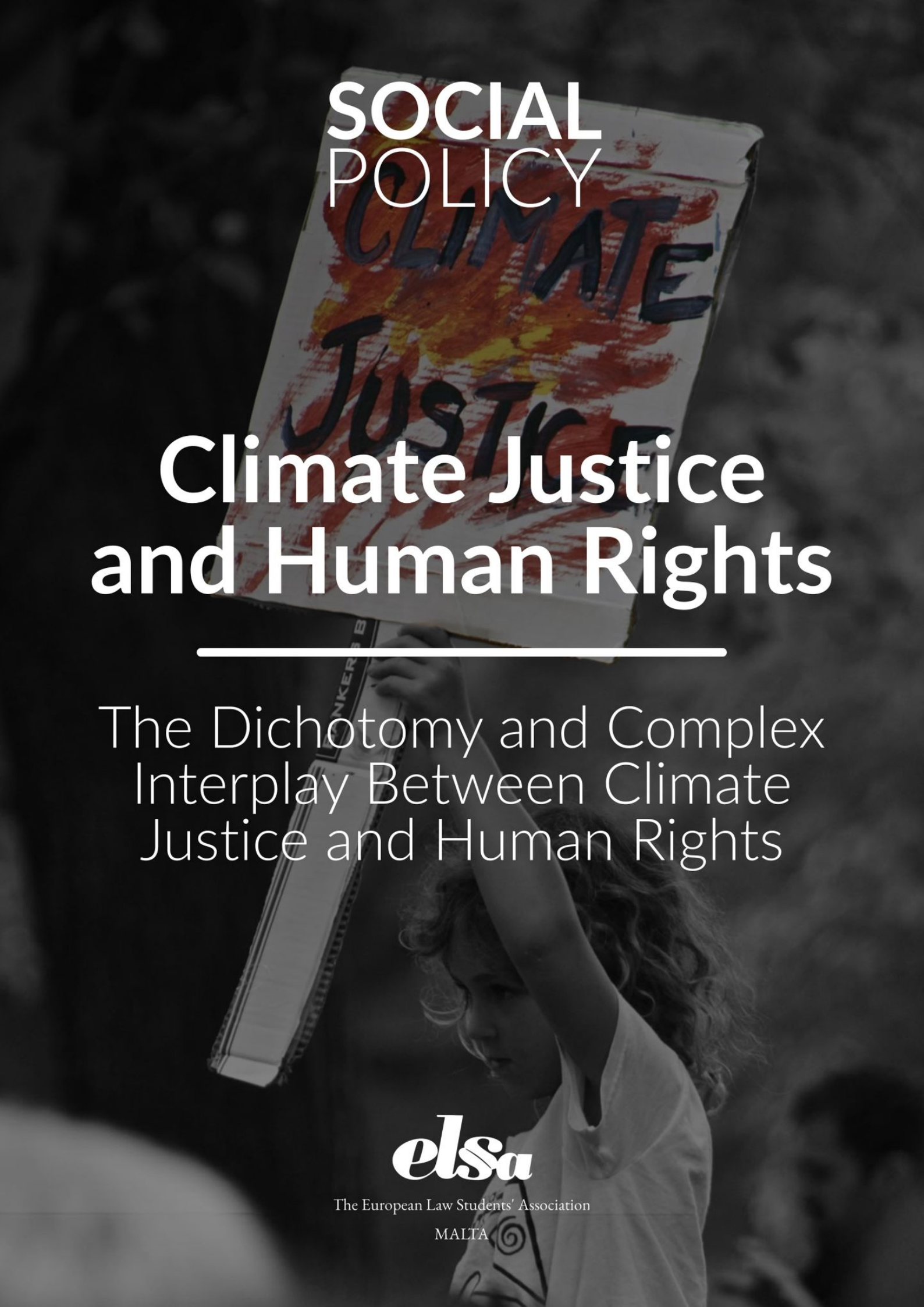

SOCIAL POLICY

Climate Justice and Human Rights

The Dichotomy and Complex Interplay Between Climate Justice and Human Rights

elsa
The European Law Students' Association
MALTA

Acknowledgements:

Project Coordinator

Abigail Bonnici

Writers

Rachel Mizzi

Pearl Ebejer

Liam Borg

Andrea Farrugia

Whitney Psaila

Reviewed by

Professor Tonio Borg

THE ELSA MALTA NATIONAL BOARD:

2025-2026

From left to right:

Gianni Farrugia, Andrea De Marco, Abigail Bonnici, Keira Grech, Sereena Azzopardi Muscat, Megan Ekezie, Lucia Zammit Lewis, Beppe Gauci, Timothy Mifsud, Harold Thake, Nirvana Thewma, Julian Mifsud, Sarah Pace, Alexander Apap Bologna, Timothy Gauci and Gianfranco Gatt Ellis

The ELSA Malta National Board's vision is to create a world where the student is able to thrive on both an academic level as well as a social one. From publishing academic materials to hosting events and competitions, the student is at the forefront of the mission of ELSA.

Foreword:

As President of ELSA Malta, it is my honour to present this Social Policy Paper, a testament to the commitment, intellect, and dedication of prospective lawyers and fellow law students. This title, assigned by ELSA International, addresses one of the most pressing and defining challenges of our generation: the intersection of climate governance, human rights, and global responsibility.

Our contributors explore these issues in a clear and thoughtful manner, demonstrating how climate change is reshaping international obligations, placing new pressures on maritime governance, and directly affecting the human rights of entire communities. Their work makes it evident that climate change is no longer merely a scientific debate or a political talking point, it has become a legal challenge that tests our systems, our institutions, and the very principles we rely on.

This paper also underscores the crucial role of law in the context of climate change. Its contents show that the law is not only a mechanism for holding individuals and governments accountable but also a tool for safeguarding justice, fairness, and fundamental human dignity. Through discussions on due diligence, human rights, and the increasing involvement of the courts, the contributors make it clear that meaningful legal progress, coupled with international cooperation, must lie at the centre of our global response.

I would also like to extend my deepest appreciation to ELSA Malta's Director for Social Policy and contributor to this paper, Abigail Bonnici. Her dedication and meticulous work are truly reflected in this biannual publication. My thanks also go to all the writers who contributed to this project; your commitment to ELSA Malta is sincerely valued. I further wish to thank Professor Tonio Borg for his endorsement and review of this paper.

It is my hope that this policy paper not only informs but also inspires, sparking dialogue, encouraging thoughtful reflection, and reaffirming our responsibility as emerging legal professionals to champion solutions that protect both our planet and its people.

Timothy Mifsud

President of ELSA Malta

2025-2026

Table of Contents:

Preamble:

by Abigail Bonnici

Climate Justice is defined in the 21st century as one of the leading social and legal problems, it is a double edged sword in today's society, with having to manage and maintain one's freedom of choice while also ensuring environmental protection and safety for society as a whole. Climate Justice and Human rights implies that States, institutions, corporations and individuals are held accountable and confront the rapid evolvement of our environment. As the climate crisis accelerates, the struggle to maintain international obligations with domestic political and economical realities has become increasingly fraught. States are being called to honour ambitious commitments under international treaties and agreements yet they often face internal constraints that hinder effective implementation exposing deep tensions between global responsibilities and national capabilities

These issues are prevalent in the governance of the world's oceans and coastal regions. Maritime governance has been long shaped by principles of sovereignty, freedom of navigation, and shared resource management, these dynamics are constantly being challenged by rising sea levels, warming waters, and natural disasters. These disruptions inherently challenge livelihoods, societies and the territorial integrity of coastal and island communities. The consequences of inadequate mitigation and adaptation efforts are not merely environmental but human. Climate induced human rights violations, ranging from forced displacement to loss of life, livelihood, and cultural heritage frame the reality that climate change is not only an ecological crisis but also a human rights crisis, seen as a common concern for humankind. Climate change imposes on states to the obligation of due diligence, a duty to protect and maintain main kind and provide equitable measures to prevent foreseeable harm, protect vulnerable populations and cooperate with international obligations in safeguarding the planer for current and future generations

In recent years, courts around the world have become pivotal actors in shaping climate governance. The judicialisation of climate policy through constitutional claims, human rights litigation and

administrative review reflect a growing recognition that legal systems play a crucial role in holding governments and corporations accountable. Through landmark rulings, courts have clarified obligations, expanded the scope of rights protections and compelled more ambitious climate action, signalling the emergence of a transformative jurisprudence that connect the gap between scientific urgency and policy inertia.

These evolving dynamics illustrate a complex dichotomy of interconnected landscape of climate justice and human rights. They underscore the need for robust, coherent, and rights based climate communities, this reimagines legal frameworks to meet the unprecedented challenges and responsibilities of the todays climate era

Abigail Bonnici:

Director for Social Policy and Human Rights

2025-2026

International Law Obligation (Domestic and Foreign):

The Struggle to Reconcile International Obligations with Domestic Realities in Climate Governance

By Rachel Mizzi

Introduction

In discussions of global climate governance, there is an ever-present chasm between national implementation and international commitments. Substantive action based on international commitments is often barred due to several national limitations spanning from economic pressures to domestic administrative and political constraints. It is these domestic and structural barriers that continually limit a nation from fulfilling the agreed and practical climate responsibilities and this ultimately factors in an uneven climate accountability in the matter. Smaller states like the Maltese Islands suffer from a disproportionate pressure placed upon them by regional bodies like the European Union (EU), which make use of mechanisms such as reporting systems and binding rules to reinforce national climate obligations.

The Evolution of International Climate Law

The progression of international climate law demonstrates a gradual shift from an unyielding, bureaucratic regulation to a more adaptive regulatory approach, one that is built upon state-driven ambition and procedural duties. In 1992, the United Nations Framework Convention on Climate Change (UNFCCC) laid the foundational principles of cooperation, particularly the Common but Differentiated Responsibilities (CBDR). It was the through the binding, quantified commitments for developed countries, established in the Kyoto Protocol in 1997, that aspired to give these concepts legal force. However, its impact was undermined due to the withdrawal of major emitters and its limited participation. The profound shift of the system of Nationally Determined Contributions (NDCs), introduced by the Paris Agreement (2015) asked that every state must communicate, report, and formulate, thus blending non-binding substantive targets with binding procedural duties.

As Daniel Bodansky asserts, this hybrid legal character illustrates the international community's measures to political circumstance, giving precedence to broad participation and transparency rather than strict enforcement.[1] Moreover, Lavanya Rajamani claims that the Paris Agreement also reconceptualises the principle of differentiation, allowing each state to establish its own level of intended contribution, thus embracing self-differentiation as opposed to a form division between developing countries and developed countries. Through this flexible and contextual approach, the regime shifts from rigid legal rules toward a politically facilitative system, aiming to harmonise sovereignty, collective responsibility, and equity in a much broader, more inclusive framework for global climate governance.[2]

Climate Change as a Human Rights Issue

It is an undisputable fact that climate change is progressively putting worldwide human security at risk. The term threat multiplier is commonly employed to highlight climate change's role in intensifying environmental, social, and economic stresses. There is a constant competition for food and water being triggered by extreme weather and unpredictable rainfall. Thus, the declining agricultural production can be a catalyst to a loss of income for a major demographic segment. As a result to floods, sea-level rise, droughts, and storms, more than 20 million people were forced to vacate their homes and immigrate to different areas in their countries each year. There is a higher risk of a country's vulnerability to climate change when said country is economically and politically fragile. Examples of such countries include as Somalia, Yemen, Afghanistan and the Democratic Republic of the Congo. [3]

There has been a notable shift in how courts conceptualise climate inaction, whereby now juridical bodies frame such inaction, due to their impacts on human security, as a human rights violation. A prime example of this shift is the Ugandan Wetlands Case, often described as a landmark case for this subject matter.

---

[1] Daniel Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25 Review of European, Comparative & International Environmental Law 142 <https://jak.ppke.hu/uploads/articles/1211121/file/Bodansky-2016 RECIEL%20Paris%20Legal%20Character.pdf>.

[2] Lavanya Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65 International and Comparative Law Quarterly 493.

[3] United Nations, 'Five Ways the Climate Crisis Impacts Human Security' (*United Nations*2021) <https://www.un.org/en/climatechange/science/climate-issues/human-security>.

The Dutch courts, in Urgenda Foundation vs State of the Netherlands discovered that the government's inadequate emissions-reduction targets violated its duty of care under Article 2 and 8 of the European Convention on Human Rights (ECHR), both of which protects the right to life and the right to private and family life. The courts asserted that the foreseeable and real risks emanating fom climate change, including threats to human habitation, health, and livelihood, mandate a positive obligation on countries to implement adequate mitigation measures. In 2019, the Supreme Court delivered its final ruling, confirming that these human rights were infringed as a consequence of the state's insufficient reduction of greenhouse gas emissions by at least 25% from 1990 levels by 2020. Not only did this decision highlight that inaction on climate change can constitute human rights violation, but it also reinforced an international precedent proclaiming that governments have a moral and legal duty to uphold fundamental rights threatened by climate impacts. [4]

This growing need for judicial involvement clearly illustrates that international climate law yields weakly binding obligations and lacks productive enforcement actions, hence persuading courts to fill the accountability gap.

The Legal Nature of Climate Obligations

One can characterise the legal nature of international climate obligations as being a blend of hard and soft law instruments. Although this deliberate structure provides flexibility, it ultimately culminates in fragmented accountability and limited enforceability.

The Paris Agreement showcases how this fluid framework functions in practice. Even though the Agreement entails binding procedural duties, namely participating in transparency mechanisms, maintaining nationally determined contributions (NDCs), and reporting progress, it does not inflict binding substantive obligations in respect of the extent of ambition states must attain. This discrepancy between optional outcomes and mandatory procedures weakens the enforceability of the states' commitments as it grants them broad discretion over their climate action. [5]

Similarly, recent studies also emphasize that most international climate responsibilities operate as "due diligence" commitments instead of strict legal directives. These responsibilities entail states to

---

[4] 'Urgenda Foundation v. State of the Netherlands' (*Climatecasechart.com*2015) <https://www.climatecasechart.com/document/urgenda-foundation-v-state-of-the-netherlands_3297>.

[5] Bodansky (n 1)

act with reasonable care however do not issue sturdy enforcement mechanisms nor authorise distinct emissions-reduction levels. Therefore, these global climate duties stay heavily dependent on political will and are legally weak. [6]

This structure is intentional. Most governments would rather have soft law in economically costly and politically sensitive sectors, as its flexibility permits for future policy amendments and reduces the risk of legal liability. Be that as it may, this choice leads to a significant accountability gap, hence explaining why regional and domestic courts continue to rely on human rights law to institute more definitive duties where the existing international regime fails to deliver. [7]

The Limits of Implementation

Ultimately, the effectiveness of climate responsibilities depends on how states implement them domestically, regardless of the extent to which regional institutions and courts attempt to fill this accountability gap. Redirecting attention on the domestic sphere sheds light onto another dimension of fragmentation: administrative limitations, national political realities, and economic constraints, which often hinder governments from converting international ambition into substantive action. Despite increasingly elaborate governance systems, the outcome is a sustained implementation deficit, with obligations remaining largely aspirational. At the domestic level, the constraints of climate accountability become most visible, exposing structural barriers that neither human rights litigiation nor interntional law are able to overcome.

National Enforcement Challenges

This local implementation of climate duties is also often limited by weak political will, with states avoiding actions that inflict short-term political costs in spite their long-term environmental sake. Political parties regularly prioritise industrial competitiveness, economic growth, and energy security over intensive decarbonisation, even though their international responsibilities appear determined. This explains why many states guarantee ambitious NDCs yet systematically

---

[6] 'The Normative Status of Climate Change Obligations under International Law | Think Tank | European Parliament' (*www.europarl.europa.eu*2022) <https://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2023)749395>.

[7] Timothy Meyer, 'Shifting Sands: Power, Uncertainty and the Form of International Legal Cooperation' (2016) 27 European Journal of International Law 161.

underperform in practice, showcasing a built-in implementation gap inherit in the Paris Agreement framework. [8]

A consistent competition is felt between climate measures and pressing national concerns such as fuel prices, fiscal stability, and employment. This is so as political constraints are aggravated by economic pressures. Mitigation is commonly portrayed as an economic burden for resource-constrained countries such as Malta, unless combined with pre-determined climate finance, specifically in the context of just transition debates. Therefore, these relationships highlight that international goal does not automatically materialise into domestic measures, entrenching the divide between implementation and obligation.

The EU as a Bridge and a Barrier

It is argued that EU membership has functioned as a compelling force of Malta's climate duty by reinforcing its institutional and legal framework. EU law has required clearer long-term strategies, implemented binding responsibilities, and enhanced national reporting systems all which Malta would have not formulated on its own. According to Galdies and Galdies' findings, global demands have incentivised Malta toward better professionalism and coordination in climate governance, even if national administrative and fragmentation limitations continue to pose significant obstacles. [9]

Sectors such as buildings, small industry, agriculture, waste, and domestic transport (excluding aviation) are covered by the Effort Sharing Regulation (ESR) which institute binding annual greenhouse-gas emission ambitions for each Member State for throughout the duration of 2021-2030. The ESR transforms EU climate goals into concrete national obligations as the sectors account for nearly 60% of total EU emissions. Additionally, the EU still provides common tools and rules even though states implement and design the policies to meet their goals. Such guidelines include flexibility mechanisms for instance limited use of cancelled EU ETS allowances, trading, borrowing, and banking, done to aid states handle their compliance.[10]

---

[8] ROBERT FALKNER, 'The Paris Agreement and the New Logic of International Climate Politics' (2016) 92 International Affairs 1107.

[9] Charles Galdies and Clara Galdies, 'The Impact of EU Membership on Malta's Climate Action' (2024) <https://www.um.edu.mt/library/oar/bitstream/123456789/122015/1/CharlesGaldies.pdf>.

[10] 'About Effort Sharing' (*Climate Action*2021) <https://climate.ec.europa.eu/eu-action/effort-sharing-member-states-emission-targets/about-effort-sharing_en>.

Moreover, under the Fit of 55 packages, the Council of the EU embraced revisions to the Effort Sharing Regulation in 2023, adjusting a 40% EU-wide GHG lowering objective by 2030 and allocating national goals according to specified flexibility provisions. [11] Consequently, Malta established a matching-19% GHG mitigation target in its revised NECP for 2021-2030, indicating the transposition of EU obligations into national policy. [12] Yet the EU tends to create substantial compliance obstacles for smaller Member States like Malta since EU climate rules can be resource-intensive and rigid. [13]

Such small states have urged for more accommodating climate policies, underscoring the political pushback that could emerge when firm EU regulations overlook domestic specificities and national capacities. For instance, renewable energy aims are notably hard to achieve for small, densely populated islands, where infrastructure constraints, high population density, and limited land pose significant challenges to implementing EU mandates.[14]

Administrative burden under the EU Emissions Trading System further intensifies these challenges, as the monitoring, trading and reporting requirements calls for human and technical resources which are lacking in smaller sates, even with scarce mechanisms to facilitate compliance. [15] Therefore, while Malta, on paper, comply with EU obligations, profound national change is often slight, encapsulated by its defeat to meet ESR emissions quota.[16]

---

[11] 'Fit for 55 Package: Council Adopts Regulations on Effort Sharing and Land Use and Forestry Sector' (*Consilium*2023) <https://www.consilium.europa.eu/en/press/press-releases/2023/03/28/fit-for-55-package-council-adopts-regulations-on-effort-sharing-and-land-use-and-forestry-sector/>.

[12] 'MALTA'S NATIONAL ENERGY and CLIMATE PLAN' (2024) <https://energywateragency.gov.mt/wp-content/uploads/2025/01/MT-%E2%80%93-FINAL-UPDATED-NECP-2021-2030-English.pdf>.

[13] 'Study on Regulatory Barriers and Recommendation for Clean Energy Transition on EU Islands | Clean Energy for EU Islands' (*Europa.eu*24 January 2023) <https://clean-energy-islands.ec.europa.eu/resources/publications/study-regulatory-barriers-and-recommendation-clean-energy-transition-eu> accessed 19 November 2025.

[14] Romain Mauger, Lea Diestelmeier and Ceciel Nieuwenhout, 'Harnessing EU Legal Concepts for the Energy Transition on Islands' [2024] Journal of world energy law and business.

[15] European Commission, 'Effort Sharing 2021-2030: Targets and Flexibilities' (*climate.ec.europa.eu*2023) <https://climate.ec.europa.eu/eu-action/effort-sharing-member-states-emission-targets/effort-sharing-2021-2030-targets-and-flexibilities_en>.

[16] Emma Borg, 'Malta the EU Laggard in 2023 Greenhouse Gas Emissions' (*Times of Malta*5 December 2024) <https://timesofmalta.com/article/malta-misses-mark-2023-greenhouse-gas-emissions-targets.1102016> accessed 19 November 2025.

Furthermore, reports states that the robust reporting demands under the EU body of law exerts a considerable pressure on the governments' capacities.[17] These challenges highlight that, in the face of the EU's goal to stabilise climate action, to approximate climate action, its regulatory and legal structures can unduly strain smaller states, unveiling a constant tension between domestic feasibility and EU-level.

Malta's Climate Governance Framework

This tense dynamic is exhibited in Malta's Climate Action Act 2024, which sets legally binding targets for energy efficiency, renewable energy deployment, and emissions reduction, establishing a formal framework for national climate governance. However, practical limitations in funding, administrative capacity, and implementation may restrain the full potential of these aims. [18]

The Accountability Gap: Why Reconciliation Fails

While these regional and domestic limitations illustrate the reason why states are frequently unsuccessful in practice, they also shed light onto a deeper architectural issue, which is the lack of serious accountability system correlating national implementation and international ambition. That being said, Malta's experience is not an exception but the outcome of a wider systemic problem in global climate governance. The divergence between what states pledge to do and what they ultimately deliver reveals the inherent fragility of any reconciliation effort where enforcement remains ineffective or uneven.

Soft Law and Lack of Enforcement

As aforementioned, soft law is meticulously designed without bearing binding force, which enables governments to convey cooperation while avoiding legal consequences connected to hard obligations. As no formal sanctions is carried by these instruments, states can appear cooperative with the standards but face no real consequences when their word is not held up. Hence this

---

[17] '5 Th Biennial Report, 2022 Ii MALTA'S FIFTH BIENNIAL REPORT' (2023) <https://unfccc.int/sites/default/files/resource/BR5_Malta_V4_resubmission_Final.pdf> accessed 19 November 2025.

[18] Climate Action Act, Chapter 543 of the Laws of Malta.

systemic weakness signifies that soft law often fabricates political commitments rather than legal ones, establishing an internal gap between declared intentions and concrete action. [19]

Notably, soft law forms governments' behaviour through norm-setting and expectations, as opposed to compulsion. Even though these instruments bear no legal force, they still impact how states structure intergovernmental engagement, planning, and reporting, designing a regulated approach to rule-following. Even if these might improve coordination and transparency, it does not oblige actual environmental achievements, underscoring that soft law exerts influence through reputational pressure and behavioural guidance, and does not establish binding legal obligation. [20]

Even with EU in the picture, soft law instruments rely heavily on reputational pressure, persuasion, and coordination, instead on binding enforcement mechanisms. This highlights how "soft enforcement" may lead state behaviour without any guaranteed compliance, solidifying the systemic accountability gap. [21] When such obligations are not enforced, they effectively normalise impunity, that allows states to habitually underperform with no penalties. Thus, it further entrenches a system in which such compliance is merely an option, and political calculations often overshadow concrete action. Accordingly, formally recognised commitments may remain symbolic, unsuccessful to yield into measurable national impact, exacerbating gaps in accountability. [22]

Political and Economic Realities

While international frameworks set bold targets, economic pressures and domestic policies typically shape the targets' feasible pursuit. States often have to find a balance between climate responsibilities and energy security, industrial competitiveness, and short-term electoral considerations, that can eventually lead to uneven, delayed, diluted implementation. These competing priorities establish that international pledge do not amount to substantive domestic

---

[19] Andrew T Guzman and Timothy L Meyer, '"International Soft Law" by Andrew T. Guzman and Timothy L. Meyer' (*Duke.edu*2022) <https://scholarship.law.duke.edu/faculty_scholarship/4207/>.

[20] Stephen Daly, 'The Rule of (Soft) Law' [2021] King's Law Journal 1.

[21] Anne Ausfelder and others, 'EU Soft-Law: Non-Binding but Enforceable' (2024) 30 European Law Journal 668 <https://onlinelibrary.wiley.com/doi/full/10.1111/eulj.12537>.

[22] Theodor Meron, 'Closing the Accountability Gap: Concrete Steps toward Ending Impunity for Atrocity Crimes' (2018) 112 American Journal of International Law 433 <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/closing-the-accountability-gap-concrete-steps-toward-ending-impunity-for-atrocity-crimes/21F7F613BCE1FC916E3E13CD75CBE0EE>.

action, specifically in contexts where policymaking is dominated by political or economic trade-offs.[23]

Such soft law weakness is clearly shown in the formal recognition by the United Nation of human right to clean, healthy and sustainable environment, as outlined in United Nations General Assembly (UNGA) Resolution 76/300. While this resolution creates an international recognised human-right standard, it falls short on any binding enforcement mechanism, which enables states to endorse the right in principle without translating it into enforceable national policies. Thus, such resolution is in jeopardy of becoming a symbolic pledge with no tangible domestic translation which may enhance political theatre as opposed to accountability in climate pursuit. [24]

The fragmented 'regime complex' for climate change enables governments to lean towards forums that inflict upon the least economic or political cost, thereby weakening support for the most protective and ambitious frameworks. In reality, this government flexibility allows states to bypass strong mitigations obligations, a recurring trend that eventually exacerbates the impact of climate change for communities who are most exposed to environmental threats. Hence this proves how the manner in which irregular participation across regime can compromise the safeguard function that international norms, such as environmental human-rights standards are meant to serve. This in turn deepens pre-existing inequalities as a result to insufficient address to climate impacts. [25]

Moreover, the Intergovernmental Panel on Climate Change (IPCC) underscores that, notwithstanding global commitments, present mitigation efforts are inadequate to prevent warming from surpassing safe levels, with many states failing to achieve their pledged targets. This constant gap between action and ambition intensify hazards for vulnerable communities, illustrating how economic and political limits at domestic level instantaneously hinder the fulfilment of significant climate results. [26]

---

[23] Falkner (n 8).

[24] 'United Nations General Assembly, the Human Right to a Clean, Healthy and Sustainable Environment, UN Doc A/RES/76/300 (28 July 2022)' (28 July 2022) <https://docs.un.org/en/A/RES/76/300>.

[25] Robert O Keohane and David G Victor, 'The Regime Complex for Climate Change' (2011) 9 Perspectives on Politics 7 <https://www.cambridge.org/core/journals/perspectives-on-politics/article/regime-complex-for-climate-change/F5C4F620A4723D5DA5E0ACDC48D860C0>.

[26] IPCC, 'Climate Change 2022: Mitigation of Climate Change' (*IPCC*2022) <https://www.ipcc.ch/report/ar6/wg3/>.

Human Rights Implications

With the intensification of climate impacts, a state's responsibilities to protect basic human rights has become increasingly inescapable. The United Nations Human Rights Committee in Ioane Teitiota vs New Zealand acknowledged that governments may breach the right to life if they do not prevent foreseeable climate hazards. This refers in particular to when individuals are defenceless to conditions that highly endanger their well-being and safety. This case serves as an example that climate inaction is not just a policy gap but also a potential violation of international human-rights duties, exhibiting the human aspect of the accountability deficit discussed in previous sections. By connecting human rights law to environmental risks, the decision outlines that inadequate adaptation and mitigation measures can produce direct ethical and legal ramifications for those most fragile. [27]

Furthermore, UNGA Resolution 76/299 underlines that governments have a responsibility to prevent environmental harm whilst guaranteeing that their inactions or actions do not pose a risk on the enjoyment of fundamental human rights. Thus, insufficient adaptation and mitigation have direct repercussion for those most exposed to climate threats. [28]

The Inter-American Court of Human Rights in Advisory Opinion OC-23/17 also recognised that a failure to prevent environmental harm can result in a breach of State's obligation to protect human rights, emphasising that environmental deterioration has the potential to directly violate these fundamental rights. [29] Additionally, analyses from the United Nations Special Rapporteur on Human Rights and Climate Change further exemplify that national inaction unequally burden marginalised communities, perpetuating worldwide patterns of heightened exposure and

---

[27] 'UN Human Rights Committee Views Adopted on Teitiota Communication' (*Climatecasechart.com*2015) <https://www.climatecasechart.com/document/un-human-rights-committee-views-adopted-on-teitiota-communication_7511>.

[28] Andorra and others, 'The Human Right to a Clean, Healthy and Sustainable Environment :: Draft Resolution /: Andorra, Angola, Antigua and Barbuda, Armenia, Bahamas, Bhutan, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Cabo Verde, Chile, Colombia, Congo, Costa Rica, Croatia, Cyprus, Czechia, Djibouti, Dominican Republic, Ecuador, Equatorial Guinea, Fiji, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Jordan, Kenya, Latvia, Lebanon, Luxembourg, Maldives, Mali, Malta, Marshall Islands, Micronesia (Federated States Of), Monaco, Montenegro, Morocco, Netherlands, Nigeria, North Macedonia, Palau, Panama, Peru, Portugal, Qatar, Republic of Korea, Romania, Samoa, Senegal, Slovakia, Slovenia, Spain, Switzerland, Togo, Ukraine, Uruguay and Vanuatu' (*United Nations Digital Library System*26 July 2022) <https://digitallibrary.un.org/record/3982508?v=pdf>.

[29] Roberto Caldas and others, 'INTER-AMERICAN COURT of HUMAN RIGHTS ADVISORY OPINION OC-23/17 of NOVEMBER 15, 2017 REQUESTED by the REPUBLIC of COLOMBIA the ENVIRONMENT and HUMAN RIGHTS (STATE OBLIGATIONS in RELATION to the ENVIRONMENT in the CONTEXT of the PROTECTION and GUARANTEE of the RIGHTS to LIFE and to PERSONAL INTEGRITY: INTERPRETATION and SCOPE of ARTICLES 4(1) and 5(1) in RELATION to ARTICLES 1(1) and 2 of the AMERICAN CONVENTION' (2017) <https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf>.

inequalities. [30] Likewise, the UNHRC in Daniel Billy and other vs Australia (Torres Strait Islander Petition) observed that deficient mitigation and adaptation policies can infringe life and cultural rights, further revealing the palpable repercussion of state passivity. [31] Ultimately, painting climate inaction as a human-rights violation not only reveals the moral seriousness of state passivity yet also solidifies that authentic climate governance must prioritised safeguarding people, namely those most at risk.

Conclusion

This essay highlights a persistent gap between international climate commitments and real-world outcomes, one which is derived from the combined effects of administrative limitations, global climate governance's structural weakness, economic pressures, as well as domestic political constraints. There are regional and international frameworks that endeavour to direct states towards stronger action the changing climate. However, these frameworks face the challenges of an absence of robust enforcement and soft law dominance which allow the endorsement of ambitious goals by governments but limited delivery and implementation. It is by supporting the execution of more realistic and credible pathways and by strengthening enforcement mechanisms, that a nation could properly address the deficit in accountability which could ultimately tip the scales towards more meaningful climate progress.

[30] 'OHCHR | Special Rapporteur on Climate Change' (*OHCHR*) <https://www.ohchr.org/en/specialprocedures/sr-climate-change>.

[31] 'Daniel Billy and Others v Australia (Torres Strait Islanders Petition)' (*Climatecasechart.com*2019) <https://www.climatecasechart.com/document/daniel-billy-and-others-v-australia-torres-strait-islanders-petition_191e>.

Maritime Governance & The Climate Crisis

by Pearl Ebejer

Maritime governance encapsulates management and regulatory oversight of port and vessel operations. This is done through policy and allocation of resources. Apart from the regulatory practices however, maritime governance is also a mechanism of protection to ensure safety, security, efficiency, and environmental sustainability[32]. Therefore through maritime governance, individuals and entities join forces in managing the ocean and its resources. This is not done simply on a national level, but instead can head great progress when tackled internationally. In the long run, this will impact the ocean positively. To this end, with regard to international protection, human rights should be at the forefront of the discussion because the right to life, health, food and water are directly interwoven with Ocean health.

The Ocean covers the majority of the earth's surface and regulates the Earth's climate. Up to this point in time, the ocean has absorbed almost 90% of the excess heat caused by carbon emissions[33]. Unfortunately, this great resource is greatly overlooked and unappreciated despite it being a force that not only benefits humankind alone but is also a driving force of development. It has been threatened not just by illegal activities and exploitation but at the crux of it all is climate change and marine pollution. Almost two-thirds of the ocean is not subject to national jurisdiction, and thus responsibility for its sustainability requires genuine cooperation between the world's states[34].

During the 2019 Climate Action Summit, the UN's Secretary General pointed referred to climate change as a race, but not one the world is destined to lose, but as "a race we can win"[35]. There has been drastic rise in global temperatures, food and water are no longer a guarantee, disasters are unpredictable and weather extremes have become more frequent. Currently, the ocean has reached an all-time record high in its temperature. To this end, ecosystems are declining and of course

---

[32] United Nations Institute for Training and Research (UNITAR), 'Maritime Governance' (UNITAR, 2024) <https://unitar.org/sustainable-development-goals/peace/our-portfolio/maritime-governance>

[33] UNESCO Ocean Literacy, 'Why Maritime Governance Matters' (UNESCO, 2023) <https://oceanliteracy.unesco.org/news/why-maritime-governance-matters>

[34] European Commission, 'International Ocean Governance' (Ocean and Fisheries, 2024) <https://oceans-and-fisheries.ec.europa.eu/ocean/international-ocean-governance_en>

[35] United Nations, 'The Climate Crisis: A Race we can Win' (UN75) <https://www.un.org/en/un75/climate-crisis-race-we-can-win>

pollution is on the rise. At the centre of this reaction is human impact. Therefore, we are not only the ones who can bring about change, but also the ones creating the need for such a change.

International Legal Frameworks for Ocean Protection

The main legal instrument regulating the ocean and its use is the United Nations Convention on the Law of the Sea, also referred to as the Constitution of the Ocean. This is the Convention upon which Global Ocean Governance relies on. The subsequent legislations and authoritative bodies all work within the ambit of this overreaching document. In essence the myriad of instruments advocating for the protection of the ocean reflect the "multifaceted nature of Ocean challenges." Under the auspices of the International Maritime Organization, the International Convention for the Prevention from Pollution of Ships was drawn up. This is the main international convention that deals with the prevention of pollution of the marine environment by ships. The regulations under this convention aim at minimising accidental and also routine pollution from ships. However, the most recent global treaty on climate change has to be the 2015 Paris Agreement adopted under the United Nations Framework Convention on Climate Change. The preamble of the Paris Agreement outlines that one of the agreement's aims will be to "not[e] the importance of ensuring the integrity of all ecosystems, including oceans, … and noting the importance for some of the concept of "climate justice", when taking action to address climate change."[36] Apart from these, a number of annual UN climate conferences [COPs] take place through which new decisions and mechanisms are added under the Paris Agreement. All these efforts come to show how climate change is truly a catalyst for conflict. Challenges ranging from degradation of natural resources leading up to displacement and migration which in turn create a burden on land that cannot endure overpopulation and overuse.

UNCLOS articles 211 and 212 deal with pollution from vessels and pollution through or from the atmosphere respectively. Under both sections the state is obliged to draw up and implement laws for the prevention of marine pollution. Apart from this states must promote the protection of the ocean and the marine environment. Therefore, a flag state can impose emission standards, technological or structural requirements for flag ships, and even market mechanisms to reduce green house gas emissions, as long as these regulations do not violate UNCLOS principles. The International Convention for the Prevention of Pollution from Ships [MARPOL], is the primary legal instrument

[36] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UNTS vol 3156 p 3 (UNFCCC)

addressing vessel marine pollution. In 2005, an amendment was made which introduced Annex VI as an effort to reduce GHG emissions from shipping. When the Kyoto Protocol was adopted, shipping was left to be regulated by the IMO because of jurisdictional issues, measurement and enforcement difficulties, and relatively small emissions share and efficiency. Moreover, because of their global nature it was considered to be more effective if a global framework by the IMO was adopted on shipping matters rather than a fragmented framework. Unfortunately, what the Protocol failed to foresee was the speed such GHG emissions were to grow. In fact the results from the 2014 GHG Study show how maritime transport is responsible for 2.5% of global GHG emissions. In addition to this, shipping emissions are predicted to increase between 50% and 250% by 2050, depending on future economic and energy developments.

The most recent international effort between states was adopted in 2023. The Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) is now the third implementing agreement under UNCLOS and has as its objective the conservation and sustainable use of marine biological diversity of areas in the high seas, both in the present and in the long run, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination[37]. This agreement covers four main issues[38], it has created a number of management tools for specific areas like marine protected areas in the high seas; environmental impact assessment requirements have also been defined, marine genetic resources; including the fair and equitable sharing of benefits; and capacity-building and the transfer of marine technology:

"*A High Seas that can be protected through marine protected areas (MPAs), strong governance, impact assessments and multilateral cooperation, is a High Seas that will help to feed millions, increase ocean productivity, protect vital Earth System services and help to combat climate change*."[39]

Therefore, maritime governance operates internationally through institutional frameworks by which marine ecosystems are protected which are in turn vital for climate regulation.

---

[37] United Nations, 'Agreement under the United Nationas Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement)' (UN, 2023)

[38] United Nations, 'BBNJ Agreement: Overview and Factsheet' (UN Division for Ocean Affairs and the Law of the Sea, 2023)

[39] European Commission, 'BBNJ: High Ambition Coalition' (Oceans and Fisheries, 2023) <https://oceans-and-fisheries.ec.europa.eu/ocean/international-ocean-governance/bbnj-high-ambition-coalition_en>

The adoption of the BBNJ Agreement constitutes a significant advancement in global ocean governance, aimed at halting destructive trends and promoting the recovery of ocean ecosystems. Its implementation is essential to tackling the interconnected crises of climate change, biodiversity decline, and pollution, and to achieving global commitments under SDG 14 and related targets.

The Sustainable Development Goals, specifically SDG 14 on the Life Below Water aims to conserve and promote sustainable use of the oceans, seas and marine resources to foster sustainable development. The target is to reduce marine pollution thereby protecting and restoring coastal ecosystems whilst also addressing the impacts of ocean acidification. Emphasis is placed on small islands and least developed countries to increase economic benefits of marine resources. Moreover, by supporting small-scale fisheries and strengthening scientific research along with technology transfer, ocean health is guaranteed to recover. Finally, implementation of international law is stressed, particularly implementation of the UN Convention on the Law of the Sea, to ensure sustainable management of ocean resources.[40]

Climate Change Impacts on the Ocean and Human Security

Having examined the legal and institutional frameworks guiding maritime governance, it is important to consider the tangible effects of climate change on the ocean and the resulting consequences for marine ecosystems, coastal communities, and global stability.

Sea-Level Rise: Threats to Borders, Statehood, and Stability

Sea-level rise is one of the main concerns raising issues with regard to maritime boundaries and statehood. Simply put, this occurrence is purely a symptom of climate change. During the 9260th meeting of the UN Security Council on the Threats to international peace and security (Sea-level rise), Malta's Minister for Foreign Affairs Ian Borg emphasised heavily on sea-level rise, confirming it is one of the main threats to low-lying coastal areas. This point served as a catalyst for discussion among those present. António Guterres, United Nations Secretary-General, refers to sea level rise as not just a threat but a "threat multiplier" because it can disrupt access to food, water and healthcare. Moreover, saltwater intrusion can also jeopardise jobs and entire economies in

[40] UNESCO Ocean Literacy, 'Why Maritime Governance Matters' (UNESCO, 2023) <https://oceanliteracy.unesco.org/news/why-maritime-governance-matters>

industries like agriculture, fisheries and tourism. Guterres, in his speech, drew attention to World Meteorological Organization findings revealing that global sea levels have increased more rapidly since the start of the 20th century. Rising sea levels have already prompted displacement and forced relocations in Fiji, Vanuatu, the Solomon Islands and elsewhere. West Africa is experiencing flooding and coastal erosion leading to damage to infrastructure. In North Africa salt water intrusion is contaminating land and fresh water, leading to depleting crops and destruction of livelihood. Somalia is also in combat with saltwater intrusion. The planet is also witnessing the rapid melting of glaciers and ice sheets. According to NASA, Antarctica is losing approximately 150 billion tons of ice mass each year, while the Greenland ice cap is melting at an even faster rate. As these glaciers continue to recede, major river systems such as the Indus, Ganges, and Brahmaputra are expected to shrink. The potential consequences are alarming some low-lying communities, and even entire nations, may disappear altogether, a phenomenon that is being assimilated to an Exodus.[41]

To address the challenge of rising sea levels, three key areas must be prioritised[42]. First, the root cause, the climate crisis must be urgently addressed. The Earth has already surpassed its safe warming limit, and immediate, coordinated global action is required to reduce emissions and achieve climate justice. Second, the root causes of insecurity must be understood in a broad sense. Factors such as poverty, discrimination, inequality, human rights violations, and environmental degradation including sea-level rise all contribute to instability and must be tackled collectively. Third, the impacts of rising sea levels must be placed at the forefront of both legal and human rights frameworks, ensuring that governance and protection mechanisms evolve to meet these emerging global challenges.

The current legal regime must therefore look to the future to address any gaps in existing frameworks because “people’s human rights do not disappear because their homes do.”

There are several possible solutions to counter the effects of sea-level rise, the most significant being the reduction of greenhouse gas emissions to slow down global warming. However, achieving a substantial decrease in emissions is a complex and challenging process, and it is unlikely to occur rapidly. Consequently, various adaptation measures must be implemented to enhance resilience. These include constructing infrastructure such as sea walls and storm surge barriers to protect coastal areas from flooding and erosion; improving drainage systems and developing flood-resistant

---

[41] United Nations, ‘The Ocean and Climate Change’ (YouTube, 2023) <https://www.youtube.com/watch?v=E5nlM6l43qI>

[42] *ibid*

buildings; and restoring natural barriers such as mangroves, wetlands, and coral reefs, which help absorb wave energy and mitigate the impact of storm surges.[43]

Small Island Developing States [SIDS] consider sea-level rise as more than a threat, but rather a crisis because their situation has materialised itself from potential risk to causing actual and urgent harm. SIDS are a group of distinct states that face unique social, economic and environmental vulnerabilities. These States control the Exclusive Economic Zone which is much more vast than their land area and therefore most of their resources come from the ocean.[44] Due to their remoteness and lack of alternative economic means, SIDS are defenceless against biodiversity loss and climate change. Sea level rise, although happening slowly, forces relocation of populations which creates a domino effect thereby leading to systematic shocks. Under the 2014 SAMOA Pathway the unique challenges faced by SIDS are addressed and recourse for support is anchored in the contained provisions.[45] The preamble of the SAMOA Pathway provides as follows:

We recognize that sea-level rise and other adverse impacts of climate change continue to pose a significant risk to small island developing States and their efforts to achieve sustainable development and, for many, represent the gravest of threats to their survival and viability, including, for some, through the loss of territory.[46]

In addressing five priority areas centred on climate change mitigation and adaptation through sustainable energy and disaster risk reduction programmes, the document echoes the recognition that "the adverse impacts of climate change compound existing challenges in small island developing States,"[47] where limited access to adequate financial resources continues to hinder effective implementation of climate initiatives. Moreover, sea-level rise threatens the very foundations of coastal economies in small island developing States. The loss of land will undermine infrastructure, tourism, and agriculture. Saline intrusion will further compromise food security by damaging coastal crops that form the backbone of local livelihoods, underscoring the urgent need

---

[43] United Nations News, 'Small Island Nations Call for Greater Climate Action at Global Summit' (UN News, 2024) <https://news.un.org/en/story/2024/08/1153596>

[44] United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (OHRLLS), 'About Small Island Developing States (SIDS)' (UN, 2024) <https://www.un.org/ohrlls/content/about-small-island-developing-states>

[45] *ibid*

[46] SIDS Accelerated Modalities of Action (SAMOA) Pathway (Outcome Document of the Third International Conference on Small Island Developing States, Apia, 1–4 September 2014)

[47] *ibid*

for integrated coastal management and climate adaptation measures.[48] The document also stresses on the importance of strengthening local, national, regional and global cooperation so that the efforts are not done in vain.

The result of the above can be seen in the Kiribati refugee case wherein Ioane Teitiota, a Kiribati national, applied for the status of refugee in New Zealand. The basis of his application was that due to climate change and sea-level rise, he fell victim to forced displacement from the island of Tarawa in Kiribati to New Zealand. The situation in Tarawa has grown increasingly fragile as rising sea levels, driven by global warming, continue to threaten the island's stability. Freshwater sources have been severely diminished due to saltwater intrusion and population overcrowding. Efforts to counteract the effects of sea-level rise have achieved little success, and the progressive loss of habitable land has triggered a housing shortage and escalating land disputes, some of which have resulted in fatalities. Consequently, living conditions in Kiribati have become unsafe and unsustainable for the author and his family. His application was denied and was subsequently removed from New Zealand and sent back to Kiribati. Teitiota argued that this violated his and his family's right to life because Tarawa has become inhabitable. Unfortunately, although the Committee acknowledged that climate change and sea-level rise could, in principle, create grounds for protection under the right to life and non-refoulement, it found that in Teitiota's particular case, the risk to his life was not imminent or severe enough at the time of deportation (2015) to reach that threshold. The Committee held the following, "the facts before it do not permit [the Committee] to conclude that the author's removal to Kiribati violated his rights under article 6(1) of the Covenant."[49] Two members of the Committee, in their individual opinions, considered the majority's decision to be erroneous. In cases like this, the widespread nature of the suffering should not lessen the duty to uphold individual human rights. The fact that many people are exposed to the same life-threatening conditions does not make it impossible, or acceptable, to prioritise each person's protection. Human rights must always remain paramount, and safeguarding the individual should stand at the forefront of any response to such dire circumstances.

---

[48] United Nations Framework Convention on Climate Change (UNFCCC), 'Climate Change and Small Island Developing States' (UNFCCC, 2017)

[49] Human Rights Committee, Views Adopted on Teitiota Communication (2019) UN Doc CCPR/C/127/D/2728/2016 para. 10, available at <https://www.climatecasechart.com/documents/Un-human-rights-committee-views-adopted-on-teitiota-communication-opinion_6a88>

Ocean Acidification and Its Human Consequences

Ocean acidification occurs when the ocean absorbs more CO2 than it can endure and as a result the ocean reacts resulting in a shift, including increased acidity levels in the marine environment. CO2, being a greenhouse gas, is also a stimulant for marine heatwaves. Climate change is the key driver of ocean acidification. The absorption leads to lower pH levels leading to a disruption in marine biodiversity and ecosystems and also the systems humans depend on.[50] A significant impact is malnutrition and food insecurity. Ecosystems' survival, growth and reproduction are altered leading to a decline in seafood availability and diversity. A high percentage of people worldwide depend on fish for their animal protein intake. Moreover, the nutritional quality of seafood is diminishing that is the essential proteins that are crucial for cardiovascular, cognitive, and immune health. Metals such as mercury and cadmium are on the increase as well as persistent organic pollutants which create neurological, developmental, and reproductive risks to humans. Beyond dietary threats, ocean acidification contributes to respiratory and physical health issues. Certain harmful algal blooms release toxins in the air which can reduce lung function. These hazards are expected to intensify and their repercussions are to be felt in coastal populations and amongst vulnerable individuals. There are also profound mental health and social well-being implications. Those whose livelihoods depend on fishing, aquaculture, and marine tourism face job losses, economic instability, and increased social stress. The decline of "blue spaces" reduces opportunities for exercise, nature engagement, and community cohesion. This loss of access to healthy marine environments can lead to anxiety, depression, and a weakening of cultural identity, particularly for island and indigenous communities with deep cultural ties to the sea. Further to this, the ocean's biodiversity has been a source of compounds used to develop life-saving medicines, yet with the threats coral reefs, seaward meadows, anD deep-sea habitats are facing this is on the decline as well. This represents a profound loss for global health innovation, as many marine-derived compounds remain unexplored. Indeed, these impacts do not occur in isolation but rather interconnect and reinforce one another.[51] Ocean acidification, is also discussed under the SAMOA Pathway, threatens the limited fresh water supply of these States, with most of the SIDS solely dependent on ground water.

---

[50] United Nations Office for Disaster Risk Reduction (UNDRR), 'Ocean Acidification' (UNDRR Terminology, 2023) <https://www.undrr.org/understanding-disaster-risk/terminology/hips/en0401>

[51] Laura J. Falkenberg et al, 'Ocean Acidification and Human Health' (2020) 17(12) International Journal of Environmental Research and Public Health

Shipping Emissions and Global Decarbonisation Efforts

Ship emissions are equally impactful, posing a growing threat to the environment. The UN Sustainable Development Goal 13 advocates for taking urgent action to combat climate change and its impacts and on the same vein, the Paris Agreement sustains the importance of reducing greenhouse gas emissions from shipping. The IMO is dedicated to these objectives. In 2023, the 2023 IMO GHG Strategy was adopted in order to fill in the gaps regulating ship emissions. This strategy builds upon the Initial GHG Strategy of 2018 and the first energy efficiency measures for ships introduced in 2011. The 2023 Strategy was adopted during the Marine Environment Protection Committee (MEPC 80) session. The Strategy contains a framework for Member States setting out a number of targets in order to give structure the future of the decarbonation of international shipping. The main objective is to reach net-zero GHG emissions by or around 2050. The Strategy contains checkpoints for emission reductions. Substantive improvements in carbon intensity are called for in order for CO2 emissions to be reduced per unit of transport of work. The Strategy also promotes the adoption of zero and near-zero emission fuels and technologies.[52] These are alternative fuels that either do not produce GHGs at all or produce them at very low levels compared to conventional fossil fuels like Green Hydrogen, Biofuels and Green Ammonia. Zero or near-zero technologies include wind-assisted propulsion, battery-electric ships and energy efficiency measures like hull design improvements, digital route optimisation, amongst many others. These measures have been drafted into legal texts consisting of an Annex of the MARPOL Convention, these will enter into force under the tacit acceptance procedure[53].

Conclusion:

Maritime Governance at the Heart of Climate Action

The impact brought about by climate change on human life is exceptionally detrimental, and despite numerous global efforts, its repercussions continue to grow at an exponential rate. Combatting this phenomenon should not be fleeting; rather, it requires sustained commitment and long-term adaptation strategies supported by legal and institutional frameworks. International cooperation

[52] International Maritime Organization (IMO), 'Cutting Greenhouse Gas Emissions from Ships' (IMO, 2024) <https://www.imo.org/en/mediacentre/hottopics/pages/cutting-ghg-emissions.aspx>

[53] Amendment enters into force at a particular time unless before the date objections against the amendment are put forward from a specified number of parties.

remains the driving force behind such efforts, as the climate crisis transcends borders and demands collective responsibility.

In this regard, maritime governance plays a pivotal role in bridging environmental protection with human rights obligations. The ocean is both a victim and a solution to climate change, it absorbs, sustains, and regulates. Therefore, ensuring the resilience of marine ecosystems is inseparable from safeguarding the fundamental rights to life, health, food, and culture. Strengthened implementation of international instruments such as UNCLOS, the Paris Agreement, and the BBNJ Agreement is essential to achieve this goal.

Ultimately, addressing the climate crisis requires a transformation of how humanity interacts with the ocean, shifting from exploitation to preservation. The protection of our oceans must stand at the heart of climate action, for a healthy ocean means a stable climate, sustainable development, and a secure future for all. Just as the tides are bound to the moon, humanity’s fate is bound to the sea.

Climate-induced human rights violations

by Liam Borg

Introduction

In primis, the link between climate change and human rights is becoming ever more omnipresent and acknowledged. This has been continuously recognised by a number of international and human rights bodies, particularly by the United Nations Human Rights Council. Upon their comments regarding the aforementioned, the Council *inter alia* professed that climate change:

"poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights."

Climate Change as a Human Rights Issue

Moreover, the Council, accentuating the implications caused by climate change, highlighted that climate change affects the enjoyment of a wide spectrum of human rights, both directly and indirectly. These include essential rights such as the right to life, adequate food, the highest attainable standard of health, adequate housing, self-determination, and access to safe drinking water and sanitation. The previous underlines the unfortunate yet consequential association between climate change and human rights.[54]

The human aspect of climate change has only recently begun to draw serious attention. Initially viewed mainly as an environmental issue, global discussions still often focus on its ecological effects rather than its consequences felt by citizens. A realistic and alarming scenario of rising sea

[54] International Environmental Law: Contemporary Concerns and Challenges; Papers Presented at the First Contemporary Challenges of International Environmental Law Conference, Ljubljana, June 28-29, 2012. (2012). Slovenia: GV Zalozba. Pg 158.

levels and extreme weather could force entire nations, especially small island states, to relocate, while other communities may be driven from their ancestral lands as living conditions worsen.[55]

State Responsibility for Climate-Related Human Rights Violations

As argued by various academics and speakers in environmentally related conferences, the attraction shared between climate change and human rights is no longer obscured. However, there is an ongoing debate about the extent to which human rights law, separate from climate change and international environmental law, requires states to take action to protect their citizens from the harmful effects of climate change.

One such notable case which exemplified state responsibility in terms of safeguarding the rights of citizens from the impacts of climate change, is *Daniel Billy and other v Australia* (Torres Strait Islanders Petition). In relation to a collective complaint submitted by eight Australian citizens and six of their children, the Islanders contended that their rights had been infringed due to Australia's failure to adequately respond to the impacts of climate change—specifically by not reinforcing seawalls on the islands or effectively reducing greenhouse gas emissions. They further asserted that shifting weather patterns had adversely affected their livelihoods, cultural practices, and traditional way of life. The Islanders emphasised that severe tidal flooding in recent years had damaged family burial sites, displacing human remains across the islands. They contended that preserving ancestral graves and maintaining spiritual connections with deceased relatives are central to their cultural identity. Moreover, the Islanders maintained that significant community rituals, including initiation and coming-of-age ceremonies, derive their meaning only when conducted on their ancestral lands. In their defence, Australia raised objections concerning admissibility, stating that the communication related to a violation of rights that are not included in the ICCPR (International Covenant on Civil and Political Rights). Australia maintained that international climate change instruments, including the United Nations Framework Convention on Climate Change and the Paris Agreement, were not applicable in this context, asserting that climate change does not constitute a current or imminent threat to the enjoyment of the Torres Strait Islanders' human rights.

---

[55] Sumudu Atapattu, Human Rights Approaches to Climate Change Challenges and Opportunities, First Edition 2015, pg. 5.

Furthermore, in its reply to the Islanders' allegations, Australia argued that climate change is a global issue whose impacts cannot be attributed exclusively to its own actions, asserting that:

> *"the general effects of climate change, and the effectiveness of any mitigation or adaptation measures to address those effects, are not within the complete control of any State."*[56]

Upon examining the evidence and submissions of the parties, the U.N. Human Rights Committee concluded that Australia had breached its obligations under the Covenant by failing to take adequate measures to protect the Indigenous Torres Strait Islanders from the adverse impacts of climate change, thereby violating their rights to enjoy their culture and to be free from arbitrary interference with their private life, family, and home. The Committee also noted that although Australia had undertaken certain initiatives, namely constructing new seawalls on four of the islands, scheduled for completion by 2023, further timely and effective measures were necessary to prevent risks to the Islanders' lives. The Committee emphasised that, without robust national and international action, the impacts of climate change could place individuals at risk of a violation of their right to life under the Covenant. More significantly, Hélène Tigroudja, a Committee member on the U.N. Human Rights Committee, made the following observation regarding the decision made:

> *"This decision marks a significant development as the Committee has created a pathway for individuals to assert claims where national systems have failed to take appropriate measures to protect those most vulnerable to the negative impacts of climate change on the enjoyment of their human rights,"*

Moreover, Tigroudja added that States that do not take sufficient measures to protect individuals within their jurisdiction from the harmful consequences of climate change may be in breach of their human rights obligations under international law.[57] In the case of *Billy et al. v. Australia*, it was the first instance in which a UN body determined that insufficient climate policies amounted to a

---

[56] Lentner, G. M., & Cenin, W. (2024). Daniel Billy et al v Australia (Torres Strait Islanders Petition): Climate change inaction as a human rights violation. Review of European Comparative & International Environmental Law, 33(1), 138-140.

[57] Australia violated Torres Strait Islanders' rights to enjoy culture and family life, UN Committee finds, 23rd September 2022, <https://www.ohchr.org/en/press-releases/2022/09/australia-violated-torres-strait-islanders-rights-enjoy-culture-and-family>accessed 10th November 2025.

violation of human rights. In reaching this conclusion, the Committee's decision provides strong support for the position that climate change and its consequences constitute a serious threat to the enjoyment of human rights. Additionally, the ruling affirmed that states bear responsibility and have a legal obligation to mitigate climate-related harms, explicitly rejecting the common 'drop in the ocean' argument.[58]

With reference to the rights mentioned previously, the topic of climate change and human rights has, in the last few years, gained substantial traction, in terms of the recognition and attention it has gathered from several human rights organisations, environmental organisations and academics.

The Right to Life

One of the most fundamental human rights, the right to life, has become the subject of intense discussion, particularly after the Intergovernmental Panel on Climate Change (IPCC) warned that climate change will undoubtedly lead to an increase in extreme weather events such as heatwaves, floods, and droughts. These events are expected to cause a rise in premature deaths and injuries among affected populations. The consequences of climate change are reflected in several environmental events, such as Superstorm Sandy in the United States, Typhoon Haiyan in the Philippines, and the recurrent floods affecting Bangladesh, Pakistan, and India. Europe and Russia have likewise witnessed increasingly frequent and intense heatwaves, resulting in significant loss of life. While these ill-fated circumstances, which have caused much heartache, cannot be attributed exclusively to climate change, it is evident that climate change has substantially contributed to their occurrence and severity, thereby posing a serious threat To the protection and effective enjoyment of this particular fundamental human right.[59] Moreover, in relation to the resulting impact of climate change, the right to life may be indirectly affected in terms of the shortage of food and water available. Given the unfortunate rise in environmental disasters, such as droughts, floods, fires and desertification, shortages of food and water are seen as an infringing factor on the right to life. Accordingly, the Human Rights Committee underscores that states must actively uphold this right, not just avoid infringing upon it. This entails the adoption of legislative, administrative, and policy measures aimed at addressing preventable health challenges such as infant mortality, malnutrition,

---

[58] n2 pg 142.

[59] Atapattu, S. (2015). Human Rights Approaches to Climate Change: Challenges and Opportunities. United Kingdom: Taylor & Francis. Pg 75-76.

and epidemics, all of which constitute fundamental components of the state's duty to protect and promote public health.[60] A European Court of Human Rights case which highlighted this particular right was *Oneryildiz v Turkey*, decided in 2004. In this case, the applicant had been living in a dilapidated area in Istanbul, which was built amongst a garbage dump, under the authority of the City Council. Unfortunately, an explosion occurred whereby a number of houses, which included that of the applicant, were destroyed. The applicant based his arguments on Article 2 of the ECHR, contending that the authorities' negligence had indeed caused the accident. An expert report noted that no measures were taken to avert a possible explosion of methane gas from the dump. In light of the arguments put forward, the Court had indeed found the authorities to have committed a procedural violation of Article 2's right to life, and also to have violated other rights adopted in Protocols to the European Convention.[61]

The Right to Health

There is also the visible argument that the Right to Health is impacted by Climate Change. As seen by the comment made by the Committee on Economic, Social and Cultural Rights;

"The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements."

Furthermore, the Committee elaborated that the right to health is a comprehensive concept encompassing not only access to timely and appropriate health care services but also the underlying conditions necessary for good health. These include access to safe drinking water, adequate sanitation, sufficient and nutritious food, decent housing, safe working and environmental conditions, and health-related education and information, including matters of sexual and reproductive health. The Committee also highlighted the importance of ensuring public participation in health-related decision-making processes at the community, national, and international levels. This undoubtedly associates the right to health with environmental conditions,

---

[60] Ibid pg 76.

[61] Sara C. Aminzadeh, 'A Moral Imperative: The Human Rights Implications of Climate Change' (2007) 30 Hastings Int'l & Comp L Rev 250-251.

which consequentially include the notion of climate change. The Special Rapporteur, in his report dealing with the Right to Health, advocated for the Human Rights Council to;

"Urgently study the impact of climate change on human rights generally and the right to the highest attainable standard of health in particular."[62]

State Obligations Under Human Rights Law

The question, therefore, arises as to who or what is at fault for climate change infringing various human rights. Given the cumulative nature of climate change impacts, it remains impossible to establish a direct causal link between specific environmental harm and the emissions attributable to any single state, regardless of advancements in science and technology. As a result, determining which actors bear responsibility for the harmful effects of climate change remains a complex challenge. This difficulty in identifying duty bearers complicates the application of the human rights framework to climate-related harm. While human rights law can effectively address environmental damage occurring within a single state's jurisdiction, its utility diminishes when the harm crosses borders or arises from the collective actions of multiple states. Regarding the duty to protect, particularly in cases where private actors may cause harm, De Schutter explains that states have a dual obligation: not only must they refrain From violating the rights of individuals within their jurisdiction, but they must also take proactive steps to prevent violations by private entities—whether individuals, groups, or corporations. Where there is evidence that a person's rights may be at risk, or where circumstances create such a risk, the state is required to adopt preventive measures to ensure, as far as possible, that these violations do not occur.[63]

It can therefore be argued that states bear a range of distinct obligations. Firstly, they must ensure that their own conduct does not infringe upon protected rights. Secondly, they are required to prevent violations committed by state officials or agents. Thirdly, they have a duty to act when private individuals or entities pose a threat to the enjoyment of such rights. Fourthly, where an imminent risk of violation exists, states must adopt appropriate preventive measures. Fifthly, if

---

[62] OHCHR(2007) Report of the Special Rapporeur on the right of everyone to the highest attainable standard of physical and mental health, United Nations, para 107(j).

[63] Atapattu, S. (2015). Human Rights Approaches to Climate Change: Challenges and Opportunities. United Kingdom: Taylor & Francis. Pg 87.

those measures prove ineffective and harm results from the actions of non-state actors, states must provide effective remedies, including compensation. Finally, states are obligated to ensure that those responsible for such violations are held legally accountable. As a result, while under international law, states are not directly accountable for the acts of private individuals, they do become liable if they fail to punish the wrongdoer or fail to prevent the damage in question.[64]

The Right to a Remedy

In this regard, and with respect to international human rights law, the right to a remedy is becoming more and more exemplified by the growing concern of the impacts that climate change might have on human rights. The growing acknowledgement of the dangers that climate change poses to the enjoyment of human rights underscores the fundamental importance of ensuring effective remedies for climate-related human rights violations. Individuals whose rights have been infringed—including those harmed by the impacts of climate change—must have access to institutions and procedures that guarantee a fair hearing and provide meaningful redress. Access to independent judicial or quasi-judicial bodies capable of adjudicating such violations is vital, as the enforceability of decisions is often regarded as an essential component of legal rights. In the absence of enforceability, state obligations risk being perceived merely as voluntary undertakings rather than binding legal duties. Within the climate change context, this Element of enforceability represents a crucial distinction between human rights obligations and broader ethical or policy-based approaches.[65]

Conclusion

It may be contended that the need for the adoption of certain legislative and protective measures has become increasingly evident, considering the escalating challenges that climate change poses to the protection of human rights.

This policy paper underscores the urgent intervention for states to safeguard the wide spectrum of rights that are particularly susceptible to the adverse consequences of climate change. Moreover,

---

64 Ibid, pg 88

65 Wewerinke-Singh, M. (2019). Remedies for Human Rights Violations Caused by Climate Change. *Climate Law*, *9*(3), Pg 226-227.

this paper goes on to provide a critical reflection on whether contemporary state practices and policy responses are sufficiently robust to ensure the effective protection and preservation of these rights. Ultimately, the discussion underlines the need for a more proactive, rights-based approach to climate governance, one that integrates human rights considerations into environmental policymaking and ensures accountability for state inaction or insufficiency in addressing the human impacts of climate change.

The Obligation of Due Diligence under the Purview of Climate Change as a Common Concern of Humankind

by Andrea Farrugia

Preliminary

Ever enduring to the concerns which international lawyers face, especially in a globalised 2025, is the persistence of disagreement between international bodies on matters which treat climate change as a common concern. In spite of the crystallisation of such literature concerns in international agreements increasing since the 1960s, much of the prevailing disagreement which arises from state actors principally emerges from a lack of dialogue on legal principles, in spite of the fact that we have established international forums. Thus, if we are to speak of a 'concern of all states', it becomes increasingly difficult to present unto each nation-state a concord with unanimity in ascent to several obligations which eventually become more strict as time advances.

The principle of the 'common concern' emerges partially from that of the 'common heritage,' and more historically the roman law category of things '*res communis*' which encompassed the common access and use of things without affording personal restrictions. [66]Therefrom, the concept of *ius gentium*, as understood in the second century, which blooms from the natural reason of mankind as per the jurist Gaius; "*naturalis ratio… vocator ius gentium*," a residue pours unto the international community, acting towards humanistic obligations, to recognise such tapestry of concerns and formalise each as a common emergence — a 'common concern of humankind'.

Today, concerns regarding the climate of the world and its effects on the global south, of which Malta belongs to, have become pronounced in the realm of international law to the extent of generating effective discourse, and political push back. From a legal standpoint, the effect of such crystallisation of literature concerns amounts towards a collection of agreements, elevated in

[66] 1 Institutes II.I.1. "Thus, the following things are by natural law common to all—the air, running water, the sea, and Consequently the seashore. No one therefore is forbidden access to the seashore, provided he abstains from injury to houses, monuments, and buildings generally; for these are not, like the sea itself, subject to the law of nations."

parallel to the most alarming scientific prospects surrounding the impact of climate change, yet without a clear declaration of principles, or any affirmation as to remedy the sovereign interests of world-states. Instead, as this paper shall clarify, most confusion surrounding the obligation of due diligence affronts the international realm through the prevailing state-interest surrounding political capital and its consequences.

In this paper, I shall observe that the doctrine of due diligence is not only objective to the *ius gentium*, but also a necessary artefact of any 'common concern' established as an imperative capture of the substance of state concord. Alongside the forthcoming observations, an emphasis on the principle of the 'common concern' shall be explored with the aim of extracting a qualified, legal residue from which I hope dialogue emerges. Furthermore, I shall illustrate such point through academic sources, alongside advisory opinions, in order to frame a complete picture for any prospective encounter with the principle.

The Emergence of Climate Change as a 'Common Concern for Humankind'

In 1990, the 'UNEP Group of Legal Experts to Examine the concept of "The Common Concern of Mankind" on Global Environmental Issues' gathered in Malta to discuss several points of law which emerged from contemporaneous discourse surrounding the notion of a 'common' concern – namely the anxieties already present with the afore-established 'common heritage' principle. Already in 1988 the United Nations (UN) General Assembly adopted a resolution which highlighted; "that climate change affects humanity as a whole and should be confronted within a global framework so as to take into account the vital interests of all mankind". Such resolution urged "governments, intergovernmental and non-governmental organisations and scientific institutions" to prioritise climate change.

Immediately, the emergence of the 'common concern' as a concept required differentiation from the prior 'common heritage' development, a maneuver largely emphasised in order to avoid equivalent controversies related to resource exploitation and property. The UNEP group concluded that the use of the term 'common';

"was employed in a same and parallel way as "public" (as in "public order") in domestic law, given the decentralisation of the international legal order; the notion of "common concern" appeared thus closely related to such concepts as "obligations *erga omnes*", "*jus cogens*", "common heritage" and "global commons".

It is a value judgment, since determining the 'worth' of the commons presupposes the principle. As Dinah Shelton observes, it is the establishment of such values from which the principle emerges, thus creating several "*erga omnes* obligations and the formation of collective compliance institutions and procedures that reinforce the *erga omnes* obligations imposed in the common interest".[67]

Prior to such debate, the first inclination from the international community to recognize such 'commons' in terms of positive law was the Martens clause in the Hague Convention of 1907 which includes a clear reference to;

"*des lois de l'humanité et des exigences de la conscience publique*"[68]

This initialisation of such international conscience may help us establish a clear substratum to the current day efforts of establishing a 'commons', not merely in terms of positive law, but also in terms of the pursuit as an international obligation in principle. In terms of positive law, evoking a broadly realist philosophy in terms of international diplomacy, the intentions of such clause, Antonio Cassese highlights, was not of a "humanitarian" or open reprise of the role of international law. The intentions were primarily to find "an expedient way out of a diplomatic deadlock between the small powers… and the major powers…"[69]which then reappear *ad nauseam* throughout the course of discussions surrounding the idea of the 'commons'.

---

[67] Dinah Shelton, 'Common Concern of Humanity' (Iustuum Aequum Salutare 39/2 2009) 34.

[68] Convention (No. IV) Respecting the Laws and Customs of War on Land, with Annex of Regulations (The Hague, Oct5.
18, 1907), 36 Stat. 2277 (1911).

[69] 4 Antonio Cassese, 'The Martens Clause: Half a Loaf or Simply Pie in the Sky?' (EJIL Vol. 11 No. 1 2000) 193.

That Question of Sovereign Interest

Previous formations of the 'common concern' principle appeared in a number of international documents, with the most intriguing for discussion being the International Convention for the Regulation of Whaling (1946)[70] and the Antarctic Treaty (1959) which both refer to a 'common interest'[71]. The latter grew in the number of parties from 12 to 58[72], and it is important to note that the majority of the parties acceded to the Treaty in the 1990s, wherein global consciousness on the prevailing literature consensus on the O-Zone grew.[73]

It was during the early years of this decade when an 'Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity' inquired on the tension between resources, sovereignty, and the hostility towards the concept of 'common heritage'. The second session, held from the 19th to 23rd February of 1990, discussed the concepts of 'broad socio-economic context' and 'common responsibility' concluding with "the need to keep the balance" in terms of sovereign interests.[74]

Louis Henkin, writing in 1999 on the 'S word', summarises the prevailing temperament of state actors as one of solitude, or polemically; "We will engage in a minimal amount of cooperation, if we as sovereign states consent."[75] From this, it follows that property ought to centre within the sovereignty of the jurisdiction, henceforth grounding such 'economic' concerns as independent from others. A white paper exploring the concept of the 'common concern' observed clearly that; "the working group carefully considered its language and settled on 'common concern" as the best possible articulation of its shared values. Note that the language mentions "requires" global

---

[70] International Convention for the Regulation of Whaling, (1946) "Recognising that it is in the common interest to achieve the optimum level of whale stocks as rapidly as possible without causing widespread economic and nutritional distress;"

[71] The Antarctic Treaty, (1959) Article IX "... thereafter at suitable intervals and places, for the purpose of exchanging information, consulting together on matters of common interest pertaining to Antarctica..."

[72] [72] https://www.ats.aq/devAS/Parties (accessed 13th of November 2025)

https://www.unep.org/news-and-stories/story/rebuilding-ozone-layer-how-world-came-together-ultimate-repair-job (accessed 13th of November 2025)

[74]Ad Hoc Working Group of Experts on Biological Diversity, Report of the Ad Hoc Working Group on the Work of its Second Session in Preparation for a Legal Instrument on Biodiversity of the Planet, 3 (Feb. 23, 1990)

[75] 10 Louis Henkin, 'That "S" Word: Sovereignty, and Globalisation, and Human Rights, Et Cetera,' (68 Fordham Law Review 1 1999) 5.

cooperation."[76]Such anxiety was professed through the consensus on establishing a 'concern,' which Dinah Shelton noted; "… are different because they are not spatial, belonging to a specific area, but can occur within or outside sovereign territory."[77]

Due Diligence and State Sovereignty

Article 193 of the 1982 Convention on the Law of the Sea clearly outlines the 'sovereign right' of states to exploit their natural resources "pursuant to their" national policies and the 'duty' to "protect and preserve the marine environment."[78]It is important to note the use of the word 'their,' which in essence subsumes the features of sovereign interest, in the sense that policy may vary from one sovereign state unto another. Indeed, such duty is imposed onto the respective states only insofar that they eventually exercise their sovereignty upon a non-exploitation of resources as an obligation. Article 192 thus establishes;

"States have the obligation to protect and preserve the marine environment."

What emerges from such effort to impose an obligation unto the states is an objective threshold for the mitigation of damage caused. Most importantly, Article 194 unravels such obligation as an eminent feature of state sovereignty, which escapes the territorial grounds and opts for a global concern. The International Tribunal for the Law of the Sea (ITLOS) further clarifies such objectivity in that it "considers that this obligation is an obligation of due diligence for the same reason stated in the context of the obligation under article 194, paragraph 1."[79] largely entailing from the specific words used at the end of Article 194(1); "and they shall endeavour to harmonise their policies in this connection." from which ITLOS construes that "the content of an obligation of due diligence should be determined objectively under the circumstances, taking into account relevant factors."[80]

---

[76] https://www.un.org/depts/los/biodiversity/prepcom_files/BowlingPiersonandRatte_Common_Concern.pdf

[77] no. 2. 35.

[78] United Nations Convention on the Law of the Sea (1982).

[79] 14 International Tribunal for the Law of the Sea 'Request for an Advisory Opinion Submitted by the Commission of Small
Island States on Climate Change and International Law – Advisory Opinion.' (21 May 2024) Par. 254.

[80] ibid. Par. 257.

Due diligence, we can summarise, is performed through the capacity of sovereign states, and exerted upon the global realm as consequence of their membership upon the international community. This summary however, is formulated on the assumption that such actions are *de facto* obliged as per states' being among other states. Such abstraction cannot help in providing proper legal character, and following such rose-tinted approach may render one useless to confronting the manoeuvres of state actors in the 21st Century. Whereas the 'S word' holds ample interest within the study of international relations, it is not the emitter of the failures of rendering such obligation as some 'consequence' of one's membership among others. Indeed, the fact we have sovereign states does not impart a *de facto* 'consequence,' for state sovereignty provides two legal characters; a form which is either, to borrow from Henkin's summation, one of 'minimal cooperation,' or a willing of an international concord which, if followed, brings forth the fullness of any 'common concern' so established.

Due Diligence and the IACtHR

On the 29th of May, 2025, the Inter-American Court of Human Rights (IACtHR) released an advisory opinion in response to a request made in 2023 from Chile and Colombia "concerning State obligations in response to the climate emergency within the framework of international human rights law" with particular reference made to the human right to a healthy environment.[81]

In recognising such series of obligations, Brazilian lawyer Rodrigo da Costa Sales comments on the IACtHR opinion as establishing 'enhanced due diligence' with the scope of administering effective action against climate change.[82]Since the jurisdiction of the IACtHR hovers across Southern America, which is home to a number of valuable ecosystems and biodiversity, it is important to address such development meaningfully. Adoption of preemptive measures to mitigate climate

[81] Inter-American Court of Human Rights Advisory Opinion AO-32/25 (2025)

[82] Rodrigo da Costa Sales, 'Enhanced Due Diligence: A New Legal Standard for Climate Action in the Inter-American System' (Columbia Law School, Columbia Climate School Sabin Center for Climate Change Law July 25th 2025)

(accessed 16th November 2025) available at: https://blogs.law.columbia.edu/climatechange/2025/07/25/enhanced-due-diligence-a-new-legal-standard-for-climate-action-in-the-inter-american-system/

change here take to consider a regional development, spanning the territories which house the very ecosystems that are to receive protection from irreversible harm.

A survey of the legal framework established for the mitigation of climate harm is provided. Paragraphs 124 to 130 go over the United Nations Framework Convention on Climate Change (UNFCCC) and its purpose. Thereafter, succeeding agreements, such as the the 1997 Kyoto Protocol, the 2007 Bali Action Plan, and the 2015 Paris Climate Agreement are observed.

Besides the increase in regulatory tension, the more current 'enhanced' due diligence language leaves us with a prevailing thought; if such tensions, present upon the initialisation of the 'commons' in international law, remain to such degree wherein political mandates include transparent hostility to such regulations, how could an 'enhanced' due diligence exercise prove legally operable?

The following is an excerpt from paragraph 264 of the advisory opinion;

"Therefore, the obligation of cooperation entails, *inter alia*: (i) financial and economic aid to the least developed countries to contribute to a just transition; (ii) technical and scientific cooperation involving communication and common enjoyment of the benefits of progress; (iii) implementation of mitigation, adaptation and reparation actions that can benefit other States; and (iv) establishment of international forums and formulation of collaborative international policies."

Notice how each imperative requires a presupposition of a 'commons', or in particular; 1. Common aid, 2. Common access to information, 3. Common operation of policy, and 4. A common space for dialogue. [83]Much of the political tensions are not uniform, and can be, at best, focused entirely on the first, and third categories.

---

[83] Jacqueline Peel, 'Unlocking UNCLOS: How the ITLOS Advisory Opinion Delivers a Holistic Vision of Climate-relevant International Law' (Columbia Law School, Columbia Climate School Sabin Center for Climate Change Law

24th of May 2024) (accessed 18th of November 2025) available at:

https://blogs.law.columbia.edu/climatechange/2025/07/25/enhanced-due-diligence-a-new-legal-standard-for-climate-action-in-the-inter-american-system/

Towards a 'Common' Understanding

Let's go back to the *ius gentium*. In its roman law derivative, the concept appeared as a summary of the natural reason which dictates the nations. We can trace a line, that of a substance of reason, which presents to us that fourth category. In spite of the increasing hostility with which climate change regulation faces, as per the diminishing of those first and third categories, therein it is that fourth category which indeed, will always exist as long as the capacity to reason dialogue emerges. Then, it is that second category, that of common access to information, which runs from the establishment of a common space for dialogue. Even with states which do not seek vast cooperation there is still an established forum for dialogue which appears throughout the course of international diplomacy.

A Holistic Vision

The year 2024 was notable since three of the protagonists of international law delved into the concerns surrounding the climate; ITLOS, the ICJ, and the IACtHR. Jacqueline Peel, a Professor of Law at the University of Melbourne, covers the significance of this moment in a blog post with emphasis on the ITLOS opinion.18 Much of the opinion covers the interconnection between the Convention on the Law of the Sea, and the aforementioned concerns.[84] A reprise of the Convention is made, as Peel observes, wherein a 'broad' approach to interpretation, and drawing of "conceptual links" with climate law are made.

In describing such effort as 'holistic', largely due to developing a wide legal realm wherein international instruments are able to maneuver as possible solutions to emerging problems, such development could only happen through the natural reason which leads the life of any common 'harmony' or 'law'. Especially in response the complexities which our current biological systems face, this 'holistic' approach, understood through the concourse of the *ius gentium*, is what provides us with objectivity in establishing due diligence.

[84] no. 14

Conclusion

In this paper, we saw how the conscience of the 'commons' emerged. Even though our current whereabouts are stifled with endless political debate, the legal documents which were formed to address the environment retain so much of the fortitude which any legal advocate requires in order to traverse the political realm.

Furthermore, the objectivity of the due diligence principle was found to appear recently, which means that future meditation on the effect, and expansion beyond ITLOS is imperative. The *ius gentium* offers a unifying thread: a shared rational foundation which enables dialogue, and thereafter a 'holistic vision'. Only through this collective reasoning can states meaningfully perform their obligation of due diligence and actualize the substantive potential of the 'common concern' principle.

The Judicialisation of Climate Governance:

The Evolving Role of Courts in Shaping Climate Policy

by Whitney Psaila

Introduction:

The Global Rise of the Judiciary in Climate Governance

The climate crisis is a global challenge that necessitates a commensurate global response. While international agreements like the Paris Agreement establish overarching goals, their translation into binding, enforceable action at the national level remains inconsistent. This gap between political commitment and legal implementation has catalysed a profound global trend: the "judicialisation" of climate governance. Across diverse legal systems and continents, citizens, NGOs, and communities are increasingly turning to the courts as a crucial forum to enforce climate commitments, hold governments and corporations to account, and protect fundamental rights from the existential threat of climate change.

The judiciary, across a multi-layered global legal system, has evolved from a peripheral actor to an indispensable one in shaping climate policy. Courts are not acting as *de novo* policymakers but as essential enforcers of existing law and guardians of constitutional and human rights principles. They are interpreting a complex web of legal instruments—from national constitutions and civil codes to regional human rights treaties and foundational principles of international law—to give legal effect to climate science and hold states and corporations to their responsibilities.

A Multi-Layered Global Judicial Architecture

The efficacy of judicial action on climate is rooted in a multi-layered legal structure where national, regional, and international courts interact and influence one another.

National Courts: These courts are the primary battleground for climate litigation. As the frontline enforcers of domestic law, they are increasingly called upon to interpret constitutional rights,

national climate acts, and administrative laws in the context of climate change. Their decisions have the most direct impact on national policy[85].

Regional Courts: Bodies like the Court of Justice of the European Union (CJEU) and regional human rights courts, such as the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR), play a crucial role. They harmonise legal standards across member states and establish powerful, rights-based precedents that guide and empower national courts.

International Courts and Tribunals: At the apex of this structure are international bodies like the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS). While their direct contentious jurisdiction is limited, their role in issuing Advisory Opinions is becoming a critical tool for clarifying the obligations of all states under international law, setting a global legal baseline for climate action[86].

The Role of Regional Supranational Courts: The CJEU as a Case Study

The CJEU's Institutional Role

The Court of Justice of the European Union (CJEU) operates as the constitutional court of the EU, holding a unique and powerful position within its highly integrated legal order. Its primary mandate is to ensure the uniform interpretation and application of EU law across all 27 Member States.

While the CJEU does not create climate policy, its judgments are legally binding and have a profound, often determinative, impact on the implementation and enforcement of climate-related legislation. It exercises this influence primarily through two key procedures: infringement proceedings brought by the European Commission against a Member State for failing to meet its legal obligations and the preliminary ruling procedure, where national courts ask the CJEU for guidance on interpreting EU law[87].

---

[85] Rayner T and others, *Handbook on European Union Climate Change Policy and Politics* (2023) <https://doi.org/10.4337/9781789906981>

[86] ibid

[87] Antonelli G and others, *Environmental Law before the Courts: A US-EU Narrative* (Springer Nature 2023)

Principle of Enforcing Clear Obligations

The CJEU consistently treats obligations under EU environmental law as hard, enforceable legal duties, not as aspirational or discretionary policy goals. This is powerfully demonstrated in its extensive case law concerning Directive 2008/50/EC[88] on ambient air quality. The Court has repeatedly found Member States in breach of their legal duty to meet limit values for pollutants like nitrogen dioxide (NO_2) and particulate matter (PM10), which originate primarily from fossil fuel combustion in transport and industry.

In key infringement cases such as ***Commission v. France (C-636/18)***[89] and ***Commission v. Germany (C-635/18)***[90], the Court found that the "systematic and persistent" exceeding of these limits constituted a failure to fulfil a clear obligation of result. This legal principle means that Member States cannot defend their inaction by pointing to economic difficulties or administrative complexities; if the data shows the legal limits are breached, a violation of EU law has occurred[91]. This jurisprudence has a direct and significant climate co-benefit: by compelling Member States to implement drastic measures to curb air pollution—such as creating low-emission zones, investing in public transport, and restricting industrial activity—the CJEU's rulings accelerate the decarbonisation agenda and reinforce the objectives of the European Green Deal[92].

Principle of Effective Judicial Protection

The CJEU has been instrumental in empowering civil society to act as a watchdog for environmental compliance, a role enshrined in the EU's obligations as a party to the UNECE Aarhus Convention. The Convention's third pillar, "Access to Justice in Environmental Matters," has been a frequent subject of preliminary rulings[93]. National procedural laws have often contained restrictive standing rules that prevent environmental NGOs from challenging government decisions unless they can prove a direct, personal injury.

---

[88] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe [2008] OJ L152/1.

[89] Case C-636/18, *European Commission v French Republic* [2019] ECLI:EU:C:2019:900

[90] Case C-635/18, *European Commission v Federal Republic of Germany* [2021] ECLI:EU:C:2021:437

[91] Antonelli (n 3)

[92] Esmeralda Colombo, “Principles of EU Law in Climate Litigation” [2024] China-EU Law Journal <https://doi.org/10.1007/s12689-024-00108-9>.

[93] Antonelli (n 3)

The CJEU has systematically dismantled these barriers. In the landmark case of ***Janecek (C-237/07)***[94], the Court ruled that individuals directly affected by air pollution must be able to require national authorities to draw up an action plan. Building on this, the decision in ***Trianel (C-115/09)***[95] was a game-changer. A German NGO had been denied standing to challenge a permit for a new coal-fired power plant. The CJEU ruled that national courts are obligated under the principle of consistent interpretation to interpret their domestic procedural laws in a way that is compatible with the objectives of EU environmental law and the Aarhus Convention. If such an interpretation is not possible, the national court must disapply the conflicting national rule. This judgment effectively forced a liberalisation of standing rules across the EU, empowering NGOs to act as "private attorneys general" and bring cases challenging projects and policies with significant climate impacts[96].

Critical Limitation: The Plaumann Test

Despite its power, direct access to the CJEU for individuals and NGOs remains exceptionally difficult due to the stringent standing requirements under Article 263(4) of the TFEU. This article allows non-privileged applicants (i.e., not Member States or EU institutions) to challenge an EU act only if it is of "direct and individual concern" to them. The Court has maintained a very strict interpretation of "individual concern," first established in its 1963 judgment in ***Plaumann v. Commission***[97]. The Plaumann test requires that an act must affect a person *"by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons."* This creates a high, often insurmountable, barrier in climate cases, where the harm is by its nature diffuse and affects entire populations[98].

---

94 Case C-237/07, *Dieter Janecek v Freistaat Bayern* [2008] ECR I-6221, ECLI:EU:C:2008:447.

95 Case C115/09, *Trianel GmbH v Bundesrepublik Deutschland* [2010] ECR I12201, ECLI:EU:C:2010:719.

96 Dr Saima Waheed and Muhammad Junaid Suffi, “The Role of Courts in Interpreting and Enforcing Environmental Laws Related to Climate Change: A Catalyst for Progress or a Barrier?” (2025) 3 Social Sciences & Humanity Research Review <https://doi.org/10.63468/sshrr.119>.

97 Case 25/62, *Plaumann & Co v Commission* [1963] ECR 95, ECLI:EU:C:1963:17.

98 Luisa Antoniolli and Carlo Ruzza, *The Rule of Law in the EU: Challenges, Actors and Strategies* (Springer Nature 2024).

This was starkly confirmed in ***Carvalho and Others v. European Parliament and Council***[99]. The applicants, a group of families from across Europe and beyond, argued that the EU's 2030 climate package was insufficient to protect their fundamental rights. Their case was first dismissed by the EU General Court, which applied the Plaumann test[100]. On appeal, the CJEU upheld this decision in 2021, confirming that the harms of climate change, however severe, did not single out the applicants in a way that differentiated them from everyone else.

This ruling creates a "paradox of standing": the more widespread and universal the harm, the harder it is to challenge directly at the EU level. As a result, strategic climate litigation within the EU legal order is firmly channelled into the national courts, making the preliminary reference procedure the primary, and vital, mechanism for national judges to engage with the CJEU on the interpretation of EU climate law[101].

The Court of Justice of the European Union exemplifies the role of a powerful regional court in a highly integrated legal system. It provides a crucial, albeit often indirect, influence on climate governance.

National Courts: The Global Epicentre of Climate Litigation

National courts have become the primary battleground and the most significant engine of legal innovation in the fight for climate justice. As the primary adjudicators of domestic law with direct jurisdiction over their governments and corporate actors, these courts are not merely applying existing rules but are acting as global laboratories, forging new legal principles by interpreting foundational legal texts in the context of the climate crisis. Their rulings are transforming abstract rights and duties into concrete, enforceable orders.

The State's Duty of Care Derived from Human Rights

---

99 Case C565/19 P, *Armando Carvalho and Others v European Parliament and the Council of the European Union* [2021] ECLI:EU:C:2021:252.

[100] Antoniolli (n 14)

[101] ibid

A powerful legal strategy has emerged, particularly in Europe, where courts fuse general tort law principles of "duty of care"[102] with the state's positive obligations under human rights law. This creates a legally binding duty on the state to protect its citizens from the foreseeable harm of climate change.

The Foundational Case: Urgenda Foundation v. The Netherlands (2019)

The Dutch Supreme Court's decision in ***Urgenda Foundation v. The Netherlands***[103] is the cornerstone of this approach. The Court's reasoning was a masterclass in legal synthesis. It started with the open-ended "unwritten standard of care" found in Article 6:162 of the Dutch Civil Code, a general tort provision. To give this abstract standard concrete meaning in the climate context, the Court turned to international human rights law, specifically the state's positive obligations to protect life under Article 2 of the ECHR and the right to private and family life under Article 8 of the ECHR. Grounding its factual analysis in the undeniable scientific consensus of the IPCC reports, the Court concluded that an insufficient climate policy constituted a breach of this duty. It translated this breach into a specific, quantifiable legal remedy: ordering the Dutch state to reduce its emissions by at least 25% by the end of 2020 compared to 1990 levels[104].

Replication and Adaptation across Europe

The *Urgenda* model has inspired litigation across Europe. In ***Klimaatzaak v. Belgium***[105], the Brussels Court of Appeal, following a similar legal path, found that the Belgian government's failure to meet its climate targets constituted a breach of its duty of care under the Belgian Civil Code and a violation of Articles 2 and 8 of the ECHR. However, in a demonstration of judicial deference, the court declined to impose a specific emissions reduction target, arguing that setting such a target was a policy choice that fell within the discretion of the legislative and executive branches, thereby respecting the separation of powers.

---

[102] Antonelli (n 3)

[103] *Urgenda Foundation v State of the Netherlands* (Court of Appeal of The Hague, Case No. 200.178.245/01, 9 October 2018).

[104] Rob Van Gestel, "The Urgenda Climate Case in The Netherlands: The Spark Igniting Global Climate Change Litigation," *Edward Elgar Publishing eBooks* (2025) <https://doi.org/10.4337/9781035355884.00008>.

[105] Tribunal de première instance francophone de Bruxelles (Frenchspeaking Court of First Instance, Brussels), *VZW Klimaatzaak v Kingdom of Belgium & Others* (No 2015/4585/A, judgment 17 June 2021).

In France, the landmark case ***Notre Affaire à Tous and Others (Affaire du Siècle)***[106] saw the Paris Administrative Court find the French state liable for failing to meet its own carbon budget targets, ruling that this failure constituted "ecological prejudice" under the French Civil Code. The court ordered the government to take all necessary measures to repair this damage by a specific deadline[107].

Intergenerational Equity and Constitutional Rights

Courts are increasingly interpreting national constitutions as living documents that protect the rights and fundamental freedoms of future generations from being unalterably compromised by the actions of the present.

The Leading Precedent: Neubauer et al. v. Germany (2021)

The German Constitutional Court's ruling in ***Neubauer et al. v. Germany***[108] established the principle of "intertemporal freedom" as a core constitutional tenet. The Court interpreted Article 20a of Germany's Basic Law (the state's duty to protect the natural foundations of life) as having a prospective, precautionary effect. It found the Federal Climate Protection Act to be unconstitutional not because its 2030 target was inadequate, but because its failure to set a clear and sufficient reduction pathway *after* 2030 created a "radical burden" of emissions cuts that would be unfairly offloaded onto younger generations. The Court reasoned that this delay would necessitate such drastic restrictions on freedom in the future that it amounted to an unconstitutional infringement on the fundamental liberties of the youth plaintiffs[109].

Global Application of Integrational Principles

---

106 Paris Administrative Court, *Notre Affaire à Tous and Others v France* ("L'affaire du siècle") (Nos 1904967, 1904968, 1904972 & 1904976/41, judgment 14 October 2021).

[107] Kleoniki Pouikli, "Editorial: A Short History of the Climate Change Litigation Boom across Europe" (2021) 22 ERA Forum 569 <https://doi.org/10.1007/s12027-022-00700-1>.

108 Bundesverfassungsgericht (Federal Constitutional Court of Germany), *Neubauer et al. v Germany* (Case Nos 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20 & 1 BvR 288/20, judgment 24 March 2021).

[109] Louis J Kotzé and others, "Courts, Climate Litigation and the Evolution of Earth System Law" (2023) 15 Global Policy 5 <https://doi.org/10.1111/1758-5899.13291>.

This principle has resonated globally. In ***Future Generations v. Ministry of the Environment***[110], the Supreme Court of Colombia, invoking rights to life, health, and a healthy environment under the Colombian Constitution, granted a writ of protection to a group of young plaintiffs. In a groundbreaking remedy, the Court recognised the Colombian Amazon as a legal entity with rights and ordered the government to create and implement an "intergenerational pact" to halt deforestation.

While ultimately unsuccessful on standing, the US case ***Juliana v. United States***[111] popularised the argument that the government's pro-fossil fuel policies violated the youth plaintiffs' constitutional rights to life and liberty and breached the state's duty under the public trust doctrine to protect essential natural resources for future generations[112].

The Domestication and Enforcement of International Law

National courts are increasingly treating international climate agreements not as mere political statements but as sources of binding legal obligations that can be enforced domestically, particularly when linked to human rights.

A Powerful Example: PSB et al. v. Brazil (on the Climate Fund) (2022)

The Brazilian Supreme Court's decision in ***PSB et al. v. Brazil (on the Climate Fund)***[113] is a powerful example. Faced with the government's deliberate paralysis of the national Climate Fund, the Court made a revolutionary legal declaration: it ruled that the Paris Agreement is a human rights treaty. Under Brazilian constitutional doctrine, this gives the agreement a "supranational status," placing it above ordinary domestic laws. Based on this, the Court found the government's inaction to be a violation of the constitution and ordered the executive branch to reactivate the fund and

---

110 Colombia, Supreme Court of Justice, *Future Generations v Ministry of the Environment and Others* (STC 43602018, 5 April 2018).

111 *Juliana et al v United States of America* (US Supreme Court, cert denied, 24 March 2025).

112 Kotzé (n 25)

113 Supremo Tribunal Federal (Brazilian Federal Supreme Court), *PSB et al v União (Brazil, ADPF 708 – Climate Fund)*, judgment 4 July 2022.

allocate resources as legally required. This judgment created a powerful legal precedent for the direct domestic enforcement of international climate commitments[114].

Corporate Duty of Care to Prevent Climate Change

In a crucial expansion of climate law, courts are beginning to apply the duty of care doctrine directly to private corporations, holding them responsible for their contribution to the climate crisis.

A New Frontier: Milieudefensie et al. v. Royal Dutch Shell (2021)

The Dutch case of ***Milieudefensie et al. v. Royal Dutch Shell***[115] opened this new frontier. The Hague District Court ruled that the same "unwritten standard of care" in the Dutch Civil Code that applied to the state in *Urgenda* also imposes a climate-related duty of care on a private corporation like Shell. To define the specific content of this duty, the court drew upon a wide range of international "soft law" norms, including the human rights obligations of states, the UN Guiding Principles on Business and Human Rights, and the scientific pathways aligned with the Paris Agreement. The Court concluded that these norms informed the national legal standard and obliged Shell to reduce CO2 emissions across its entire global value chain (Scopes 1, 2, and 3) by 45% by 2030 relative to 2019 levels. This judgment established a groundbreaking pathway for holding multinational corporations accountable under domestic tort law[116].

Regional Human Rights Courts:

Establishing a Rights-Based Consensus

Regional human rights courts are creating a powerful, harmonised legal consensus that government inaction on climate change constitutes a violation of fundamental human rights. By interpreting

---

[114] Christina Voigt, 'The Power of the Paris Agreement in International Climate Litigation' (2023) 32(2) *Review of European, Comparative & International Environmental Law* 237 <https://doi:10.1111/reel.12514>

[115] The Hague District Court, *Milieudefensie et al v Royal Dutch Shell plc* (26 May 2021) C/09/571932 / HA ZA 19-379, ECLI:NL:RBDHA:2021:5339.

[116] Chiara Macchi and Josephine van Zeben, 'Business and Human Rights Implications of Climate Change Litigation: Milieudefensie et al v Royal Dutch Shell' (2021) 30(3) *Review of European, Comparative & International Environmental Law* 409 <https://doi:10.1111/reel.12416>

foundational human rights treaties as living instruments capable of addressing modern existential threats, these courts are establishing binding precedents that provide a crucial legal backstop where domestic political processes fail.

The European Court of Human Rights (ECtHR): A Landmark Affirmation with Strict Procedural Limits

The ECtHR has become a central and highly influential forum for climate litigation. Its jurisprudence now provides one of the clearest affirmations of a state's duty to protect citizens from climate change, though it has also carefully delineated the procedural path for bringing such claims.

The Foundational Ruling: Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024)

The Grand Chamber's ruling in ***Verein KlimaSeniorinnen Schweiz and Others v. Switzerland***[117] was a watershed moment. It established for the first time that Article 8 of the ECHR ("right to private and family life") encompasses a right to "effective protection by the State authorities from the serious adverse effects of climate change." The Court found that Switzerland had violated this right, as well as the right of access to court under Article 6(1). The violation was not based on a single policy failure but on "critical lacunae" (gaps) in the country's climate governance framework, including its failure to quantify a national carbon budget and its history of missing its own past emissions reduction targets. This judgment created a binding precedent for all 46 Council of Europe member states, establishing both substantive and procedural duties for states to create and implement adequate climate policies[118].

Defining the Procedural Hurdles: Duarte Agostinho and Carême

[117] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (European Court of Human Rights) App No 53600/20, [9 April 2024] ECHR 304.

[118] Colombo (n 8)

The KlimaSeniorinnen judgment was delivered on the same day as two other major climate cases, which were dismissed on procedural grounds. Together, the three rulings create a complete picture of the pathway to justice at the ECtHR.

In ***Duarte Agostinho and Others v. Portugal and 32 Other States***[119], a case brought by six Portuguese youths, the Court dismissed the claim primarily on jurisdictional grounds. It rejected the applicants' argument for a broad extraterritorial application of the ECHR in the climate context, finding no basis to hold states accountable for their overseas emissions' impacts. Furthermore, it ruled that the applicants had not exhausted available legal remedies in their home state of Portugal, a critical prerequisite for bringing a case to the ECtHR.

In ***Carême v. France***[120], brought by a former resident of a coastal town threatened by sea-level rise, the claim was dismissed because the applicant lacked the necessary "victim status." As he had moved away from the town, the Court found he could no longer claim to be a direct victim of the French government's alleged inaction.

These three cases, read together, establish a clear but challenging legal test: while a substantive right to protection from climate change exists under the ECHR, claimants must navigate strict procedural requirements, including demonstrating direct victim status, exhausting all viable domestic legal options, and bringing the case against their own state[121].

The Inter-American Court of Human Rights (IACtHR): A Pioneer in Environmental and Climate Justice

The IACtHR has been a global leader in developing a progressive and expansive jurisprudence linking human rights and environmental protection, creating a robust legal framework that is now being applied directly to the climate crisis.

The Foundational Opinion: Advisory Opinion OC-23/17

---

[119] *Duarte Agostinho and Others v Portugal and 32 Others* (European Court of Human Rights) App No 39371/20, [9 April 2024].

[120] *Carême v France* (European Court of Human Rights), Application No 7189/21, [9 April 2024].

[121] Colombo (n 8)

The Court's **Advisory Opinion OC-23/17** on the Environment and Human Rights[122] was a trailblazing document. It explicitly recognised the right to a healthy environment as an autonomous and justiciable right under the American Convention on Human Rights (via Article 26), essential for the existence of humanity. It affirmed the indivisibility and interdependence of human rights, explaining how environmental harm directly impacts the rights to life, personal integrity, health, food, and water. Critically, it established that states have extraterritorial obligations to prevent significant transboundary environmental harm, a principle of immense importance for addressing the borderless nature of climate change[123].

The broad principles of the Advisory Opinion have been directly applied in the Court's binding judgments. In the case of the ***Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v. Argentina***[124], the Court addressed the impacts of illegal logging and cattle ranching on Indigenous ancestral lands. For the first time in a contentious case, it found a direct violation of the autonomous right to a healthy environment. The judgment explicitly linked the environmental degradation to violations of the rights to adequate food, water, and cultural identity, demonstrating the Court's holistic approach. This case was crucial because it translated the principles of OC-23/17 into an enforceable judgment, setting a powerful precedent for protecting vulnerable communities from environmental destruction.

International Courts and Tribunals: Clarifying Global Obligations

While direct contentious litigation between states on climate change remains rare, the world's highest international courts are now playing a pivotal role by clarifying the universal legal obligations that all states share. They are building upon a rich foundation of environmental case law to provide authoritative guidance on what international law requires in the face of the climate crisis. This process is creating a global legal baseline that informs and empowers courts at every level.

The International Court of Justice (ICJ)

---

[122] InterAmerican Court of Human Rights, *Advisory Opinion OC23/17: The Environment and Human Rights* (15 November 2017) Series A No 23.

[123] Edgardo Sobenes, Sarah Mead and Benjamin Samson, *The Environment Through the Lens of International Courts and Tribunals* (Springer Nature 2022).

[124] *Indigenous Communities Members of the Lhaka Honhat (Our Land) Association v Argentina* (InterAmerican Court of Human Rights, Judgment, 6 February 2020) Series C No 400.

The ICJ's role is set to become central to global climate governance. In 2023, the UN General Assembly adopted Resolution A/77/276[125], formally requesting an Advisory Opinion from the Court on the obligations of States in respect of climate change. This request is historic in its scope, asking the Court to clarify state duties under a wide array of international legal instruments, including human rights treaties, the UNFCCC, the Paris Agreement, and customary international law. While an Advisory Opinion is technically non-binding, its immense legal and moral authority will provide the most definitive interpretation of international law on climate change to date. It is expected to draw heavily on established principles from the ICJ's prior environmental jurisprudence

In the ***Gabcíkovo-Nagymaros Project (Hungary/Slovakia)*** **case[126]**, the Court famously acknowledged the need to interpret treaties in light of evolving environmental norms, stating that "new norms and standards have been developed" and that the environment "is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn." This case embedded the concepts of sustainable development and intergenerational equity into the Court's jurisprudence, creating a legal foundation for considering the rights of future generations in climate cases.

The ICJ has built a toolkit of principles through decades of environmental disputes that are now directly applicable to climate change. In the ***Pulp Mills on the River Uruguay (Argentina v. Uruguay)*** **case[127]**, the Court solidified the customary international law principle that states have an to prevent significant transboundary harm. It affirmed that this duty includes a procedural obligation to conduct an environmental impact assessment (EIA) for any activity that may have a significant adverse impact in a transboundary context. This principle is now central to arguments that states must assess and prevent the transboundary harm caused by their greenhouse gas emissions[128].

---

[125] UN General Assembly, *Resolution A/77/276: Climate Change and Human Rights* (23 September 2023).

[126] *GabcíkovoNagymaros Project (Hungary/Slovakia)* (International Court of Justice, [25 September 1997]) ICJ Rep 1997 7.

[127] *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (International Court of Justice, [20 April 2010]) ICJ Rep 2010 14.

[128] Sobenes (n 39)

The International Tribunal for the Law of the Sea (ITLOS)

In a historic and unanimous Advisory Opinion delivered in May 2024[129], ITLOS provided a definitive and powerful interpretation of state obligations under the UN Convention on the Law of the Sea (UNCLOS).

At the request of the Commission of Small Island States on Climate Change and International Law (COSIS), the Tribunal addressed the specific question of what UNCLOS requires of its state parties in relation to climate change[130]. It made several groundbreaking findings:

- It unequivocally declared that anthropogenic greenhouse gas (GHG) emissions constitute "pollution of the marine environment" under UNCLOS.
- It affirmed that states have a specific, binding legal obligation under Article 194(1) of UNCLOS to take "all necessary measures" to prevent, reduce, and control this pollution.
- Crucially, it established that these measures must be determined objectively, rather than left to the sole discretion of the state. The Tribunal set a standard of "stringent due diligence," requiring states to act in a manner that is not "manifestly unreasonable" and to demonstrate a high degree of vigilance.
- It directly linked this legal duty to the goals of the Paris Agreement, stating that fulfilling the obligation to prevent marine pollution requires state parties to pursue emissions reduction pathways consistent with limiting global temperature rise to 1.5°C.

Conclusion:

A New Era of Climate Accountability Forged in the Courts

The emergence of a multi-layered global judicial architecture represents a paradigm shift in climate governance. No longer peripheral actors, courts have firmly established themselves as central pillars in the quest for climate accountability. This is not a fragmented landscape of isolated legal challenges, but a dynamic, mutually reinforcing ecosystem where a global climate rule of law is being forged.

---

[129] International Tribunal for the Law of the Sea, *Advisory Opinion on the Request submitted by the Commission of Small Island States on Climate Change and International Law* (ITLOS Case No 31, 21 May 2024)

[130] Kotzé (n 25)

At its foundation, the national judiciary has become the global epicentre of innovation and enforcement, translating abstract constitutional rights and civil duties into concrete, legally binding orders against both governments and corporations. From the duty of care established in *Urgenda* to the principle of intergenerational equity defined in *Neubauer*, national courts are redrawing the boundaries of state and corporate responsibility.

This foundational layer is reinforced and guided by regional courts, which act as critical standard-setters. Supranational bodies like the CJEU provide a powerful harmonising force, ensuring consistent application of environmental law, while regional human rights courts like the ECtHR and IACtHR establish a normative backstop, affirming that a failure of climate policy is a failure to protect fundamental human rights. Crowning this architecture, international tribunals like the ICJ and ITLOS are clarifying the universal obligations of all states under international law, providing an authoritative global baseline that strengthens legal arguments in every court below[131].

While this judicialisation is a powerful response to the vacuum left by political inertia and diplomatic deadlock, it is not a panacea. Significant procedural hurdles, demonstrated by cases like *Carvalho* and *Duarte Agostinho*, can limit access to justice. The principle of judicial deference to legislative and executive power remains a real constraint, and the ultimate challenge of enforcing compliance against reluctant states is ever-present.

Nevertheless, the judiciary has fundamentally and irrevocably altered the climate landscape. It has established that government and corporate inaction is not a political choice free from legal consequences, but a justiciable breach of legal duty[132]. By weaving together human rights law, constitutional principles, and scientific evidence, courts have cemented their role as indispensable—and increasingly powerful—actors in the defining governance challenge of our time.

---

[131] Waheed (n 12)

[132] Ottavio Quirico and Walter F Baber, *Implementing Climate Change Policy: Designing and Deploying Net Zero Carbon Governance* (2024).

Bibliography:

Books and Academic Articles

Atapattu S, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Taylor & Francis 2015)

Bodansky D, 'The Legal Character of the Paris Agreement' (2016) 25 RECIEL 142

Falkner R, 'The Regime Complex for Climate Change' (2011) 9 *Perspectives on Politics* 7

Kotzé LJ and others, 'Courts, Climate Litigation and the Evolution of Earth System Law' (2023) 15 *Global Policy* 5

Pouikli K, 'Editorial: A Short History of the Climate Change Litigation Boom across Europe' (2021) 22 *ERA Forum* 569

Rajamani L, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65 *ICLQ* 493

Shelton D, *Common Concern of Humankind* (referenced in context of erga omnes obligations)

Voigt C, 'The Power of the Paris Agreement in International Climate Litigation' (2023) 32(2) RECIEL 237

Wewerinke-Singh M, 'Remedies for Human Rights Violations Caused by Climate Change' (2019) 9 *Climate Law* 226

International Reports, UN Documents & Institutional Material

IPCC, *Climate Change 2022: Mitigation of Climate Change* (IPCC 2022)

OHCHR, *Report of the Special Rapporteur on the Right to Health* (2007)

OHCHR, *Special Rapporteur on Climate Change* https://www.ohchr.org/

UNGA Res 76/300 (28 July 2022) *The Human Right to a Clean, Healthy and Sustainable Environment*

UNEP Group of Legal Experts, *Report on the Concept of the Common Concern of Humankind* (Malta, 1990)

UNGA, Resolution on Climate Change Affecting All Humanity (1988)

Cases:

European Court of Human Rights

Verein KlimaSeniorinnen Schweiz and Others v Switzerland App no 53600/20 (ECtHR, 9 April 2024)

Duarte Agostinho and Others v Portugal and 32 Other States App no 39371/20 (ECtHR, 9 April 2024)

Carême v France App no 7189/21 (ECtHR, 9 April 2024)

UN Human Rights Committee

Ioane Teitiota v New Zealand (Views adopted 2019)

Daniel Billy and Others v Australia (Torres Strait Islanders Petition) (2019)

National Courts

Urgenda Foundation v State of the Netherlands (Supreme Court of the Netherlands, 20 December 2019)

Neubauer et al v Germany (BVerfG, 24 March 2021)

Future Generations v Ministry of the Environment and Others (Supreme Court of Colombia, STC 4360-2018)

PSB et al v Brazil (Climate Fund) (Supremo Tribunal Federal, ADPF 708, 2022)

Notre Affaire à Tous and Others (Affaire du Siècle) (Paris Administrative Court, 2021)

Klimaatzaak v Belgium (Brussels Court of First Instance, 2021)

United States

Juliana et al v United States of America (US Supreme Court, cert denied, 24 March 2025)

EU Law and CJEU Cases

Case 25/62 *Plaumann & Co v Commission* [1963] ECR 95

Case C-565/19 P *Armando Carvalho and Others v Parliament and Council* [2021] ECLI:EU:C:2021:252

Rayner T and others, *Handbook on EU Climate Change Policy and Politics* (Edward Elgar 2023)

Web Sources & Institutional Reports

International Maritime Organization, 'Cutting Greenhouse Gas Emissions from Ships' (IMO, 2024) https://www.imo.org/

UNESCO Ocean Literacy, 'Why Maritime Governance Matters' (UNESCO, 2023) https://oceanliteracy.unesco.org/

NASA, 'Ice Sheet Mass Balance Data' https://climate.nasa.gov/

Peel J, 'Unlocking UNCLOS: How the ITLOS Advisory Opinion Delivers a Holistic Vision of Climate-Relevant International Law' (Columbia Climate School Sabin Center, 2024) https://blogs.law.columbia.edu/