climatici nel contesto delle decisioni giudiziarie in materia ambientale*, in F. Amato, V. Carofalo, A. Del Guercio, A. Fazzini, V. Grado, E. Imparato, A. Liguori (Eds.), *Climate change, human rights and international migration – Cambiamento climatico, diritti umani e migrazioni internazionali*, Napoli, 2025, 31-47. For some interesting insights related to the subject of human rights, see also F. Delfino, *'Considerations of Humanity' in the Jurisprudence of ITLOS and UNCLOS Arbitral Tribunals*, in A. Del Vecchio, R. Virzo (Eds.), *Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals*, Cham, 2019, 421-443.

[10] IACtHR, *Advisory Opinion requested by the Republic of Chile and the Republic of Colombia, Climate emergency and human rights (Emergencia Climática y Derechos Humanos)*, Advisory Opinion, 3 July 2025, No. OC-32/25 (IACtHR Advisory Opinion). See M. Carducci, *Prima la natura. la svolta epistemologica nell'Opinione consultiva n. 32/25 della Corte interamericana dei diritti umani*, in *Dir. Comp.*, 2025, 1-5. It is worth recalling that the same Court had previously affirmed the existence of a relationship between the environment and human rights: IACtHR, *Medio Ambiente y Derechos Humanos*, Advisory Opinion, 15 November 2017, No. OC-23/17. See C. Campbell-Duruflé, S.A. Atapattu, *The Inter-American Court's Environment and Human Rights Advisory Opinion: Implications for International Climate Law*, in 8 *Climate L.* 321 (2018). T. Scovazzi, *La Corte interamericana dei diritti umani svolge una trattazione sistematica del diritto umano a un ambiente sano*, in *Riv. giur. ambiente*, 2019, 4, 713-716.

[11] ICJ, *Obligations of States in respect of climate change*, Advisory Opinion, 23 July 2025, No. 187 (ICJ Advisory Opinion). See M. Wewerinke-Singh, *The advisory proceedings on climate change before the International Court of Justice*, in F. Amato, V. Carofalo, A. Del Guercio, A. Fazzini, V. Grado, E. Imparato, A. Liguori (Eds.), *Climate change, human rights and international migration – Cambiamento climatico, diritti umani e migrazioni internazionali*, Napoli, 2025. M. Wewerinke-Singh, J. Viñuales, *The Great Reset: The ICJ Reframes the Conduct Responsible for Climate Change Through the Prism of Internationally Wrongful Acts*, in *EJIL:Talk!*, 4 August 2025. C. Voigt, *The ICJ and the UN Climate Regime: Clarifying Mitigation Obligations Under the Paris Agreement*, in *Völkerrechtsblog*, 4 August 2025. T. Scovazzi, *Il parere consultivo della Corte Internazionale di Giustizia sul cambiamento climatico*, in *RGAonline*, October 2025, No. 68. M. Colli Vignarelli, *Ripartire con le idee chiare: il contributo della Corte Internazionale di Giustizia all'azione per il clima*,

framework of international law applicable in the field of climate change, and raise noteworthy issues on the existence of States' obligations in this area. More specifically, this article aims to identify and discuss some remarkable questions arising from the Courts' Opinions concerning the existence and scope of States' obligations, with particular attention to the extent to which they entail duties of due diligence and oversight vis-à-vis multinational enterprises and other private actors. Although all three Advisory Opinions address climate-related obligations and touch upon the role of private actors, they operate within distinct institutional and normative frameworks. The ICJ, as a court of general jurisdiction in matters of international law, articulates climate duties within the broader framework of international law, whereas the IACtHR approaches them through the specific normative framework of regional human rights protection, and ITLOS frames them within the law of the sea and the structure of obligations mainly under the United Nations Convention on the Law of the Sea (UNCLOS)[12]. A comparative reading of these Opinions therefore requires attention not only to their convergences, but also to the structural differences that shape their respective reasoning and potential domestic impact.

As for the characteristics of the legal instruments covered by this investigation, namely the Advisory Opinions delivered by the ICJ, the IACtHR and the ITLOS, it should first be noted that the function of delivering Advisory Opinions is provided for respectively in Article 65(1) of the ICJ Statute[13], Article 2 of the IACtHR Statute[14] and, finally, Article 21 of the ITLOS Statute[15] in conjunction with Article 138(1) of the Rules of the ITLOS[16].

in *SIDIBlog*, 18 September 2025. P. Panpailin Jantarasombat, I. Chan, *ICJ Climate Change Advisory Opinion: Peoples and Individuals as Obligees*, in *EJILK:Talk!*, 17 October 2025.

[12] United Nations Convention on the Law of the Sea (UNCLOS), adopted in Montego Bay on 10 December 1982 and entered into force on 16 November 1994.

[13] Statute of the International Court of Justice, signed in San Francisco on 26 June 1945 and entered into force on 24 October 1945 (ICJ Statute), Article 65(1): «The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request».

[14] Statute of the Inter-American Court of Human Rights, adopted on 31 October 1979 and entered into force on 1 January 1980 (IACtHR Statute), Article 2: «The Court shall exercise adjudicatory and advisory jurisdiction: [...] 2. Its advisory jurisdiction shall be governed by the provisions of Article 64 of the Convention». American Convention on Human Rights, adopted in San José on 22 November 1969 and entered into force on 18 July 1978 (also known as the Pact of San José), Article 64(2): «The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments».

[15] Statute of the International Tribunal for the Law of the Sea (Annex VI to the United Nations Convention on the Law of the Sea - UNCLOS, opened for signature in Montego Bay on 10 December 1982 and entered into force on 16 November 1994) (ITLOS Statute), Article 21: «The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal».

[16] ITLOS Rules of the Tribunal, adopted on 28 October 1997, last amendment on 25 March 2021, Article 138(1): «The Tribunal may give an advisory opinion on a legal

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As the ICJ has previously clarified, «in regard to advisory proceedings [...] The Court's reply is only of an advisory character: as such, it has no binding force»[17].

It follows, therefore, that advisory opinions do not generate binding legal effects. Nonetheless, ICJ advisory opinions are generally regarded as enjoying considerable authority, in some respects comparable to that of judgments, and may qualify as "judicial decisions" within the meaning of Article 38(1)(d) of the ICJ Statute, as subsidiary means for the determination of rules of international law, thus making a significant contribution to the development of international law[18]. From this perspective, they may serve as an authoritative source for the identification and clarification of rules of international law[19].

In this regard, it is worth noting that the International Law Commission[20], as part of its work, has long been engaged in the issue of «Subsidiary means for the determination of rules of international law», addressing the point whether «advisory opinions could be as authoritative as judicial decisions, even though they were not judicial decisions as such»[21], through a comprehensive study of Article 38(1)(d) of the of the Statute of the International Court of Justice which refers, as is well known, to the «judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law»[22].

2. Brief overview of the main international instruments guiding enterprises on sustainability

The relationship between MNEs and less developed economies from the perspective of sustainability has been extensively explored in international law[23].

question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion».

[17] ICJ, *Interpretation of peace treaties with Bulgaria, Hungary and Romania*, Advisory Opinion, First phase, 30 March 1950, p. 10. On these subjects, see P. Benvenuti, *L'accertamento del diritto mediante i pareri consultivi della Corte Internazionale di Giustizia*, Milano, 1985. B. Conforti, C. Focarelli, *Le Nazioni Unite*, 13th ed., Padova, 2023.

[18] U. Villani, *La funzione consultiva della Corte Internazionale di Giustizia*, in *Diritto@Storia. Riv. Inter. Sci. Giur Trad. Rom.*, 2018, 16, para. 5, https://www.dirittoestoria.it/16/memorie/usurocrazia/Villani-Funzione-consultiva-Corte-Internazionale-Giustizia.htm#_ftn27.

[19] A. Pellet, *Article 38*, in A. Zimmermann, C. Tomuschat, K. Oellers-Frahm (Eds.), *The Statute of the International Court of Justice. A Commentary*, 2nd ed., Oxford, 2012, 783. U. Villani, *La funzione consultiva della Corte Internazionale di Giustizia*, *supra.*

[20] ILC, *Subsidiary means for the determination of rules of international law*, UN Doc. A/76/10, 10 September 2021.

[21] ILC, *Provisional summary record of the 3633rd meeting*, UN Doc. A/CN.4/SR.3633, 26 July 2023.

[22] ICJ Statute, Article 38.

[23] The topic in question is highly debated and there is a vast amount of literature on these issues. Among the pioneers of these studies, see F. Francioni, *Imprese multinazionali, protezione diplomatica e responsabilità internazionale*, Milano, 1979. Among

Several international instruments, mostly of soft law, have been developed at different times and in different contexts with the aim *inter alia* to lead MNEs activities towards sustainability targets and the promotion and protection of the "non-economic values"[24].

In this respect, initially can be mentioned the 1976 OECD Guidelines for Multinational Enterprises, that have been periodically revised until the most recent update in 2024, which incorporates elements consistent with environmental, social and technological requirements, calling for MNEs to address them urgently[25]. The OECD Guidelines set out recommendations and expectations regarding the activities of MNEs that are jointly addressed by governments to MNEs to foster the adoption of responsible conduct in their business activities, with the twofold objective of contributing to sustainable development and addressing the negative impacts on people and the environment associated with the MNEs activities. The recently amended edition includes, *inter alia*, some recommendations to MNEs concerning their commitment to align themselves with the objectives of addressing climate change and protecting biodiversity consistently with relevant international law. Besides, some updates have been included regarding the information that must be provided on corporate responsible conduct.

Furthermore, it is also worth recalling in a nutshell the ILO Tripartite Declaration adopted in 1977[26] and subsequently amended several times until

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the most recently published works, the following may be mentioned, although not exhaustively: R. Pavoni, *Environmental Rights, Sustainable Development, and Investor-State Case Law: A Critical Appraisal*, in P.-M. Dupuy, E.-U. Petersmann, F. Francioni (Eds.), *Human Rights in International Investment Law and Arbitration*, Oxford, 2009, 525-556. J.E. Viñuales, *Foreign Investment and the Environment in International Law*, Cambridge, 2012. J.E. Viñuales, *Foreign Direct Investment: International Investment Law and Natural Resource Governance*, in E. Morgera, K. Kulovesi (Eds.), *Research Handbook on International Law and Natural Resources*, Cheltenham, 2016, 26-45. F. Marrella, *Protection internationale des droits de l'homme et activités des sociétés transnationales*, in 385 *Recueil des cours* 33-435 (2017). F. Francioni, *Il rapporto tra protezione dell'ambiente, libertà del commercio e disciplina degli investimenti*, in A. Fodella, L. Pineschi (Eds.), *La protezione dell'ambiente nel diritto internazionale*, Torino, 2010. R.T. Hoffmann (Eds.), *Research Handbook on Foreign Direct Investment*, Cheltenham, 2019. F.M. Palombino, *Revisiting the 'humanization of international law' argument through the lens of international investment law*, in *Dir. comm. internaz.*, 2020, 3, 745, 745-752. M.A. Stein (Ed.), *The Cambridge Companion to Business & Human Rights Law*, Cambridge, 2021. P. Acconci, *Investimenti stranieri sostenibili. Diritto e governance internazionale e dell'Unione europea*, Napoli, 2023. M.R. Mauro, *Investment Disputes and Fight Against Climate Change in Light of the Energy Charter Treaty: The Delicate Position of the European Union*, in *TDM*, 2023, 1, www.transnational-dispute-management.com/article.asp?key=2992. R. McCorquodale, *Business and Human Rights*, Oxford, 2024. E. Corcione, *La tutela dei diritti umani nelle catene globali del valore*, Torino, 2024. M. Fasciglione, *Impresa e diritti umani nel diritto internazionale. Teoria e prassi*, *supra*. C. Milo, *Environmental and Human Rights Justifications in Investment Arbitration: Probing the Limits of ISDS for the Adjudication of Climate-Related* Disputes, in 26 *J. World Investment & Trade* 512 (2025).

[24] For a systematic and reasoned review of the international instruments mentioned in this paragraph, cf. M.R. Mauro, *Diritto internazionale dell'economia. Teoria e prassi delle relazioni economiche internazionali*, Napoli, 2019, 92-119.

[25] OECD, *Declaration on International Investment and Multinational Enterprises, and annexed OECD Guidelines for Multinational Enterprises*, 21 June 1976.

[26] ILO, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, 17-18 November 1977.

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its latest revision in 2022, the Global Compact of 2000[27], the UN Guiding Principles on Business and Human Rights of 2011[28], and the Hague Rules on Arbitration in Business and Investment of 2019, that provide a set of rules for the arbitration of disputes in the area of business and human rights[29].

This list also includes the United Nations Agenda 2030 and the 17 Sustainable Development Goals adopted in 2015, insofar as it commits both States and all members of society, including enterprises and, among them, MNEs in particular, to pursue sustainable development globally[30]. The Addis Ababa Action Agenda, delivered in the same year, established a global framework for financing development post-2015, where considerable room is dedicated to the role of the private sector in contributing to development and sustainability goals, particularly in the countries of the Global South[31]. First by the 2021 Our Common Agenda[32] and then through the 2024 Pact for the Future[33], the centrality of the principles informing the Agenda 2030 was reaffirmed with a view to the future, including in relation to commitments concerning sustainability issues in Global South countries".

Finally, by means of the recent Sevilla Commitment, States have renewed the global financing for development framework, building on the 2015 Addis Ababa Action Agenda, also announcing the launch of an ambitious package of reforms and actions to bridge the financing gap and catalyse sustainable development investments at scale, with a strong focus on the role of the private sector, stating that «Private business activity, investment and innovation are major drivers of and can play a catalytic role for sustainable development»[34].

In the context of the binding international instruments, an early mention to the role of public and private financing commitments on sustainability and climate action can be found in Article 2(1)(c) of the 2015 Paris Agreement which, referring to the UNFCCC, outlines that «in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: [...] Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development»[35].

Despite significant constraints on its effectiveness and concrete prospects for implementation, it is nevertheless noteworthy that also the Preamble to the 1994 Marrakesh Agreement establishing the WTO provides that the States Parties recognise that their relations in the field of trade and economic activities should, *inter alia*, «allowing for the optimal use

[27] UN, *Global Compact*, 26 July 2000.
[28] UN-HRC, *Guiding Principles on Business and Human Rights*, 16 June 2011.
[29] Business and Human Rights Arbitration Working Group, Hague Rules on Business and Human Rights Arbitration, 12 December 2019.
[30] UNGA, *Transforming Our World: the 2030 Agenda for Sustainable Development*, UN Doc. A/RES/70/1, 21 October 2015.
[31] UNGA, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)*, UN Doc. A/RES/69/313, 17 August 2015.
[32] UN, *Our Common Agenda - Report of the Secretary-General*, September 2021.
[33] UN, *Pact for the Future*, 22-23 September 2024.
[34] UNGA, *Sevilla Commitment*, UN Doc. A/RES/79/323, 26 August 2025, para. 31.
[35] *Paris Agreement*, adopted in Paris on 12 December 2015 and entered into force on 4 November 2016.

of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development»[36].

Furthermore, the practice of new-generation international agreements is now widespread, in particular both International Investment Agreements (IIAs), that include Bilateral Investment Treaties (BITs), and Free Trade Agreements (FTAs) of new generation, which reveal a trend towards integration, alongside economic integration, of the social and environmental components inherent in the concept of sustainability, and contain specific sections dedicated to the need to fulfil the latter, including the respect for the climate system, throughout the corporate activities[37].

Although the Energy Charter Treaty (ECT) is a rather controversial instrument due to the risks related to its potential impact on climate and environmental policies of the States parties, nevertheless its Preamble contains a reference to the UNFCCC and to other international environmental treaties with energy-related aspects, thus linking energy and climate issues in relation to the activities of States and enterprises under the ECT[38].

Another noteworthy development, is that of the governments of Costa Rica, Iceland, New Zealand and Switzerland: in 2024 they concluded the negotiations on an Agreement on Climate Change, Trade and Sustainability (ACCTS), which was opened for signature in the same year, with the aim of promoting the contribution of international trade to both climate action and the fight against other severe environmental problems[39].

Furthermore, at international level, consistent efforts have been underway since 2014 to reach a binding UN Treaty on Business and Human Rights, and further progress in this direction has been made very recently,

[36] *Agreement establishing the World Trade Organization*, adopted in Marrakesh on 15 April 1994 and entered into force on 1 January 1995. Cf. A. Picone, A. Ligustro, *Diritto dell'Organizzazione Mondiale del Commercio*, Padova, 2002, 3-34, 99-101.

[37] For example, see *CETA - Comprehensive Economic and Trade Agreement between Canada and the European Union*, adopted on 30 October 2016, not yet in force, but entered into provisional application on 21 September 2017. *Free Trade Agreement between the European Union and New Zealand*, entered into force on 1 May 2024. As regards another FTA, namely the *European Union – Singapore Free Trade Agreement (EUSFTA)*, entered into force on 21 November 2019, the European Court of Justice issued its views by Opinion 2/15 of 16 May 2017, noting at para. 147 that «the objective of sustainable development henceforth forms an integral part of the common commercial policy» of the EU. On these topics, see G.M. Ruotolo, *Gli accordi commerciali di ultima generazione dell'Unione europea e i loro rapporti col sistema multilaterale degli scambi*, in *Studi sull'integrazione europea*, 2016, 2-3, 329-354. L. Di Anselmo, *La promozione dello sviluppo sostenibile negli accordi commerciali dell'Unione europea: alla ricerca di strumenti di enforcement più incisivi?*, in *Federalismi.it*, 2023, 10, 92-119. For a comprehensive analysis of the provisional application of treaties, see P. Picone, *L'applicazione in via provvisoria degli accordi internazionali*, Napoli, 1973.

[38] *Energy Charter Treaty*, adopted in Lisbon on 17 December 1994 and entered into force on 16 April 1998. See M. Colli Vignarelli, *Reflections at the Sunset: the Strategy of the European Commission for a Coordinated Withdrawal from the Energy Charter Treaty*, in *Quaderni di SIDIBlog*, 2024, 10/2023, 365, 365-386.

[39] *Agreement on Climate Change, Trade and Sustainability (ACCTS)*, adopted on 15 November 2024, not yet in force.

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in 2025[40]. The Preamble contained in the draft text agreed in 2024 significatively refers to the role of private individuals in these wording: «Emphasizing that business enterprises play a crucial role in the social and economic development as well as the implementation of the Agenda 2030 for Sustainable Development»[41].

Finally, it is worth shortly mentioning also another aspect that, at least under some particular standpoints, fits into this discussion, which concerns the European Union, more specifically, the far-reaching regulatory interventions carried out by the EU Institutions that have the effect of promoting the compliance of the enterprises with non-economic values. This concerns both relations between EU Member States, for example through the Corporate Sustainability Reporting Directive (CSRD)[42] and the Corporate Sustainability Due Diligence Directive (CSDDD)[43] – although the full effectiveness of both has been partially deferred for the time being through the "Stop the clock" Directive[44]. It also applies to relations with entities from third countries, such as through the CBAM Regulation[45], which aims to address the risks that may be associated with critical aspects embedded in certain goods originating in third countries (cement, electricity, fertilisers, cast iron, iron, steel, aluminium and chemicals) related to the fact that industrial processes employed to manufacture these goods entail high GHG emissions into the atmosphere.

3. The contribution of the ICJ Advisory Opinion to the definition of State obligations on climate change in relation to the private sector

The recent Advisory Opinion of 23 July 2025 delivered by the ICJ on the subject of *Obligations of States in respect of Climate Change* provides fundamental support for the analysis undertaken in this article, given its comprehensive nature, its novelty on the international stage and the authority of the body that issued it[46]. The ICJ proposes that «its conclusions will allow the law to inform and guide social and political action to address the ongoing climate crisis»[47].

The ICJ was activated in this regard by the UN General Assembly in 2023[48], which requested the ICJ to deliver its views on two questions: what

[40] UN-HRC, *Draft Report on the eleventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, UN Doc. A/HRC/61/XX, 24 October 2025.
[41] UN-HRC, *Text of the updated draft legally binding instrument with the textual proposals submitted by States during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, UN Doc. A/HRC/55/59/Add.1, 13 February 2024.
[42] *Directive (EU) 2022/2464* of 14 December 2022.
[43] *Directive (EU) 2024/1760* of 13 June 2024.
[44] *Directive (EU) 2025/794* of 14 April 2025.
[45] *Regulation (EU) 2023/956* of 10 May 2023.
[46] ICJ Advisory Opinion.
[47] ICJ Advisory Opinion, at para. 456.
[48] UNGA, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, UN Doc. A/RES/77/276, 29 March 2023.

are the obligations of States under international law to protect the climate system from anthropogenic GHG emissions; and what are the legal consequences for States resulting from the violation of these obligations, in particular with respect to small island developing States, as they are often most severely affected by climate impacts, and towards the present and future generations.

It is important to note from a methodological point of view, in particular with regard to the use of climate data and models by judges, that in order to address from a legal perspective the questions submitted, the ICJ relied on the work of the Intergovernmental Panel on Climate Change (IPCC), namely on its Synthesis Reports[49], as the embodiment of the best available science, thus emphasising their full reliability: «The Court is aware that scientific research on climate change is well developed. In this regard, reports by the IPCC constitute comprehensive and authoritative restatements of the best available science about climate change at the time of their publication»[50].

For the purposes of the subject in discussion, it is useful to consider the ICJ's observations, which contains a detailed examination of the main international rules that the Court, for the tasks that it has been assigned, considers relevant and applicable in the field of climate change, which are summarised hereafter.

Among these, first and foremost, a short but significant mention concerns the Charter of the United Nations[51], namely its provisions regarding both the purpose to achieve international co-operation in solving international problems, such as climate change, according to Article 1(3), and the principle of good faith in the fulfilment of the obligations assumed by Member States under the Charter, according to Article 2(2). The reference to international cooperation takes on more specific features in the ICJ Advisory Opinion, as the Court considered it indispensable in the field of climate change[52].

The ICJ then focuses on the three binding international agreements that deal specifically and more directly with climate issues, namely the UNFCCC[53], the Kyoto Protocol[54] and the Paris Agreement[55], remarking in general terms that, by committing themselves to these agreements, States intended to address the problem of climate change caused by anthropogenic GHG emissions[56]. It should be noted, however, that, with very few exceptions, almost all States have ratified the three above-mentioned instruments, giving them a substantial global scope of application.

[49] IPCC, *Climate Change 2023: Synthesis Report, Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2023.
[50] ICJ Advisory Opinion, at para. 284.
[51] *Charter of the United Nations*, signed in San Francisco on 26 June 1945 and entered into force on 24 October 1945 (UN Charter).
[52] ICJ Advisory Opinion, at paras. 115 and 215.
[53] *United Nations Framework Convention on Climate Change*, adopted on 9 May 1992, opened for signature on 4 June 1992 and entered into force on 21 March 1994 (UNFCCC).
[54] *Kyoto Protocol*, adopted on 11 December 1997 and entered into force on 16 February 2005.
[55] *Paris Agreement, supra.*
[56] ICJ Advisory Opinion, at paras. 116-121 and 174.

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In this regard, it should be recalled that more than thirty years ago, the international community as a whole began to jointly address the global problem of climate change by adopting a multilateral agreement, the UNFCCC, which promoted the adoption of both mitigation measures, designed to address the causes of climate change, and adaptation measures, intended to enable the process of adjustment to actual or expected climate and its effects.

The "ultimate objective" set out in Article 2 of the UNFCCC which diversely applies to States according to their level of development, is to achieve the «stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system», and to ensure that «[s]uch a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner»[57]. The UNFCCC therefore provides for obligations to adopt mitigation and adaptation measures, obligations to cooperate, as well as additional obligations incumbent upon the most developed countries.

In accordance with Article 17 of the UNFCCC, the Kyoto Protocol was presented at the third Conference of the Parties (COP-3) to the UNFCCC held in 1997, but it did not enter into force until 2005 owing to a complex ratification process. The Protocol made the obligations of States more stringent by introducing the "cap and trade" principle, which set limits on the GHG emissions of each State and allowed the "trading" of emission allowances on the "carbon market". Although the Kyoto Protocol is still formally in force, the specific emission reduction obligations incumbent on the States provided for therein are no longer applicable, as the commitment period envisaged thereby has expired and has not been renewed[58].

At COP-21 in 2015, the last of the three main instruments dedicated to climate change was presented, the Paris Agreement, also linked to the UNFCCC, which introduced the different instrument of Nationally Determined Contributions (NDCs). This means that countries are requested to set out their commitments in national climate action plans, which are submitted regularly to the UNFCCC Secretariat, specifying, on the one hand, how they plan to reduce GHG emissions to help reach the global goal of mitigation, i.e. limiting the average global temperature increase to well below 2°C above pre-industrial levels (generally before 1750) and to pursue any efforts to limit the increase to 1.5°C. And, on the other hand, how they intend to adapt to the impacts of climate change, with a view to contributing to the global adaptation goal set out in Article 7 of the Agreement itself.

[57] UNFCCC, *supra*, Article 2.

[58] For several years now, the Kyoto Protocol has been eclipsed from the international climate law scene and implicitly considered superseded by the Paris Agreement, with its effectiveness mainly relegated to the period of validity of the first commitment period provided for therein. By means of the Advisory Opinion at stake, the ICJ has now cleared up any doubts regarding the current validity of the Kyoto Protocol, clarifying that «the lack of agreement on a further commitment period under the Kyoto Protocol after the adoption of the Paris Agreement does not mean that the Kyoto Protocol has been terminated. The Kyoto Protocol therefore remains part of the applicable law » (ICJ Advisory Opinion, at para. 120. See also paras. 187-195).

The rules contained in the aforementioned triad of agreements, despite substantial differences, converge on the objective of establishing obligations for the States Parties to fulfil in the two fundamental pillars of climate action, namely mitigation and adaptation, although the latter, beyond a rather generic commitment to pursue the global adaptation goal, is mostly subject to provisions that lack real binding legal effects. The ICJ also specified that «there is no incompatibility between the three climate change treaties. On the contrary, they are mutually supportive, with the Kyoto Protocol and Paris Agreement providing greater specification to the general obligations contained in the UNFCCC»[59].

For the sake of completeness, it should also be added that, alongside those two pillars, a third sector known as "loss and damage" is emerging through a long and complex process, with the aim of introducing compensation instruments for damage caused by climate change, particularly in less developed countries.

Having dealt with the three international instruments at stake, the ICJ, consistently with the specific requests submitted by the General Assembly, then focused on the UNCLOS noting that, according to its Opinion, this too forms an integral part of the applicable and most relevant legislation on climate change. The ICJ supported this view with the arguments put forward by ITLOS, namely that many provisions contained in UNCLOS impose obligations on States in relation to climate change, i.e. that States Parties to the UNCLOS have the specific obligations «to take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions» and «to take measures necessary to conserve the living marine resources threatened by climate change impacts and ocean acidification»[60].

Further obligations for the States that are contracting parties to them, arise from compliance with international treaties mainly concerning different issues, to the extent that they also intercept and address aspects relevant to climate issues, as in the case of the 1992 Convention on Biological Diversity, the 1994 Convention to Combat Desertification and the system of rules designed to protect the ozone layer, which includes the 1985 Vienna Convention, the 1987 Montreal Protocol and the 2016 Kigali Amendment[61].

The ICJ then stressed the applicability in this context of the *corpus* of human rights law. On the one hand, this means that, as indicated in the Preamble to the Paris Agreement, when taking action to address climate change, States are required to consider their human rights obligations. On the other hand, it means that States must ensure the enjoyment of human rights by taking the measures necessary to protect the climate balance and cooperate in good faith[62]. On yet another hand, it means that States must promote and protect human rights from the impacts of climate change[63].

Finally, the ICJ referred to two obligations under customary international law, reiterating their *erga omnes* effect, relating to the duty to

[59] ICJ Advisory Opinion, at para. 195.
[60] ITLOS Advisory Opinion, at paras. 441(3)(b) and 441(4)(e).
[61] ICJ Advisory Opinion, at paras. 125-130.
[62] T. Scovazzi, *Il parere consultivo della Corte Internazionale di Giustizia sul cambiamento climatico*, *supra*, at 2.
[63] ICJ Advisory Opinion, at paras. 143-145.

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protect the climate system[64]. The first of these obligations corresponds to the duty of States to prevent significant damage to the environment and involves the application of a strict standard of due diligence[65]. It not only results in the obligation for each country to adopt all appropriate rules and measures to prevent activities under their jurisdiction from causing such damage, but also in ensuring a certain level of vigilance in the application of such rules and measures and in the exercise of administrative control.

The second obligation under customary international law which has been considered relevant by the Court in this context is the duty of States to cooperate in good faith for the protection of the climate system and the environment - insofar as the obligation to cooperate, as already seen, is also enshrined in Article 1 of the United Nations Charter[66] - which, according to the ICJ, must be considered intrinsically linked to the obligation to prevent significant damage to the climate system[67].

For the purposes of interpreting the aforementioned framework of rules, the ICJ acknowledges, in particular, the existence of applicable principles in the field of climate change but it limits its analysis thereof to the material submitted by the contributors to its work. The Court thus identifies a range of five principles: sustainable development, common but differentiated responsibilities and respective capabilities, equity[68], intergenerational equity, precaution.

As regards the answer to the second question submitted to it by the General Assembly, it is sufficient here to note that the ICJ observed that «a breach by a State of any obligations identified in response to question (a) constitutes an internationally wrongful act entailing the responsibility of that State»[69].

A specific point in the aforementioned ICJ Opinion is reserved to the role played by States in relation to private individuals, more precisely, to the controversial issue concerning the attribution to States of the conduct of private actors, including MNEs, resulting in large emissions of GHG[70]. Recalling the arguments for answering question (a) on the obligations of States under international law to protect the climate system from anthropogenic GHG emissions «the Court observes that the obligations it has identified under question (a) include the obligation of States to regulate the activities of private actors as a matter of due diligence. Therefore,

[64] On the subject of obligations *erga omnes*, cf. P. Picone, *Comunità internazionale e obblighi «erga omnes»*, 3rd ed., Napoli, 2013.
[65] The ICJ referring to para. 101 of its Judgement delivered on 20 April 2010 in the case *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, «recalls that obligations of conduct in international environmental law entail an obligation to act with due diligence, requiring States parties "to use all the means at [their] disposal" with a view to fulfilling their international obligations», (ICJ Advisory Opinion, at para. 175).
[66] UN Charter, Article 1: «The Purposes of the United Nations are: [...] 3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character».
[67] ICJ Advisory Opinion, at paras. 131-142.
[68] For useful insights into the principle of equity in international law, see F. Francioni, *Equity in International Law*, in R. Wolfrum (Ed.), *Max Planck Encyclopedia of Public International Law*, Oxford, 2020.
[69] ICJ Advisory Opinion, at para. 457.
[70] Id. at para. 428.

attribution in this context involves attaching to a State its own actions or omissions that constitute a failure to exercise regulatory due diligence. In such circumstances, the question of attributing the conduct of private actors to a State does not arise»[71].

The ICJ also pointed out that «The legal standard to assess compliance with the obligation to regulate, as well as the nature of the actions or omissions that lead to attribution, has been set out by the Court in several cases»[72]. And it argued that «Thus, a State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction»[73].

Having sketched out what are, in the light of the ICJ Opinion, the international legal obligations of States in relation to climate change and what are the consequences of their violations, a specific aspect it is now worth noting, that was underlined by one of the Court's components, Judge Cleveland, in her Declaration attached to the Advisory Opinion.[74].

In the section entitled "International investment law" contained in her Declaration, Judge Cleveland addressed the intricate issue of the relationship between the aforementioned duty of due diligence – which as to the ICJ is incumbent upon the States – requiring States to regulate the activities of private actors, on the one hand, and international investment law, on the other hand. The issue revolves around the problem that arises when the foreign investor's protection requirements may conflict with the due diligence obligation of States. It offers an interesting perspective on the matter, which is worth quoting verbatim[75]:

> 21. A number of participants stressed the potentially negative influence of international investment law on efforts taken by States to combat climate change. They pointed, in particular, to the chilling effect of onerous investment proceedings on climate-related regulation. The IPCC has acknowledged this phenomenon, observing that «international investment agreements may lead to "regulatory chill", which may lead to countries refraining from or delaying the adoption of mitigation policies, such as phasing out fossil fuels.
> 22. It is therefore important to underscore that the obligations of States in relation to the protection of the climate system impose significant responsibilities on States to adopt and implement appropriate environmental regulations to mitigate and adapt to climate change, including in co-operation with other States, while allowing States some discretion with respect to the particular regulatory paths that may be chosen. Accordingly, the interpretation of investment instruments must be informed by States' obligations in respect of climate change under international law, including the

[71] Id. at para. 428.
[72] ICJ, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 20 April 2010, at para. 197. ICJ, *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, Judgment, 24 May 1980, at para. 63.
[73] ICJ Advisory Opinion, at para. 428.
[74] ICJ, Declaration of Judge Cleveland (to the ICJ's Advisory Opinion of 23 July 2025).
[75] Id. at paras. 21 and 22.

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> stringent due diligence standard to which States are bound in implementing such obligations.

This last sentence should therefore be interpreted as meaning that, in order for the duty of due diligence relating to the protection of the climate system incumbent on States to be considered fulfilled, not only are States required to ensure compliance with it for themselves, but also that any acts – domestic or international – intended to regulate foreign investments should be interpreted in accordance with the aforementioned obligation.

In addition to Judge Cleveland's Declaration, a joint Declaration that Judge Cleveland and Judge Bhandari also attached to the ICJ's Advisory Opinion is also worth mentioning here[76]. In the joint Declaration, the Judges, relying upon the findings of the IPCC, note that

«Fossil fuel emissions contribute overwhelmingly to climate change, and measures to phase out fossil fuel dependence and transition to clean energy necessarily form key components of States' obligations both to limit global warming to the 1.5°C Paris Agreement temperature target and to fulfil their customary obligations. Indeed, in light of the scientific consensus underscoring the impact of fossil fuels on both historical and projected global warming, it is unimaginable that States can achieve their obligations under climate change treaties and their obligation to prevent significant harm to the environment under customary international law without a rapid and drastic reduction in — and the phasing out of — fossil fuel production and dependency»[77].

Based on these considerations, Judges Cleveland and Bhandari jointly conclude that «the primary responsibility to act rests with States, and the private actors subject to their jurisdiction, who must re-evaluate and reform their policies to achieve the transformative change essential for the preservation of our shared future»[78].

A systematic analysis of the ICJ Opinion and the two said Declarations leads to the conclusion that, in fulfilling the aforementioned international obligations, it is inevitable that States will adopt measures targeting MNEs that impose restrictions on the extraction and processing of fossil fuels, with a view to the progressive and rapid dismantling of such productive activities.

The ICJ Opinion and the two Declarations, ultimately, should be recognised for having taken into consideration, in dealing with issues relating to the obligations of States and the consequences of their violations, the question of the role played by private individuals in this context, although these matters have not been thoroughly addressed, arguably because this was not the most appropriate forum in which to deal with them, nor was it the focus of the questions submitted to the Court by the General Assembly.

Against this background, the ICJ Opinion may be seen as outlining the overarching international legal framework guiding the interpretation of States' climate obligations, including those that may entail duties of due diligence and oversight vis-à-vis private actors, thereby contributing to the

[76] ICJ, Joint Declaration of Judges Bhandari and Cleveland (to the ICJ's Advisory Opinion of 23 July 2025).
[77] Id. at para. 1.
[78] Id. at para. 29.

evolving redefinition of the public–private allocation of climate-related responsibilities[79].

4. The contribution of the IACtHR Advisory Opinion to the definition of State obligations on climate change in relation to the private sector

Unlike the ICJ, the Inter-American Court operates within a regional human rights system characterised by a particularly intense interaction with domestic legal orders. Its interpretative authority is designed to operate internally through the doctrine of conventionality control - whereby States parties to the 1969 American Convention on Human Rights are under an international obligation to ensure that their domestic authorities interpret and apply internal law in conformity with the Convention as authoritatively interpreted by the Court - as well as through a consolidated practice of judicial dialogue, which has historically fostered innovative remedial and structural approaches. Consequently, even when delivered in advisory form, the Court's reasoning is capable of exerting a direct influence at the domestic level, especially in a region where courts have frequently played a central role in advancing rights-based environmental protection.

In addressing the IACtHR Advisory Opinion, which focuses primarily on aspects relating to the relationship between human rights and the climate system, it is worth noting that this interrelationship has also been outlined in previous international instruments, albeit from different perspectives. In 2022, the Human Rights Council[80] and the United Nations General Assembly[81] recognised the existence of an autonomous human right to a clean, healthy and sustainable environment, which could be also considered, at least in part, as an autonomous right to a balanced climate.

It should be added that, since 2008, the same Council has adopted a series of Resolutions on human rights and climate change, also addressing specific aspects, such as those relating to the relationship between climate change and cross-border migration[82] and providing for the appointment of a Special rapporteur on the promotion and protection of human rights in the context of climate change[83]. Furthermore, a very remarkable a very

[79] On the growing debate concerning corporate climate responsibility and the role of domestic and international courts in shaping standards of due diligence and regulatory oversight over private actors, see, *inter alia*, P. Martino, *From Public Duty to Private Obligations: The Evolution of Climate Responsibilities Across Constitutional Systems*, in *Riv. Corp. Gov.*, 2025, 2, 219-246. C. Feraci, *Contenzioso climatico e diritto internazionale privato dell'Unione Europea*, Torino, 2024. A.G. Castermans, B. Krans, J. Lukkes, *Climate liability: a duty of care for companies*, in 22 *JuristenZeitung* 1022-1028 (2025).
[80] UN-HRC, *The human right to a safe, clean, healthy and sustainable environment*, UN Doc. A/HRC/48/L.23/Rev.1, 8 October 2021.
[81] UNGA, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300, 28 July 2022.
[82] UN-HRC, *The slow onset effects of climate change and human rights protection for cross-border migrants*, UN Doc. A/HRC/37/CRP.4, 2 March 2018. La più recente è: UN-HRC, Human rights and climate change, UN Doc. A/HRC/RES/59/25, 16 July 2025.
[83] UN-HRC, *Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, UN Doc. A/HRC/RES/48/14, 8 October 2021.

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remarkable case-law has been developing before by both national and international courts and international human rights monitoring bodies: in particular, the European Court of Human Rights, in the *KlimaSeniorinnen* case, explicitly ruled that States have positive obligations with regard to climate change[84].

Turning now to the Advisory Opinion under discussion, on 29 May 2025, just two months before the ICJ Opinion, the IACtHR issued its Advisory Opinion on Climate Emergency and Human Rights[85] focusing on the obligations under the Inter-American Convention on Human Rights[86] and the Protocol of San Salvador[87] in the context of the climate emergency and their scope[88].

The IACtHR has paid particular attention, among other aspects, to the implications of climate change for human mobility, emphasising how climate disasters can cause damages to infrastructure, suspension of essential services, destruction of homes and the loss of livelihoods, employment and income. According to the Court, these phenomena can also result in the interruption of vital economic activities and give rise to forms of forced and involuntary migration and displacement of persons, with consequent repercussions on the protection of the fundamental rights of the individuals involved.

The IACtHR stressed that «Impacts of climate change such as growing food insecurity, the economic downturn, migrations, water scarcity, and extreme weather events» also pose challenges to the maintenance and effectiveness of democracy. In addition, as a «threat multiplier», climate change «exacerbates underlying factors of conflict, exercises pressure on public finances, aggravates resource inequalities, and increases political and social tensions» raising not least significant concerns also for the promotion and protection of non-economic values, especially in the less developed countries[89].

By closely linking the issues related to the negative impacts of climate change, the effective enjoyment of human rights, the migrations and the institutional stability, this Advisory Opinion provides a valuable perspective

[84] ECHR, Grand Chamber, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, case No. 53600/20, Judgment, 9 April 2024. For early discussion, see, *inter alia*, A. Hösli, M. Rehmann, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: the European Court of Human Rights Answer to Climate Change*, in *Climate L.*, 2024, 1-22. M. Wewerinke-Singh, *Climate Protection Obligations under the European Convention on Human Rights: The KlimaSeniorinnen Judgment*, in 2 *Eur. Const. L. Rev.* 356-374 (2025). R. Pisillo Mazzeschi, *Diritti umani e cambiamento climatico: brevi note sulla sentenza KlimaSeniorinnen della Corte di Strasburgo*, in *Dir. umani dir. internaz.*, 2024, 2, 383-400. F. Gallarati, *L'obbligazione climatica davanti alla Corte europea dei diritti dell'uomo: la sentenza KlimaSeniorinnen e le sue ricadute comparate*, in *DPCE online*, 2024, 2, 1457-1478. A. Savaresi, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making climate change litigation history*, in 1 *Rev. Europ. Compar. Internat. Env. L.* 279-287 (2025).

[85] IACtHR Advisory Opinion.

[86] American Convention on Human Rights, *supra*.

[87] Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, signed at San Salvador on 17 November 1988 and entered into force on 16 November 1999 (Protocol of San Salvador).

[88] IACtHR Advisory Opinion, at para. 217.

[89] Id. at paras. 95 and 97.

on the integration of these areas, including from the standpoint of the enforcement of international law with a view to increasing the protection of the rights at stake.

In one section of the Advisory Opinion, the IACtHR addresses the issue of States' climate obligations in relation to the activities of individuals and entities. In dealing with «the scope of the general obligations derived from the American Convention and the Protocol of San Salvador in relation to the substantive and procedural rights in the context of the climate emergency»[90], the IACtHR focuses *inter alia* on the «Obligation of Guarantee in the Context of Climate Emergency», noting that «The obligation of guarantee requires organizing the whole government apparatus and, in general, all the structures through which public powers are exercised, in a manner that is capable of legally ensuring the free and full exercise of human rights»[91]. The Court then argues that «the obligation of guarantee extends beyond the relationship between State agents and the people subject to its jurisdiction, encompassing also the duty, in the private sphere, to prevent third parties from violating the protected rights»[92].

For the purposes of the issues addressed in this article, as concerns the effects on the individuals and entities resulting from the obligations undertaken by States in climate action, it appears particularly significant what the IACtHR observed in relation to the obligation of States to ensure coherence between States' international and national commitments and their obligations related to climate change, taking into account the standard of enhanced due diligence to which they are bound. On this point, the IACtHR finds that «they should adopt measures that permit coherent international action across all sectors contributing to the achievement of their mitigation strategy, in particular with regard to foreign investment, finance, and international trade»[93].

The Court thus highlights the active role that international economic operators can play in climate action, if properly guided by States. In this way, the IACtHR, on the one hand, provides an important contribution to the growing trend whereby, through their engagement in climate change mitigation and adaptation (besides the loss and damage sector), the relevant private actors – especially MNEs – become key partners of the States in fulfilling the global agenda for addressing climate change. On the other hand, it intends to underline that both States and companies have obligations and responsibilities in the context of climate change.

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[90] Id. at para. 218.
[91] Id. at para. 225.
[92] Id. at para. 226.
[93] Id. at para. 344. On the aspects of the IACtHR Advisory Opinion concerning the role of private entities, see E. Jackson, *Advancing Corporate Climate Accountability Post theInter-American Court Advisory Opinion on Human Rights and the Climate Emergency*, in *EJIL:Talk!*, 21 July 2025, https://www.ejiltalk.org/advancing-corporate-climate-accountability-post-the-inter-american-court-advisory-opinion-on-human-rights-and-the-climate-emergency/. N. Andreotti, *Climate Change and Investment Arbitration: The IACtHR's 2025 Advisory Opinion as a Regulatory Defense Tool*, in *Kluwer Arbitration Blog*, 9 August 2025, https://legalblogs.wolterskluwer.com/arbitration-blog/climate-change-and-investment-arbitration-the-iacthrs-2025-advisory-opinion-as-a-regulatory-defense-tool/.

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In the broader context of States' climate-related obligations and the legal framework they are required to establish to achieve this result, the IACtHR systematically addresses the issue of the obligation of States to regulate the behaviour of companies, devoting a large section to it which is entitled «Regulation of Corporate Conduct»[94]. According to the IACtHR, there is no doubt that «business enterprises are called on to play an essential role in addressing the climate emergency», and that the adoption of any measures aimed at addressing human rights violations committed by public and private enterprises «is an obligation that should be complied by the business sector and must be regulated by States»[95].

The Court further emphasizes the necessity for the relevant regulatory frameworks to duly take into account the role played by the different components of MNEs, so to enable States to attribute legal responsibility to parent companies, or to those exercising control over other entities, in respect of the amount of GHG emitted by their subsidiaries or controlled companies[96].

The Court then turns specifically to the issue of the need for a renewed approach by States that should be more committed to sustainability when operating in the context of foreign investment, noting to this end that States should both review the relevant trade and investment international treaties, and provide for foreign investor-State dispute settlement mechanisms, with the aim to ensure that they neither hinder nor curtail actions concerning climate change and human rights[97].

Accordingly, States should enshrine these obligations within their domestic legal systems and take all appropriate steps - including regulatory, institutional, and enforcement measures - to guarantee their effective fulfilment and ensure full compliance in practice[98].

5. The contribution of the ITLOS Advisory Opinion to the definition of State obligations on climate change in relation to the private sector

On 21 May 2024, the ITLOS delivered an Advisory Opinion in response to a request made by the Co-Chairs of the Commission of Small Island States on Climate Change and International Law by letter dated 12 December 2022, on the following questions: «What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea [...]: (a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?» and «(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming

[94] Id. at paras. 345-351.
[95] IACtHR Advisory Opinion, at para. 345.
[96] Id. at para. 350.
[97] Id. at para. 351.
[98] Id. at para. 346.

and sea level rise, and ocean acidification?»[99]. The Tribunal recalls the provisions of UNCLOS concerning, *inter alia*, the circumstances according to which, States, pursuant to Article 194, para. 1 of that Convention, are required to adopt all measures that are necessary to prevent, reduce and control pollution of the marine environment from any source - including GHG - basing their actions on the best practicable means. The ITLOS also recalls the provisions of Article 194, para. 2, namely that States are required to adopt all measures necessary to address two situations that are framed as follows. The first provision refers to the obligation to ensure that activities under their jurisdiction or control – i.e. including those carried out by private individuals and enterprises - are so conducted as not to cause damage by pollution (including GHG emissions) to other States and their environment. The second provision refers to the obligation to adopt appropriate measures to prevent pollution arising from incidents or activities under the jurisdiction or control of the State spread beyond the areas where the respective States exercise their sovereignty.

In this regard, ITLOS observes that the provision of Article 194, para. 1 of UNCLOS, to prevent, reduce and control GHG emissions and other kinds of pollution corresponds to a duty of due diligence, emphasising, on the one hand, that this obligation is "stringent" because, otherwise, the emissions generated could cause high risks of serious and irreversible harm to the marine environment, while noting, on the other hand, that this obligation may be articulated differently, according to the effective capabilities and available resources of the States[100].

The Tribunal is aware of the difficulties inherent in the concept of due diligence, highlighting how the boundaries of this standard are likely to vary, depending on the situations in which an obligation of due diligence applies. In this regard, the Tribunal relies on the findings of the Seabed Disputes Chamber, which is a specialised Chamber established within the ITLOS, having compulsory and generally exclusive jurisdiction over disputes concerning the exploration and exploitation of the seabed and ocean floor, and is also competent to deliver Advisory Opinions[101]. In this regard, ITLOS refers to the Chamber's view on this point, namely that "[t]he standard of due diligence has to be more severe for the riskier activities"[102]. It is clear that enterprise activities, including the ones carried out by subsidiaries and controlled entities in the most vulnerable countries, such as those in the Global South, could in some cases fall within this notion of "riskier activities", with the resulting consequences in terms of higher rigour in assessing the standard at stake.

Turning to how Article 194(2) applies to GHG emissions, which, as already said, establishes obligations for the State in relation to transboundary pollution (and is framed in the above-mentioned situations),

[99] ITLOS Advisory Opinion, at para. 3.1. See also the following recent UN Resolution, linking the marine environment to climate change: UN-HRC, *The human right to a clean, healthy and sustainable environment: the ocean and human rights*, UN Doc. A/HRC/RES/58/16, 3 April 2025.
[100] Id. at para. 243.
[101] Id. at para. 239.
[102] ITLOS, Seabed Disputes Chamber, Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion, 1 February 2011, para. 117

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ITLOS, besides identifying an obligation to prevent, reduce and control marine pollution in this case as well[103], considered that the additional obligation arising from the principle of harm prevention is also applicable to such cases. As recently reaffirmed in a Resolution of the Institut de Droit International, States' obligations to prevent harm to the environment of areas beyond national jurisdiction are obligations *erga omnes*[104], and this means that they constitute obligations under general international law, owed to the international community as a whole[105]. As a result, «Any State is entitled to invoke the responsibility of other States for a breach of these obligations and to take action in conformity with international law to ensure compliance with them»[106].

By extending its analysis of the climate-related obligations arising from Article 194 of UNCLOS, ITLOS focused on the scope and content of the obligations, stressing, first of all, that the wording "activities under their jurisdiction or control" which features in the UNCLOS, refers to activities carried out by both public and private actors[107]. This clearly underlines the importance of the role that ought to be attributed to the behaviour of individuals and enterprises in achieving the purposes envisaged by this Convention.

Secondly, ITLOS focused on aspects relating to the link concerning jurisdiction or control, which should be identified between the activities in question and the State concerned, emphasising that this concept of State jurisdiction or control is characterised by specific features in this field: in fact, in this particular context, it would go beyond the territorial boundaries of the State to extend its scope to other areas where the State could thus exercise its jurisdiction or authority according to international law.

On these grounds, ITLOS argued that, according to the obligation to take the necessary measures to protect and preserve the marine environment, States are required to ensure that non-State actors under their jurisdiction or control comply with such measures[108].

The ITLOS arguments regarding the contribution of the private sector to due diligence obligations are also significant for the purposes of the present analysis. According to the Tribunal, in fact, «The obligation of due diligence requires a State to put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and to exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective»[109].

[103] ITLOS Advisory Opinion, at para. 244.
[104] Institut de Droit International, 3rd Commission, Harm Prevention Rules Applicable to the Global Commons, Rapporteurs: Ms Jutta Brunnée and Mr Nico Schrijver, Resolution, *Harm prevention rules applicable to the environment of areas beyond national jurisdiction*, 27 August 2025, Article 7(1). Cf. P. Picone, *Comunità internazionale e obblighi «erga omnes»*, *supra*.
[105] Id., Article 1.
[106] Id., Article 7(2).
[107] ITLOS Advisory Opinion, at para. 247.
[108] Id. at para. 396.
[109] Id. at para. 235.

The ITLOS appears to align itself with the position taken by the ICJ in the above-mentioned case *Pulp Mills on the River Uruguay*, where the ITLOS described the obligation of due diligence as entailing the adoption of the relevant measures and the duty of vigilance and monitoring on their implementation[110]. In fact, with regard to the obligation to act with due diligence[111], not only when the relevant activities are carried out by the State, but also when performed by individuals and entities, the ICJ ruled in the case *Pulp Mills* that «It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators»[112]. In the same vein, it is also worth recalling what was stated by the United Nations Working Group on Business and Human Rights, according to which not only States, but also companies bear obligations and responsibilities toward climate change[113].

As said, the obligation of due diligence acquires particular significance in those contexts where the relevant activities are predominantly conducted by individuals and entities, mainly MNEs, such as, for example, in the event of the State's duty to regulate marine pollution resulting from anthropogenic GHG emissions.

Finally, ITLOS also points out that, in such circumstances, it would be neither reasonable nor consistent with the principle at stake to hold a State, that has adopted all appropriate measures to comply with this obligation, internationally responsible merely because such pollution has occurred[114].

6. Concluding remarks

A joint analysis of the three recent Advisory Opinions delivered by the ICJ, IACtHR and ITLOS reveals a significant evolution in international law towards an increasingly integrated model of climate-related obligations, in which emerges the involvement of individuals and enterprises.

In this paradigm, once applied to the climate system, the above-mentioned principles of international law, such as harm prevention, cooperation, due diligence as well as the principles imposing the duties of preventing, controlling and reducing pollution and GHG emissions, contribute to marking a shift towards a growing legal significance of corporate behaviour, including when operating through subsidiaries and controlled entities, in the context of Global South countries.

[110] ICJ, *Pulp Mills on the River Uruguay*, *supra*, at para. 197.
[111] On these subjects, see P. Picone, *Obblighi "erga omnes" e uso della forza*, Napoli, 2017, 58-59. M. Fasciglione, *Impresa e diritti umani nel diritto internazionale. Teoria e prassi*, Torino, 2024, 41 ss.
[112] ICJ, *Pulp Mills on the River Uruguay*, *supra*, at para. 197.
[113] Working Group on the issue of human rights and transnational corporations and other business enterprises, *Information Note on Climate Change and the Guiding Principles on Business and Human Rights*, June 2023, 3: «States and business enterprises have obligations and responsibilities with respect to climate change, and with respect to the impacts of climate change on human rights».
[114] ITLOS Advisory Opinion, at para. 236.

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On the one hand, it is precisely because of the type of business activity, especially in the energy sector, which often involves greater risks and, therefore, as already argued, requires a more stringent assessment of the standard of due diligence, and, on the other hand, due to the higher vulnerability of those countries, that greater attention must be paid to the activities of such enterprises, especially MNEs, in terms of sustainability and compliance with the climate targets that the international community has set out to achieve.

Recognising a major role of MNEs and other enterprises from this standpoint, especially when involved in commercial and investment activities in the Global South, also with emerging trends in view of a corporate climate responsibility, appears also consistent both with the needs expressed by the scientific community on the basis of the climate data and scenarios, and with the roadmaps of national and international bodies operating in the climate sector.

These developments not only appear to strengthen the effectiveness of international obligations related to the protection of the climate system, but also offer international and national judges, interpretative criteria and applicable legal instruments, which are suitable for increasing consistency between global governance and domestic as well as international climate litigation, thus promoting the progressive integration of international climate law into any legal system.

Recent domestic judicial developments, rendered in institutional and procedural contexts distinct from those of the three Advisory Opinions, further attest to the progressive recognition of enterprises as legally relevant actors within the climate framework.

In Italy, by order of 21 July 2025, the Court of Cassation affirmed the jurisdiction of the ordinary civil courts in a climate-related action brought against a major energy corporation[115]. The decision was delivered in the context of a preliminary ruling on jurisdiction and did not address the merits of corporate climate liability. However, by rejecting objections aimed at excluding judicial review and by confirming that claims seeking to hold a private corporation liable for alleged climate-related harm fall within the jurisdiction of the ordinary judiciary, the Court removed significant procedural obstacles. In doing so, it clarified that complex questions relating to corporate contributions to climate change are, in principle, justiciable within the domestic civil framework, thereby allowing the substantive phase of the proceedings to unfold before the competent trial court of Rome.

Equally emblematic is the litigation brought by a Peruvian farmer against a leading German energy company before the German courts[116]. He contended that glacial retreat linked to global warming exposed his property to an increased risk of flooding and requested that the company – allegedly among the major historical emitters of greenhouse gases – bear a

[115] Court of Cassation, Joint Civil Chambers (Corte di Cassazione, S.U. civ.), Order no. 20381 of 21 July 2025. See G. Butti, *Contenzioso climatico: intervengono le Sezioni Unite della Cassazione e la Corte Internazionale di Giustizia*, in *RGA online*, 1 October 2025.

[116] Higher Regional Court (Oberlandesgericht) of Hamm, *S.L.L. v. RWE AG*, Judgment, 28 May 2025. See V. Kahl, E. Costa, *One Step Back and Two Steps Forward: The Significance of Lliuya's Defeat for the Success of Future Climate Litigation across the South-North Axis*, in *VerfBlog*, 12 November 2025, https://verfassungsblog.de/lliuya-rwe/.

corresponding share of the costs of protective measures, calculated according to its contribution to historical greenhouse gas emissions. In its final judgment of 2025, the Higher Regional Court of Hamm dismissed the claim on evidentiary grounds, holding that the claimant had not sufficiently demonstrated the existence of a concrete and imminent risk to his property. The action therefore failed. Nevertheless, the proceedings had previously been admitted to the evidentiary phase on the basis that, in principle, a private company could bear civil liability corresponding to its share of global greenhouse gas emissions. By engaging in a substantive assessment of questions of causation, attribution and proportional contribution in a transnational setting, the German court acknowledged that domestic tort law is not structurally incapable of addressing climate-related harm, even where the alleged damage materialises in a different State.

Further clarification may be drawn from proceedings before the Dutch courts concerning the possible imposition, under domestic tort law, of emission reduction obligations on a major energy company. At first instance, the court held that the company was subject to a duty of care requiring alignment of its overall emissions – including emissions attributable to the group and those generated along its global value chain – with internationally recognised climate objectives, notably the temperature targets underpinning the Paris Agreement. On appeal, however, that specific reduction order was set aside, the appellate court considering that, although climate-related risks may fall within the scope of the general duty of care under national law, the formulation of a precise and enforceable quantitative reduction obligation exceeded the proper limits of judicial intervention. The case therefore illustrates both the openness of domestic tort law to climate-related claims against corporate actors and the structural constraints that may arise when courts are called upon to translate general standards of care into concrete emission targets[117].

These developments also reflect a broader evolution in climate litigation, which, while initially focused primarily on States and their climate-related obligations, is progressively opening space to a closer scrutiny of the role of corporate actors, examining their concrete contribution to climate-related harm and assessing, within existing legal frameworks, whether such contribution may ground forms of civil liability.

Taken together, these cases show that developments at the domestic level unfold along lines that are not disconnected from the evolution traced at the international level by the Advisory Opinions. While none of these decisions resulted in a finding of corporate liability, they nonetheless confirm that domestic courts are prepared to confront the legal implications

[117] District Court of The Hague, *Milieudefensie et al. v. Shell*, Judgment, 26 May 2021; Court of Appeal of The Hague, *Shell v. Milieudefensie et al.*, Judgment, 12 November 2024 (non-final: appeal pending before the Supreme Court of the Netherlands). See E. Baroncini, *Corporate Climate Litigation: The Shell Appeal Judgement*, in E. Baroncini, C. De Stefano, L. Rubini (Eds.), *New Institutional Architectures and Substantive Rules in International Economic Law - The EU and the UN Sustainable Development Goals*, Bologna, 2025, 169-188. S. Dominelli, *Milieudefensie e altri contro Shell – atto secondo: takeaways e riflessioni di diritto internazionale privato a margine della open end rule del codice civile olandese*, in *Rivi. Giur. Ambiente*, 2025, 3, 841-862.

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of corporate contributions to climate change within existing procedural and substantive frameworks.

At the same time, the domestic effects of the three Advisory Opinions cannot be presumed to operate homogeneously, given the distinct jurisdictional mandates, normative bases and modes of internal projection characterising each adjudicatory body. The ICJ, acting within the broader framework of international law, provides an authoritative clarification of States' climate-related obligations and of the due diligence standard applicable in this field. By contrast, the Inter-American Court exercises its advisory function within a regional human rights regime structured around the doctrine of conventionality control and a consolidated pattern of interpretative integration between international and domestic law, thereby enhancing the Opinion's potential for domestic normative effects. ITLOS, for its part, situates climate-related duties mainly within the specific architecture of UNCLOS, framing them through the law of the sea's obligations of prevention, protection and preservation of the marine environment. These structural differences inevitably condition the intensity, channels and modalities through which each Opinion may influence domestic adjudication.

In this respect, the clarifications provided at the international level concerning States' duties of prevention and due diligence contribute to shaping the legal framework within which such claims are assessed, including those directed against corporate actors whose activities are alleged to have contributed to climate-related harm. They are consistent with a progressive alignment between international climate obligations and the standards applied to multinational enterprises in national litigation, reinforcing the view that corporate activities cannot remain insulated from the broader architecture of climate responsibility.

The foregoing leads to the conclusion that the participation of the private sector in the protection of the climate system tends to shape up as a legally relevant dimension in the international legal framework relating to global climate and environmental context, particularly in the Global South, where the impacts of climate change and the economic and social asymmetries are more pronounced.

Furthermore, the overall assessment common to the three examined Advisory Opinions allows us to stress, first of all, that the content of these instruments is fundamental in order to affirm unequivocally the existence of obligations on States in relation to climate change and to clarify their scope and extent: as already argued, these obligations also concern the realm of private activities, including enterprises.

Secondly, it should also be remarked that, although limited by the fact that this was not exactly the question put to the respective Courts, nor is this the legal effect inherent in the Advisory Opinions, it can nevertheless be noted that they contribute to outlining a legal framework that is also relevant for the activities of MNEs, especially when they are operating directly or through their subsidiaries in the most vulnerable contexts, such as in the countries of the Global South. From this perspective, they complement and integrate the existing international instruments, briefly outlined above, which, as we have noted, already apply in such contexts.

In this view, States are required to give effect to their climate-related obligations in a manner that encompasses the conduct of multinational enterprises operating within their jurisdiction or under their control, including when such enterprises act abroad. This is particularly significant where the State itself holds a shareholding interest in the company concerned. MNEs and their subsidiaries, in turn, are expected to conduct their activities consistently with the applicable domestic and international legal frameworks that reflect those obligations.

From this perspective, the Advisory Opinions operate at the level of State responsibility, clarifying the scope and content of duties of prevention and due diligence in contexts where private activities may have climate-relevant consequences, including in Global South countries.

This may prove particularly relevant in safeguarding the natural and social systems of those countries and in strengthening the protection of human rights. In contexts where climate-related degradation progressively undermines livelihoods, access to land, food security and essential services, the clarification and effective implementation of States' climate-related obligations of prevention and due diligence – particularly where they concern activities of multinational enterprises in high-impact sectors – may contribute to reducing structural vulnerabilities that act as drivers of instability and displacement.

In this sense, the articulation of States' duties of due diligence obligations, as reflected in the examined Advisory Opinions, acquires a preventive dimension: by requiring States to exercise appropriate control and supervision over activities falling within their sphere of responsibility, it may indirectly address some of the structural climate-related conditions that contribute to involuntary internal displacement and cross-border mobility driven by climate impacts. In this perspective, the progressive specification of due diligence obligations vis-à-vis private actors does not merely enhance legal coherence but may also operate as a structural preventive element in mitigating the destabilising effects of climate-related harm on vulnerable communities.

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