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THE JUDICIALIZATION OF CLIMATE CHANGE IN INTERNATIONAL COURTS AND THE DELIMITATION OF STATE RESPONSIBILITY IN INTERNATIONAL LAW

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ABSTRACT

This paper seeks to contribute to the growing debate on protecting the environment as a human right, as part of the theme Environment, Human Rights, and International Justice. To this end, we investigate the role of multilateral policies and movements, as well as access to justice at the international level for the protection of the environment. In particular, we look at international cooperation, the delimitation of state responsibility, and the development of environmental issues in international human rights courts. The chapter is divided as follows: (i) a brief analysis of the role of multilateralism in the realization of the right to a healthy environment; (ii) the environment as a human right, from the perspective of international courts, with emphasis on the collaboration of the European, Inter-American and African System Courts; and (iii) an analysis of the advisory opinions issued or about to be issued by International Courts. Finally, the paper seeks to outline expectations about the protection of the environment as a human right in its conclusion, taking into account the shared responsibility of states in environmental matters, as well as the forms of reparation and prevention in cases of environmental violations, which ultimately constitute a violation of human rights.

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INTRODUCTION

Climate change is one of the greatest contemporary global challenges, directly affecting the quality of life and fundamental rights, especially of people living in environments that are more susceptible to the impacts of climate change. With the increased frequency and intensity of extreme weather events, such as droughts, floods and rising global temperatures, there was and still is a growing need to recognize the right to a healthy environment as a fundamental human right. In this context, there are two fundamental elements of investigation: environmental multilateralism and the judicialization of environmental issues. Multilateralism refers to international cooperation between different countries with a common goal. However, when it comes to global issues, multilateral movements and agreements are leveraged by an involvement that goes beyond governments to include companies, non-governmental organizations and civil society. This is the case of the urgency presented by climate change, which led to the movement known as "environmental multilateralism", which is based on the recognition that environmental issues, such as climate change, biodiversity loss, and pollution, transcend national borders and require cooperative solutions through shared governance and policies. This concept is typically manifested through international agreements, treaties, and organizations that facilitate collaboration, establish common goals, and promote the equitable distribution of responsibilities and benefits among participating nations.

In addition to the contribution of environmental multilateralism, the judicialization of environmental issues in international courts is a highly relevant tool for protecting the environment and delimiting the responsibilities of states on the international stage. This paper is part of the discussion on environmental protection in the context of human rights, exploring the relationship between multilateralism and environmental justice in international courts aimed at protecting human rights. Nonetheless, it is important to recall that the right to a healthy environment is also part of constitutional protection not only internationally, meaning that environmental protection is part of the international dialogue but also domestic legislation. In Brazil, for instance, the Constitution in its article 225 states that "Everyone has the right to an ecologically balanced environment, an asset of common use to the people and essential to a healthy quality of life, imposing on the public authorities and the community the duty to defend and preserve it for present and future generations."¹ Similarly, the Colombian Constitution has a provision that "all people have the right to a healthy environment and that the law must guarantee community participation in decisions that affect it"². Although it will

¹Constituição Federal 1988, artigo 225. Available at [/www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=318230#:~:text=Art.,as%20presentes%20e%20futuras%20gera%70es](http://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=318230#:~:text=Art.,as%20presentes%20e%20futuras%20gera%70es).

² CONSTITUCIÓN POLÍTICA DE COLOMBIA 1991, Available at <https://www.mincit.gov.co/ministerio/normograma-sig/procesos-estrategicos/gestion-de-informacion-y-comunicacion/constitucion-politica/derechos/articulo->

not be part of the analysis proposed for this paper, it is noteworthy to recognize that the litigation of the right to a healthy environment is also part of the history of the U.N. treaty bodies. In this sense, we recall the case *Teitiota v. New Zealand*³, *Daniel Billy et al v. Australia*⁴, decided by the Human Rights Committee, and *Sacchi v. Argentina*⁵, decided by the Committee on the Rights of the Child. Those cases illustrate that human rights mechanisms have been used to litigate state obligation towards environmental protection and its implications to human rights protection. For instance, in *Teitiota v. New Zealand*, the United Nations Human Rights Committee addressed the case of a Kiribati national, Ioane Teitiota, who sought asylum in New Zealand, claiming he was a "climate refugee" and based the claim under article 6 of the International Covenant on Civil and Political Rights (ICCPR). The UN Human Rights Committee dismissed Teitiota's claim but acknowledged significant points, such as the effects of climate change can, in principle, trigger obligations under the ICCPR if they pose an imminent risk to life.⁶ As Professor Atapattu⁷ highlights, there are several cases with strategic ambition related to climate litigation and they have continued to rise, which would suggest that climate litigation has become a tool to enforce or enhance commitments made by governments.

In order to analyze part of environmental litigation and state responsibility, this paper will focus on recent developments before International Courts, both for contentious and advisory opinions. Thus, the discussion developed here is divided into three main parts, covering the following themes: (i) the role of multilateralism in realizing the right to a healthy environment, and the formation of so-called "environmental multilateralism" in the context of climate change; (ii) the interpretation of the environment as a human right by International Courts, with emphasis on the decisions of the European, Inter-American and African Human Rights Courts; and (iii) an analysis of recent requests for Advisory Opinions, investigating the evolution of the issue in recent developments. Through the analysis of these issues, the central aim of this chapter is to contribute to the debate on the protection of the environment as a human right already recognized in Public International Law, assessing the role of the shared responsibilities of States and the measures of reparation and prevention in cases of environmental violations which ultimately constitute a violation of human rights.

Multilateralism and the right to a healthy environment on the International Agenda: Climate change knows no borders - although these have been imposed by governments - so humanity as a whole faces the challenges inherent in the search for a healthy environment. Historically, there had already been some international rules aimed at environmental protection, such as the 1931 Convention for the Regulation of Whaling, the 1946 International Convention for Whaling, the 1951 International Convention for the Protection of Plants and the 1959 Antarctic Treaty, among others. However, the consolidation of International Environmental Law came about after the first major International Conference on the Environment, held in Stockholm, Sweden, in 1972, which marked the beginning of the proliferation of international documents on the subject.⁸

79.aspx#:~:text=Todas%20las%20personas%20tienen%20derecho,e%20logro%20de%20estos%20fines.

³ United Nations Human Rights Committee. *Ioane Teitiota v. New Zealand*, Communication No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016, January 7, 2020. Available at <https://undocs.org/CCPR/C/127/D/2728/2016>.

⁴ United Nations Human Rights Committee. *Communication No. 3624/2019*, CCPR/C/135/D/3624/2019 (22 September 2022). Available at https://tbintemet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR_C135_D3624_2019_34335_E.docx.

⁵ United Nations Committee on the Rights of the Child. Communication No. 10412019, CRC/C/88/D/104/2019. Available at <https://undocs.org/CRC/C/88/D/104/2019>.

⁶ *Id.*

⁷ Atapattu, Sumudu. "Climate Litigation, International Human Rights and the Right to a Healthy Environment: Connecting the Dots." *Review of European, Comparative & International Environmental Law* 30, no. 1 (2021): 5–15.

⁸ Varella, Marcelo Dias (2004). *Direito internacional econômico ambiental*. Belo Horizonte: Del Rey.

Environmental multilateralism began more than fifty years ago, at the United Nations Conference on the Human Environment (1972) in Stockholm, Sweden.⁹ The Stockholm Conference is a milestone because it was the first global environmental summit, when world leaders met to discuss environmental crises that were already emerging, such as acid rain and oil spills. It was from this Conference that programs such as the United Nations Environment Program (UNEP) and World Environment Day were established. And with the signing of the UN Convention on Climate Change during Rio 92, the international climate regime was inaugurated. Multilateralism helps to realize the right to a healthy environment by promoting various environmental milestones alongside science. The first of these is encouraging the fight against deforestation, an effort observed in various partnerships over the last few decades. It is also worth mentioning the Regional Seas Program (1974)¹⁰ for the protection of the oceans, which shaped future treaties such as the Paris Agreement on climate change (2015)¹¹; and the Unlocking Finance for Nature, a global campaign that brought together more than 450 financial institutions to finance an environmental transition towards sustainability. Both programs were led by UNEP¹².

Furthermore, multilateralism contributed to the adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer on September 16, 1987¹³, which came into force in 1989. The Montreal Protocol was an offshoot of the Vienna Convention for the Protection of the Ozone Layer (1985)¹⁴, which aimed to phase out substances harmful to the ozone layer, such as chlorofluorocarbons (CFCs). It is worth mentioning that the Protocol was the first and only UN environmental agreement to be ratified by every country in the world. Faced with the emergence of new risks, however, the Montreal Protocol was updated with the Kigali Amendment, which came into force in 2019. The Kigali Amendment aims to reduce emissions of hydrofluorocarbons (HFCs), which are extremely potent organic compounds commonly used as refrigerants in air conditioners and other devices as alternatives to the ozone-depleting substances controlled by the Montreal Protocol. The expectation is that with the ratification of the Kigali Amendment, which involves more than 140 countries - including Brazil - it will be possible to reduce the production and consumption of HFCs by more than 80% over the next 30 years.¹⁵ Important commitments are made in those Forums. For example, during COP 26 (Framework Convention on Climate Change) in Glasgow, "more than 100 world leaders pledged to end and reverse deforestation by 2030, promising to mobilize almost 20 billion dollars in public and private funding to support the cause"¹⁶. Since the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992 (Rio 92), however, little progress has been made in terms of curbing the increase in the concentration of greenhouse gases in the atmosphere, which is one of the main challenges in combating climate change. In the 2020s, there

⁹ UNEP. (2023) "Relebrando 50 anos de multilateralismo ambiental" (03/06/2023). Available at: <https://brasil.unep.org/pt-br/184841-pnuma-relembra-50-anos-de-multilateralismo-ambiental#:~:text=No%20dia%205%20de%20junho,mortais%20de%20polui%C3%A7%C3%A3o%20do%20ar>.

¹⁰ United Nations Environment Programme. *Regional Seas Program*. 1974. Available at <https://www.unep.org/topics/ocean-seas-and-coasts/regional-seas-programme#:~:text=Since%201974%2C%20the%20programme%20has,regional%20approach%20to%20environmental%20action>.

¹¹ United Nations Framework Convention on Climate Change. *Paris Agreement*. 2015. Available at <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>.

¹² UNEP. The time to unlock financing for biodiversity protection is now. Available at: <https://www.unep.org/news-and-stories/speech/time-unlock-financing-biodiversity-protection-now>

¹³ United Nations Environment Programme. (1987). *Montreal Protocol on Substances that Deplete the Ozone Layer*. Available at <https://ozone.unep.org/treaties/montreal-protocol>

¹⁴ United Nations Environment Programme. (1985). *Vienna Convention for the Protection of the Ozone Layer*. Available at <https://ozone.unep.org/treaties/vienna-convention>

¹⁵ UNEP. Acordo para diminuir gases do efeito estufa entra em vigor no 1º dia de 2019. Available at <https://www.unep.org/pt-br/noticias-e-reportagens/press-release/acordo-para-diminuir-gases-do-efeito-estufa-entra-em-vigor-no>

¹⁶ *Id.*

is a paradox: on the one hand, an increase in the effects of climate change and extreme weather events and, on the other, a decrease in the drive to reduce emissions in developing countries.¹⁷ For example, China overtook the US to become the largest CO₂ emitter in 2005, accounting for more than half of the total global emissions in 2020.¹⁸ China argues that, as a developing country, it has the right to increase its emissions based on the Principle of Common But Differentiated Responsibilities.¹⁹ This principle initially emerged as an attempt by developed countries to make amends for their growth through exploitation and environmental degradation to generate profit and industrial development. Nonetheless, in trying to promote a fairer division of responsibilities between the more and less developed states, the Principle of Common But Differentiated Responsibilities generated a "liberating effect" for developing countries by imposing less strict limits on greenhouse gas emissions.²⁰ However, translating this principle into practice requires ongoing advocacy, accountability, and international cooperation. In this sense, there are many examples of the challenges in multilateralism and environmental protection, which will not be explored further, but the tension between developing countries and developed countries continues to be an important struggle in the international scenario. In the middle of debates regarding the environmental framework, state responsibility and climate change, human rights appear as part of a possible solution to delimitate state responsibility and guarantee the right to a healthy environment.

Health Environment and Human Rights: The Contribution of the Regional Human Rights Courts

The issue of the environment has occupied the agenda of all international relations scenarios. International environmental law is emerging as a result of the expansion of modern international law, which transcends the traditional border issues typical of classical international law to encompass challenges of common interest. This phenomenon is characteristic of a period marked by legal globalization. In this regard, the introduction of environmental law was given greater expression in the dialogue between members of the international community after the Second World War, and the first multilateral documents on the subject were launched in the 20th century. While the term "international environmental law" gained formal acknowledgment through the United Nations General Assembly's resolution that convened the Conference on Environment and Development in 1992²¹, its framework has continually expanded to address emerging challenges as translated into the Paris Agreement, adopted in 2015²², which represents a landmark effort under the United Nations Framework Convention on Climate Change to address global warming through collective action and national commitments. By setting ambitious targets to limit the increase of global temperature, the Paris Agreement highlights the interconnectedness of environmental sustainability and human well-being. This alignment between climate action and human rights emphasizes the necessity of organizing international environmental law to promote equitable participation and ensure that environmental governance not only mitigates climate change but also safeguards

fundamental human rights, as reaffirmed by U.N bodies.²³ On October 8, 2021, the United Nations Human Rights Council adopted Resolution 48/13, recognizing for the first time that access to a clean, healthy, and sustainable environment is a human right. This resolution was proposed by Costa Rica, the Maldives, Morocco, Slovenia, and Switzerland and was approved with 43 votes in favor and 4 abstentions (Russia, India, China, and Japan).²⁴ Later, on July 28, 2022, the United Nations General Assembly adopted a resolution declaring that everyone on the planet has the right to a clean and healthy environment. The resolution was approved with 161 votes in favor and 8 abstentions (Belarus, China, Cambodia, Ethiopia, Iran, Kyrgyzstan, Russia, and Syria). Although not legally binding, this resolution encourages countries to fulfill their international commitments and intensify efforts to ensure that everyone has access to a clean, healthy, and sustainable environment.²⁵

These resolutions represent a significant turning point in the international recognition of the intrinsic relationship between human rights and environmental protection, emphasizing the importance of a healthy environment for the full enjoyment of human rights. However, it is not only within the United Nations that the dialogue on the environment takes place. It also enters the Regional Human Rights Systems, namely: European, Inter-American and African.²⁶ It is worth noting that human rights are like a living organism, which expands its capacity for protection over the years and encompasses various new fields in its constant evolution, always aiming to achieve the principle of human dignity, recognizing that this principle encompasses the protection of the environment itself. According to Hari Osofsky, environmental abuses can include states, companies, individuals, or a combination of two or three of these agents. Victims also range from indigenous peoples, whose very survival is tied to the land, to people who have no special connection to the land, but who live close to the source of pollution.²⁷ In response to the development of international environmental law, regional systems have started to develop their standards in this field. Since state responsibility is possible in contentious cases in these systems, there has been an opportunity to repair, mitigate and create non-repetition mechanisms in cases of environmental violations that impact human rights. An example of this is the European System for the Protection of Human Rights, where the evolution of the jurisprudence of the European Court of Human Rights (ECHR) has resulted in a Handbook on Human Rights and the Environment - adopted by the Council of Europe in 2005²⁸ - which reviews the Court's decisions and sets out some general principles. It is important to note that the European system has not yet included environmental protection in any of its legal instruments and the European Court of Human Rights interprets the European Convention on Human Rights to protect this right, in other words, not having the right to a clean and healthy environment in the European System was not an impediment for having the

²³ United Nations Human Rights Council. *Resolution 48/13: The Human Right to a Clean, Healthy, and Sustainable Environment*. October 8, 2021. Available at: <https://undocs.org/A/HRC/RES/48/13>.

²⁴ *Id.*

²⁵ United Nations General Assembly. *Resolution 76/300: The Human Right to a Clean, Healthy, and Sustainable Environment*. July 28, 2022. Available at <https://digitalibrary.un.org/record/3982508>.

²⁶ Regional systems were created at the same time as the global system. And experience has shown that they coexist harmoniously, with the global system, minimum protections and regional systems being responsible, in conjunction with national legislation, for observing the peculiarities of each region, as well as extending protection in accordance with the Universal Declaration of Human Rights. However, because they have a smaller number of member countries with closer realities and cultural identities, they have a more consensual political context and are more successful in applying sanctions effectively (Piovesan, Flávia (2011). *Direitos Humanos e o Direito Constitucional Internacional*. 12. ed. São Paulo: Saraiva).

²⁷ Osofsky, Hari M. (2010) *Learning from Environmental Justice: A new model for international environmental rights. Contextualizing Environmental Human Rights: A Relativist Perspective*. In: *Human Rights and the Environment – Vol. I*. Shelton Dinah

²⁸ Council of Europe. *Handbook on Human Rights and the Environment: Principles Emerging from the Case Law of the European Court of Human Rights*. Available at https://www.echr.coe.int/documents/d/echr/dh_dev_manual_environment_eng

¹⁷ Viola, E., & Basso, L. (2024, August 1). *Política climática internacional na era de alta conflituosidade geopolítica*. Interesse Nacional. Available at: <https://interessenacional.com.br/portal/politica-climatica-internacional-na-era-de-alta-conflituosidade-geopolitica/>

¹⁸ World Resources Institute (2024). "Os países que mais emitiram gases de efeito estufa". Disponível em: <https://www.wribrasil.org.br/noticias/os-paises-que-mais-emitiram-gases-de-efeito-estufa#:~:text=A%20China%20ultrapassou%20os%20EUA,das%20emiss%C3%B5es%20globais%20de%20CO2.>

¹⁹ Viola, E., & Basso, L., *Id.*

²⁰ Ferreira, Adriano et al (2022). "A mitigação do princípio das responsabilidades comuns, mas diferenciadas, no direito ambiental internacional". *Brazilian Journal of Development*. Curitiba, v.8, n.4,

²¹ United Nations. *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992*. New York: United Nations, 1992.

²² United Nations Framework Convention on Climate Change (UNFCCC). (2015). *Paris Agreement*. Available at https://unfccc.int/sites/default/files/english_paris_agreement.pdf

interpretation of this right in relation to the other human rights established in the European Convention of Human Rights. Cases such as *López Ostra v. Spain*²⁹, in which the Court had the opportunity to expand the meaning of the articles provided for in the European Convention to encompass a right not expressly provided for in the document - the right to a healthy environment - demonstrate that the right to private life or the right to life can compel states to regulate environmental risks and supervise existing environmental laws. Regarding the operation of a waste treatment plant and its impact on neighboring inhabitants, the Court concluded that the State had not struck a fair balance between the interest of the city's economic well-being in having a waste treatment plant and that of the living and health conditions of the applicant and her family, that is, the effective exercise of her right to respect for her home and her private and family life, which were drastically affected by the waste treatment.

Years later, the European Court continued to be challenged to analyze cases relating to human rights violations, environmental protection, and climate change. In *Klimaseniorinnen Schweiz and Others v. Switzerland*³⁰, the European Court of Human Rights recently handed down an important decision involving Switzerland, in a case brought by the Swiss climate advocacy group "Klimaseniorinnen". This group, which represents elderly women, argued that the Swiss government's insufficient efforts to reduce greenhouse gas emissions violated their human rights, especially the right to life and health, as climate change disproportionately affects the elderly during heatwaves. The ECHR ruled that Switzerland failed to fulfill its obligations under the European Convention on Human Rights by not taking adequate measures to reduce emissions and protect vulnerable populations. The Court also found that Switzerland's national climate policies were not sufficiently aligned with the goals of international climate agreements, such as the Paris Agreement. This judgment sets a precedent for the use of human rights law to address the impacts of climate change, emphasizing that governments must take stronger and more effective measures against global warming.³¹ Arguably the Swiss case could influence climate litigation and policy across Europe, encouraging stricter environmental regulations to protect human rights.

The European Court has had the opportunity to rule on several cases involving human rights and the environment. However, the Court does not directly protect the right to an ecologically balanced environment, due to the lack of a specific rule protecting this fundamental human right³² but an analysis of its case law reveals an interesting fact: the environment has been protected indirectly as a consequence of the protection of other fundamental legal goods. The recent case, *Duarte Agostinho and Others v. Portugal and 32 Other Countries*³³, filed in 2020 before the European Court of Human Rights, is a landmark climate litigation brought by six Portuguese youth (the applicants) against Portugal and 32 other Council of Europe member states. The applicants claimed the failure of the respondent states to take sufficient action to mitigate climate change violates their fundamental rights under the European Convention on Human Rights (ECHR). They asserted that the respondents' States are collectively responsible for contributing to climate change and failing to meet their international commitments under the Paris Agreement. Nevertheless, the Court considered the case inadmissible. It argued that although no case specifically concerning climate change had so far been decided, the domestic case law demonstrated that

environmental litigation was now a reality of the domestic legal system. ECHR pointed out that there had not been any special reasons for exempting the applicants from the requirement to exhaust domestic remedies in accordance with the applicable rules and the available procedures under domestic law. The applicants had thus failed to take appropriate steps to enable the national courts to fulfill their fundamental role in the Convention protection system, that of the Court being subsidiary to theirs, concluding by the inadmissibility for non-exhaustion of domestic remedies.³⁴

Concerning the norms of the Inter-American human rights system, a series of provisions in the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man are particularly relevant to this study. Although these instruments do not explicitly address the environment and human rights in a direct and objective manner, the Inter-American Human Rights System (IACHR) has played a leading role in international law by recognizing this connection in the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador). Article 11 of this Protocol protects the "right to a healthy environment", stipulating that: "Everyone shall have the right to live in a healthy environment and to have access to basic public services", as well as committing the States Parties to 'promote the protection, preservation and improvement of the environment'³⁵. The Protocol of San Salvador opened up space for the protection of the environment in conjunction with human rights, but it was through its jurisprudence that the human right to a healthy environment was consolidated. Judicializing the right to a healthy environment is considered new. The first case heard by the Inter-American Court of Human Rights (IA Court of Human Rights) was that of the *Mayagna (Sumo) Awas Tingni Community vs. Nicaragua* (2001)³⁶, which dealt with the failure to delimitate indigenous lands belonging to the Awas Tingni community.

The Nicaraguan state failed to adopt effective measures to guarantee the community's property rights over their ancestral lands and natural resources. In 1995, Nicaragua authorized logging on the community's land through an agreement with the company Sol del Caribe S.A., without prior consultation with the indigenous community, which brought the case before the IA Court of Human Rights. The Court, interpreting Article 21 of the American Convention on Human Rights, highlighted the intrinsic relationship between indigenous peoples and their lands, emphasizing that the preservation of the environment is essential for their survival. Another relevant example is the case of the *Kichwa Indigenous People of Sarayaku vs. Ecuador*³⁷. In the 1990s, the Ecuadorian state granted authorization to an oil company to explore oil in the territory of the Kichwa people of Sarayaku, without prior consultation or consent from the community. The dispute did not involve the ownership of the territory, but rather the material damage and local interference caused by the company's incursion. The Court again applied Article 21 of the American Convention, reinforcing the protection of indigenous peoples' close connection with their lands and natural resources. Although the Inter-American system tends to bring environmental protection closer to indigenous issues³⁸, not all cases follow the same context, such as the

³⁴ European Court of Human Rights. *Duarte Agostinho and Others v. Portugal and 32 Other Countries*, Application No. 39371/20. 2020. Available at: <https://hudoc.echr.coe.int/eng/#%7B%22itemid%22:%5B%22002-14303%22%5D%7D>

³⁵ Organization of American States. *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)*. Adopted November 17, 1988. Available at https://www.oas.org/dil/treaties_B-32_Protocol_of_San_Salvador.htm.

³⁶ Inter-American Court of Human Rights (2001). *Comunidad Mayagna (Sumo) Awas Tingni vs. Nicaragua*. Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf.

³⁷ Inter-American Court of Human Rights. *Kichwa Indigenous People of Sarayaku v. Ecuador, Judgment of June 27, 2012 (Merits and Reparations)*, Series C No. 245. Available at https://corteidh.or.cr/docs/casos/articulos/seriec_245_ing.pdf.

³⁸ Sena, K. "The Intersection of Human Rights and Climate Change in the Inter-American Human Rights System: what to hope for?" *Wisconsin International Law Journal* 38, no. 2 (2021): 331–368. Available at

²⁹ ECHR (1992). Case *LÓPEZ OSTRA v. SPAIN*. Available at: < <https://hudoc.echr.coe.int/eng/#%7B%22itemid%22:%5B%22001-57905%22%5D%7D>>.

³⁰ European Court of Human Rights. *Klimaseniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20. Available at <https://hudoc.echr.coe.int/>.

³¹ Center for International Environmental Law. (2023). *Historic climate ruling on climate justice*. Available at <https://www.ciel.org/news/historic-climate-ruling-on-climate-justice/>

³² *Id.*

³³ European Court of Human Rights. *Duarte Agostinho and Others v. Portugal and 32 Other Countries*, Application No. 39371/20. 2020. Available at: <https://hudoc.echr.coe.int/>.

case of *Kawas Fernández vs. Honduras*³⁹. This case involved the violation of the right to free association of an environmental activist in Honduras, who was murdered because of her activities in defense of the environment. The IA Court of Human Rights equated the work of environmental activists with that of human rights defenders, elevating environmental rights to the category of economic, social and cultural rights, based on Article 11 of the Protocol of San Salvador and recognized, supported by decisions from other international human rights protection bodies, the inseparable relationship between environmental protection and the full exercise of human rights.⁴⁰

The culmination of this analysis in the Inter-American Human Rights System was Advisory Opinion No. 23/17⁴¹, issued on November 15, 2017, in which the IA Court of Human Rights addressed state obligations regarding the environment in the context of protecting the rights to life and personal integrity. The IA Court recognized an inseparable relationship between the protection of the environment and the guarantee of other human rights, noting that environmental degradation and the impacts of climate change compromise the full enjoyment of these rights. Based on the Protocol of San Salvador, the IA Court stated that economic, social and cultural rights, including the right to a healthy environment, are closely linked to civil and political rights, forming an indivisible whole based on human dignity⁴². Therefore, these rights require continuous protection and promotion, and it is unacceptable to violate some in the name of realizing others. It is important to note that the IACHR, in the same Advisory Opinion, emphasized that the acceptable level of environmental impact must be determined through environmental studies to be carried out seriously by States. Among the various points of this Advisory Opinion, it is clear that it represents an important milestone for the member states of the Organization of American States, since it recognizes that environmental issues affect all states, transcending national borders. The connection between human rights and the environment is also addressed by the African Human Rights System. Three cases illustrate this connection. The first case is that of the *Center for Social and Economic Rights (SERAC) and Another vs. Nigeria*⁴³. This case, brought before the African Commission on Human and Peoples' Rights (ACHPR), involved allegations that the Nigerian government had allowed the Shell Petroleum Development Corporation to pollute the land and water of the Ogoni community in the Niger Delta. The Commission concluded that the Nigerian government had violated several rights guaranteed by the African Charter on Human and Peoples' Rights, including the right to health, development and a favorable environment. The Commission determined that the state has an obligation to protect communities from environmental damage caused

by corporate activities and that it must guarantee the participation of affected communities in decisions affecting their environment. Three years later, the ACHPR issued a decision on the case of the Democratic Republic of Congo (DRC) in allegations concerning Burundi, Rwanda and Uganda (227/99)⁴⁴. Summarizing the facts, the DRC alleges serious and massive violations of human rights and peoples' rights committed by the armed forces of these three countries in the Congolese provinces since August 2, 1998, and for which the DRC blames Burundi, Uganda and Rwanda. The point that comes closest to the subject of this article is what is alleged by the DRC, on August 17, 1998, about Rwandan and Ugandan forces - who had been on Congolese territory for many weeks - besieging the Inga hydroelectric dam (in the province of Bas-Congo). The presence of these forces disrupted the lives of millions of people and the economic life of the Democratic Republic of Congo. It has also caused the death of many patients, including children in hospitals, due to the cutting off of the electricity supply to incubated operating theaters and other respiratory equipment. The African Commission condemned the countries involved for the violations, including the plundering of natural resources, which compromised the environment and the economic, social and cultural rights of local communities.⁴⁵

Finally, it is worth mentioning the *Ogiek vs. Kenya* case from the African Court of Human Rights. The Ogiek people are one of the last hunter-gatherer communities in Kenya, depending on the areas in which they live for their survival, identity and cultural practices. According to the petition submitted, the Kenyan government has subjected the Ogiek to forced evictions from their ancestral lands, without consultation or compensation, which has severely damaged their traditional way of life, access to natural resources, and fundamental rights, including education and health⁴⁶. In 2009, the case was presented on behalf of the Ogiek to the African Commission on Human and Peoples' Rights, alleging that the Kenyan government had violated multiple rights of the Ogiek under the African Charter on Human and Peoples' Rights. In 2012, the case was referred to the African Court on Human and Peoples' Rights, which issued an order for interim measures in 2013, requiring the Kenyan government to protect the rights of the Ogiek and avoid actions that could cause irreparable harm.⁴⁷ Despite the court orders, the Ogiek people continued to suffer forced evictions and intimidation. In May 2017, the African Court of Human Rights issued a landmark ruling, recognizing that the Kenyan government had violated the Ogiek's rights under seven separate articles of the African Charter, pointing out that the Ogiek have been continuously evicted from the Mau Forest by the Kenyan state, without having been effectively consulted. These evictions have negatively impacted their economic, social and cultural development. Furthermore, they have not been actively involved in the development and determination of health, housing and other economic and social programs that affect them. This decision is an important milestone for the rights of indigenous peoples in Africa, reaffirming the need to respect their territorial, cultural and religious rights to guarantee their livelihoods and human dignity.⁴⁸ In conclusion, it should be emphasized that even though we are dealing with the right to a healthy environment, the Regional Human Rights Systems have tackled the issue in cases with different contexts, allowing for a broad interpretation of the issue and demonstrating the intrinsic relationship between human rights and the environment.

Advisory Opinions of the International Courts and the prospective State responsibility to guaranteeing environmental protection in the context of climate change: In continuity with the examination of the contribution of international courts to the

https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2021/06/38.2_331-368_Sena.pdf.

³⁹ Inter-American Court of Human Rights. *Kawas Fernández vs. Honduras*. Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

⁴⁰ It should be noted that international law has been developing mechanisms to safeguard people fighting to protect the environment: "Representatives of Latin American and Caribbean countries meeting at the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC) in Santiago, Chile, agreed last week to include the protection of people fighting to defend human rights in environmental matters in the future regional agreement on access to information, public participation and justice in environmental matters. The treaty is known as Principle 10 of the Rio Declaration on Environment and Development". See UN BRAZIL. Latin American treaty on environment will address protection of human rights defenders. [S.l.], 6 Dec. 2017. Available at: <https://nacoesunidas.org/tratado-latino-americano-sobre-meio-ambiente-abordara-protexao-de-defensores-dos-direitos-humanos/>.

⁴¹ Inter-American Court of Human Rights. *Advisory Opinion OC-23/17: The Environment and Human Rights (State Obligations in Relation to the Environment under Articles 4(1) and 5(1) of the American Convention on Human Rights)*. Available at https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.

⁴² *Id.*

⁴³ African Commission on Human and Peoples' Rights. (2001). *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights v. Nigeria* (Communication No. 155/96)

⁴⁴ African Commission on Human and Peoples' Rights. (2003). *Democratic Republic of Congo v. Burundi, Rwanda, and Uganda* (Communication No. 227/99).

⁴⁵ *Id.*

⁴⁶ African Court on Human and Peoples' Rights. (2017). *African Commission on Human and Peoples' Rights v. Republic of Kenya (Ogiek Case)* (Application No. 006/2012). Available at <https://www.african-court.org>

⁴⁷ *Id.*

⁴⁸ *Id.*

environment as a human right, this topic focuses on the analysis of Advisory Opinions, which are an instrument used by international courts to clarify legal questions to states on certain issues and to determine the legal parameters of certain questions. The session highlights the similarities and differences between Advisory Opinions by the Inter-American Court of Human Rights, the International Tribunal for the Law of the Sea, and the International Court of Justice.

Advisory Opinion from the Republic of Colombia and the Republic of Chile to the Inter-American Court of Human Rights on Climate Emergency and Human Rights: First of all, it is worth contextualizing the reality faced by Latin America in the context of climate change. In a 2020 report, the World Meteorological Organization (WMO) pointed out that the worst droughts in 50 years in the southern Amazon and record hurricanes and floods in Central America in 2020 are the new normal that awaits Latin America, according to the new State of the Climate Report for Latin America and the Caribbean. This latest report notes that climate-related events and their impacts caused more than 312,000 deaths in Latin America and the Caribbean and affected more than 277 million people between 1998 and 2020⁴⁹. This scenario was a trigger for many countries to try to understand their responsibility under human rights law. On January 9, 2023, the Republic of Colombia and the Republic of Chile asked the IACHR for an Advisory Opinion with the purpose of clarifying the scope of State obligations, in their individual and collective dimensions, to respond to the climate emergency within the framework of International Human Rights Law, which takes into account, in particular, the differentiated effects of this emergency on people and population groups in different regions, nature and human survival on our planet⁵⁰. It is important to emphasize that the IACHR's advisory opinions provide states with important parameters to ensure that human rights are guaranteed. The request is based on the Latin American context of dealing with the consequences of the climate emergency, including the proliferation of droughts, floods, and landslides, among others. According to the request in the Advisory Opinion "(...) human rights not only provide a necessary perspective for assessing the consequences of the emergency, but also offer fundamental tools for seeking timely, fair, equitable and sustainable solutions to it"⁵¹.

The requesters of the Advisory Opinion organized their questions into 6 (six) different sections, as follows:

- a) On the state obligations derived from the duties of prevention and guarantee of human rights linked to the climate emergency;
- b) On state obligations to preserve the rights to life and survival in the face of the climate emergency in the light of what is established by science and human rights;
- c) On the differentiated obligations of States with respect to the rights of children and new generations in the face of the climate emergency;
- d) On state obligations arising from consultation and judicial processes related to the climate emergency;
- e) Conventional protection and prevention obligations relating to environmental and territorial defenders, women, Indigenous peoples and Afro-descendant communities in the context of the climate emergency; and
- f) On the shared and differentiated rights obligations and responsibilities of States in the face of the climate emergency⁵².

The Inter-American Court of Human Rights concluded its visit to Brazil as part of its 167th Regular Session. From April 22 to 25 in

Barbados and from May 20 to 24 in Brasilia, the Court met and held the first hearings of the Session, and on May 27, 28 and 29 in Manaus, it continued with the Public Hearing on the Advisory Opinion on Climate Emergency and Human Rights. The highest regional human rights court heard from more than 170 organizations, experts, affected communities and activists about the impact of the climate emergency. Among the topics discussed were: policies aimed at mitigating the effects of the climate emergency; the obligations of states in dealing with the crisis; the differentiated impacts on specific populations, such as children and adolescents, women and indigenous communities; and the risks faced by environmental human rights defenders⁵³.

The OC-32⁵⁴ reflects a long journey in the development of human rights protection in the context of climate change. One of its main contributions is the recognition that climate change directly threatens the enjoyment of fundamental rights, such as the right to life, personal integrity, health, water, food, housing, and a healthy environment. In this regard, the Court establishes that States have an obligation to prevent environmental damage that could undermine these rights by adopting adequate measures to mitigate and adapt to climate change. These policies must be designed and implemented with a human rights-based approach, ensuring that they do not reproduce or deepen existing structural inequalities. In fact, the Court emphasized that the impacts of climate change are not distributed equitably. Indigenous peoples, Afro-descendants, peasants, and other rural communities—who depend directly on the natural environment and have contributed minimally to the crisis—suffer the most serious consequences and lack effective means to protect their rights. The Court also emphasized that all States must ensure compliance with the rules of public international law that protect the environment and take into account the implications of a healthy climate for their individual and collective dimensions. At the same time, it recognizes the intergenerational dimension and the particular difficulties faced by the younger generation due to ecological and climatic imbalance. In this regard, the Court establishes that States must adopt measures that guarantee the rights not only of present generations, but also of future generations. This approach involves incorporating scientific criteria into climate policy formulation, long-term planning, and the prevention of irreversible damage. Similarly, the Court also highlights the application of the principle of common but differentiated responsibilities, recognizing that, while all States have duties in relation to climate, the magnitude and scope of their obligations vary according to their capacity and historical contribution to the climate crisis. In this context, States with greater resources and historical responsibility must make more ambitious commitments and cooperate in solidarity with those in more vulnerable conditions.

With regard to procedural rights, the Court highlights the importance of the right to access environmental information, public participation, and justice in environmental matters, as established in the Escazú Agreement. Transparency and access to data on emissions, protected areas, climate finance, and environmental risks are essential conditions for ensuring accountability and citizen action. The OC-32 also imposes on States the obligation to regulate and supervise the activities of companies, especially those that generate significant emissions or affect sensitive ecosystems. In this context, it affirms the State's duty to require companies to carry out environmental and climate due diligence processes, in line with the principles on business and human rights⁵⁵. In conclusion, Advisory Opinion 32/2025 consolidates a regional regulatory framework that obliges States to act urgently and responsibly in the face of the climate

⁴⁹ World Meteorological Organization. (2020). State of the global climate 2020. Available at https://library.wmo.int/doc_num.php?explnum_id=10444

⁵⁰ Inter-American Court of Human Rights. (2023). *Advisory Opinion OC-1/2023*. Available at: https://www.corteidh.or.cr/docs/opiniones/soc_1_2023_en.pdf

⁵¹ *Id.*

⁵² *Id.*

⁵³ Inter-American Court of Human Rights. (2024). *I/A Court H.R. PR-27/2024 English*. Available at: https://corteidh.or.cr/docs/comunicados/cp_27_2024_eng.pdf and Inter-American Court of Human Rights coming to Brazil May 20-29, available at <https://www.gov.br/secom/en/latest-news/2024/05/inter-american-court-of-human-rights-coming-to-brazil-may-20-29>.

⁵⁴ Inter-American Court of Human Rights, Advisory Opinion OC-32/25 on Climate Emergency and Human Rights, Series A No. 32, May 29, 2025

⁵⁵ Inter-American Court of Human Rights, Advisory Opinion OC-32/25 on Climate Emergency and Human Rights, Series A No. 32, May 29, 2025

emergency, not only as an environmental imperative, but also as a legal requirement in terms of human rights. This ruling strengthens the legal basis for climate action and sets a precedent that could have global implications for the construction of climate justice with a human rights approach.

Advisory Opinion of the International Tribunal for the Law of the Sea on Climate Change and International Law: The International Tribunal for the Law of the Sea (ITLOS) issued an Advisory Opinion on Climate Change and International Law on May 21, 2024⁵⁶, in response to a request from the Committee of Small Island States on Climate Change and International Law (COSIS). This landmark opinion addresses the legal responsibilities of States under the United Nations Convention on the Law of the Sea (UNCLOS) in relation to the impacts of climate change on the marine environment. The consultative procedures provided an opportunity for the International Tribunal for the Law of the Sea to clarify the relationship between UNCLOS and the UN climate change regime. This task included reflecting on the role of Article 237 of UNCLOS, which regulates, in its title, the relationship between Part XII of UNCLOS - the part of UNCLOS dedicated to the protection and preservation of the marine environment - and "obligations under other conventions on the protection and preservation of the marine environment".⁵⁷ The phenomenon of climate change was fundamental to the request made, and the questions contained in it necessarily have scientific aspects. In their written and oral submissions, the participants who followed the process of drafting the Opinion extensively addressed the scientific aspects related to climate change and the ocean and presented or referred to various materials on scientific issues. In its Advisory Opinion, ITLOS notes that the Intergovernmental Panel on Climate Change (IPCC) defines climate change as:

A change in the state of the climate that can be identified (e.g. by statistical tests) by changes in the mean and/or variability of its properties and that persists for an extended period, usually decades or more. Climate change can be due to natural internal processes or external forces, such as modulations of solar cycles, volcanic eruptions and persistent anthropogenic changes in the composition of the atmosphere or land use.⁵⁸

In this regard, ITLOS stated that states have an obligation to prevent, reduce and control pollution of the marine environment, including greenhouse gas emissions, which contribute to climate change. The tribunal also emphasized the duty of states to protect and preserve the marine environment for present and future generations, recognizing the disproportionate effects of climate change on vulnerable populations, especially in relation to small island states⁵⁹. The Advisory Opinion highlights the relevance of international law in addressing the global challenge of climate change, particularly through the perspective of the law of the sea, and reinforces the legal framework within which States must operate to fulfill their obligations in mitigating the impacts of climate change⁶⁰.

International Court of Justice: the obligations of States in relation to climate change and the request for an Advisory Opinion by the UN General Assembly: With the threats posed by climate change, what is the obligation of states to protect both the populations currently living on the planet and future generations? This question was posed by the United Nations General Assembly to the International Court of Justice - the UN's main judicial body - in the context of a request for an Advisory Opinion on March 29, 2023⁶¹.

⁵⁶ International Tribunal for the Law of the Sea. *Advisory Opinion on Climate Change and International Law*. May 21, 2024. Available at https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_35_0_EN.pdf

⁵⁷ *Id.*

⁵⁸ *Id.* p. 28.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Resolution 77/276 adopted by the UN General Assembly on March 29, 2023. Available at: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230412-app-01-00-en.pdf>.

The UN Charter provides that agencies and organs of the Organization may have recourse to the ICJ's advisory jurisdiction, which includes advisory opinions on legal matters. It should be noted, however, that an Advisory Opinion is not legally binding, as it serves precisely to guide states on their rights and obligations concerning international law. Even so, by establishing a clear legal framework, as in the case of the role of states in the context of climate change, it has the power to eliminate ambiguities, strengthening multilateral negotiations. As a result, loss and damage repair processes, as well as the definition of mitigation targets, can be defined and implemented more quickly⁶². The Republic of Vanuatu, a small island part of an archipelago in the South Pacific, led a global coalition⁶³ towards an advisory opinion from the ICJ on climate change. The island was classified by the UN University World Risk Index 2021⁶⁴ as the country with the highest risk of disasters worldwide, precisely because of its low altitudes and the effects of climate change. The campaign to obtain the broad support needed from the UN General Assembly lasted more than a year. The process included, in addition to consultations with member states, the engagement of civil society groups from more than 130 countries. It achieved unanimous approval by the General Assembly, making it possible to adopt resolution 77/276⁶⁵. In this way, the initiative of the country and others that are extremely vulnerable in the context of climate change was fundamental.

The request for an Advisory Opinion was received by the ICJ on April 12, 2023, with two central questions⁶⁶:

- (a) *What are the obligations of States under international law to protect the climate system and other parts of the environment from anthropogenic greenhouse gas emissions, both for States and for present and future generations?*
- (b) *What are the legal consequences arising from these obligations for States that, through their acts and omissions, have caused significant damage to the climate system and other parts of the environment, with respect to:*
 - (i) *States, including in particular small island developing States, which due to their geographical circumstances and level of development, are adversely affected or particularly vulnerable to the adverse effects of climate change?*
 - (ii) *Peoples and individuals of present and future generations affected by the adverse effects of climate change?*

In view of the various cases concerning the effects of climate change discussed in this paper, it can be observed the global development of a vast body of case law on the links between human rights and climate change, which served as basis for the issues presented in the request for the ICJ Advisory Opinion. Finally, on 23 July 2025, the International Court of Justice issued a landmark Advisory Opinion as a response to the request of the General Assembly (resolution 77/276 adopted on 29 March 2023). The opinion, as discussed below, is going to confirm that States carry climate obligations. In issuing its advisory opinion, the Court took into account relevant scientific considerations. The ICJ noted that climate change produces severe

⁶² Kosolapova, Elena. 2024. "ICJ to Rule on States' Climate-Related Obligations: How Did We Get Here?" SDG Knowledge Hub. Available at <https://sdg.iisd.org/commentary/policy-briefs/icj-to-rule-on-states-climate-related-obligations-how-did-we-get-here/>.

⁶³ Government of Vanuatu. *Vanuatu's Initiative to Seek an Advisory Opinion from the International Court of Justice on Climate Change*. Available at <https://www.vanuatuicj.com/>.

⁶⁴ United Nations University – Institute for Environment and Human Security. *World Risk Index 2021*. Bonn: United Nations University, 2021. Available at: <https://www.worldriskreport.org>.

⁶⁵ United Nations General Assembly. *Resolution 77/276: Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*. 2023. Available at <https://documents.un.org/access.nsf/get?OpenAgent&DS=A/RES/77/276&Lang=E#:~:text=3/3-.23%2D06203,countries%20to%20meet%20the%20goal%2C>.

⁶⁶ Document A/77/L.58 (01/03/2023), p. 3-4, our translation. Available at: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230630-req-03-00-en.pdf>.

and wide-ranging effects on natural ecosystems and human populations, including rising global temperatures, the melting of glaciers and ice sheets, sea level rise, and the increasing frequency and intensity of extreme weather events such as hurricanes, droughts and heatwaves. These consequences undermine agricultural systems, displace populations, exacerbate water scarcity, and contribute to ecosystem degradation, species extinction and irreversible biodiversity loss, while also posing serious risks to human life and health⁶⁷. In its assessment, the Court relied primarily on the findings of the Intergovernmental Panel on Climate Change (IPCC), regarded by the participants as “the best available science on the causes, nature and consequences of climate change”⁶⁸, and took note of the recognition of these adverse effects within the United Nations system, including by the United Nations Environment Programme and relevant specialized agencies. Regarding the relevant applicable law, the ICJ mentions the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement as the three climate change treaties that form part of the relevant applicable law in this advisory opinion, without neglecting other treaties such as the United Nations Convention on the Law of the Sea (UNCLOS), the ozone layer treaties, the Biodiversity Convention, the Desertification Convention, the customary duty to prevent significant harm to the environment and the duty to cooperate for the protection of the environment, and international human rights law, and other relevant rules and principles.

Moreover, the Court determined that the temperature target of 1.5 °C is legally binding under the Paris Agreement. As a consequence, States, especially the largest emitters, must work towards mitigation measures according to science⁶⁹. Therefore, in relation to question (A),⁷⁰ the Court recognized that, taking into consideration the harmful effects of climate change, human rights cannot be fully realized without safeguarding the climate system and the environment as a whole. Protecting people’s rights therefore depends on concrete action by States to preserve the climate system and the environment. This can involve adopting policies to reduce and adapt to climate impacts, putting in place clear legal and regulatory frameworks, and making sure that private actors are monitored and held accountable. Thus, human rights are expected to be at the core of those actions. It was also emphasized that international human rights law, climate change treaties, environmental agreements, and relevant rules of customary international law are closely interconnected and mutually reinforcing. As a result, States must consider their human rights obligations when implementing commitments under climate and environmental regimes, and also take their climate and environment-related obligations into account when giving effect to their responsibilities under international human rights law. Regarding question (B) was considered by the ICJ as the legal consequences that arise for those countries that breach the obligations identified in question (A). “The rules on State responsibility under customary international law are also applicable to the determination of legal consequences for States that, by their actions or omissions, have breached those obligations”⁷¹. Regarding obligations under customary international law, the Court noted that the primary obligation of States in the context of climate change is to prevent significant harm to the climate system and the environment. This obligation is of general application and binds all States, including those that are not parties to one or more climate change treaties. In other words: “a State that does not exercise due diligence in the performance of its primary obligation to prevent significant harm to the environment, including to the climate system, commits an internationally wrongful act entailing its responsibility”⁷². Furthermore, the ICJ mentions the duty to make reparations under Article 31 of the ILC Articles on State Responsibility, which provides that a State that has committed an internationally wrongful act is required to provide full reparation for

the damage caused. Reparation seeks to eliminate the effects of the unlawful conduct and, to the extent possible, to restore the situation that would likely have existed in its absence. This obligation may be fulfilled through restitution, compensation, satisfaction, or a combination of these forms, the appropriate type and amount of which depend on the specific circumstances of each case. In situations involving environmental harm, restitution may be difficult or even impossible; nonetheless, in the context of climate change caused by greenhouse gas emissions (GHG), restitution may include the reconstruction of damaged or destroyed infrastructure and the restoration of ecosystems and biodiversity. Where restitution is materially impossible, the responsible State has an obligation to provide compensation⁷³. The ICJ’s advisory opinion comes within a growing body of international and regional decisions that recognize States’ obligations to respond to climate change, such as the Opinions from the International Tribunal for the Law of the Sea and the Inter-American Court on Human Rights previously presented. It confirms that States have binding obligations to prevent harms related to climate change and can be held responsible when they fail to act, reinforcing the legal basis for more ambitious and science-based climate policies. Looking ahead, the opinion may influence future climate litigation, shape negotiations under the UN climate framework, and strengthen the position of vulnerable States seeking accountability and climate justice⁷⁴.

CONCLUSION

Multilateralism is an essential key to realize the right to a healthy environment by promoting various environmental frameworks alongside science. The results of multilateralism in environmental matters have materialized in international commitments and documents on the containment of economic activities and their environmental impacts, as well as mechanisms to repair the environment, in addition to the intensification of countries’ concerns about global warming. In order for countries to be held accountable beyond the commitments made at international, regional, and global levels, there was a provocation for the International Courts to start expressing their views on environmental protection. Since there was no specific Court created for the international protection of the environment, international strategic litigation began to put the environment on the agenda of the existing Courts, ranging from the Regional Courts for the Protection of Human Rights to the International Tribunal for the Sea and the International Court of Justice in more recent development. From this perspective, the article found that the issue of the environment has taken center stage on the agenda of international relations in various spheres, with the incorporation of environmental law gaining greater prominence in the dialogue between members of the international community after the Second World War. Furthermore, it was from the 20th century onwards that the first multilateral documents on the subject were promoted, right up to the provocation of the International Courts to develop jurisprudence on the subject.

There are cases such as *López Ostra v. Spain*, in which the European Court of Human Rights had the opportunity to expand the meaning of the articles provided for in the European Convention to include a right not expressly provided for in the document - the right to a healthy environment - and even the case of *Klimaseniorinnen Schweiz and Others v. Switzerland*, in which the ECHR considered that Switzerland’s national climate policies were not sufficiently aligned with the goals of international climate agreements, as well as the development of cases such as those observed in the Inter-American Human Rights System. At the Inter-American Court of Human Rights, from the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* to Advisory Opinion No. 32/2025, the Inter-American Human Rights System has positively influenced the agenda on the international responsibility of the State with regard to its obligations

⁶⁷ ICJ. Summary of the Advisory Opinion of 23 July 2025, p. 2.

⁶⁸ ICJ. Summary of the Advisory Opinion of 23 July 2025, p. 2.

⁶⁹ IISD. Historic International Court of Justice Opinion Confirms States’ Climate Obligations. 28 July 2025.

⁷⁰ ICJ. Summary of the Advisory Opinion of 23 July 2025, p. 8.

⁷¹ ICJ. Summary of the Advisory Opinion of 23 July 2025, p. 19.

⁷² ICJ. Summary of the Advisory Opinion of 23 July 2025, p. 20.

⁷³ ICJ. Summary of the Advisory Opinion of 23 July 2025, p.24.

⁷⁴ IISD. Historic International Court of Justice Opinion Confirms States’ Climate Obligations. 28 July 2025.

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