

# Interlinkages between Human Rights, Climate Action and Due Diligence Obligations of States: Potential Impact on Business Organizations

Environmental Policy and Law  
2025, Vol. 55(6) 190–197  
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DOI: 10.1177/18785395251390411  
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## Abstract

The International Court of Justice (ICJ) in its landmark Advisory Opinion of 23 July 2025, has established a clear connection between human rights, climate action and due diligence obligations of States under treaty and customary international law. The Court appears to have elevated the concept of due diligence from a relatively soft principle to a powerful standard, against which to assess compliance of international obligations by states. In their turn, States are likely to pass on these obligations to business organisations too through various human rights and environmental due diligence schemes. There are various reporting requirements of the European Union for business organisations through several schemes that already point to a move in this direction. Thus, the impact of this ICJ Advisory Opinion is not limited to States *per se*. It has the potential to require business organisations to adhere to an international human rights and environmental due diligence standard, against which their own policies and practices can be evaluated. The paper seeks to examine this perspective.

## Keywords

international court of justice, advisory opinion, climate change, human rights and environmental due diligence obligations, business organisations.

Received: 8 October 2025; accepted: 8 October 2025

## Introduction

The advisory opinion of the International Court of Justice (ICJ) on the *Obligations of States in Respect of Climate Change* of 23 July 2025<sup>1</sup> (hereafter the ICJ Advisory Opinion or the Climate Change case) makes a significant and far-reaching connection between human rights, climate action and the due diligence obligations of States. In doing so, the ICJ, as the principal judicial organ of the United Nations (UN), has devoted a considerable space in its advisory opinion to outline the nature and scope of the concept of due diligence in international law and the obligations of States under this concept to prevent climate change and mitigate its impact. It is against this backdrop that this article analyses this nexus in international law and the contribution made to establishing this nexus by this advisory opinion of the ICJ. In doing so, it will examine how the Court has developed and applied the concept of human rights and environmental due diligence obligations of States and what their potential impact would be on business organisations.

## Linkage between human rights and climate change

Climate change is no longer a distant concern; its impacts are already unfolding in the present. Climate change is contributing to erratic weather patterns, rising sea levels, heatwaves, droughts, ecosystem degradation, and the unprecedented melting of the polar ice. The world is also witnessing receding snowlines in the mountain ranges such as the Himalayas and the Alps, as well as growing food insecurity across the world. These developments pose a direct threat to the right to life itself and jeopardise the very survival of small island states, particularly those in the South Pacific. Therefore, climate change has been recognised as the first truly global environmental crisis. It was the pioneering

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<sup>1</sup> ICJ Advisory Opinion on the *Obligations of States in respect of Climate Change*, 23 July 2025; INTERNATIONAL COURT OF JUSTICE; Advisory Opinion of 23 July 2025

UN General Assembly resolution 43/53 of 6 December 1988 that normatively characterised climate change as a “common concern of mankind”<sup>2</sup> and set in motion a global regulatory process to address the challenge of global climate change. It led to the adoption of the UN Framework Convention on Climate Change (UNFCCC)<sup>3</sup> at the 1992 Rio Earth Summit.<sup>4</sup> Following this, two more successive international legal instruments came to be adopted: the 1997 Kyoto Protocol<sup>5</sup> and the 2015 Paris Agreement.<sup>6</sup> These three instruments (UNFCCC, Kyoto Protocol and Paris Agreement) constitute the global regulatory<sup>7</sup> framework on climate change.

Climate change is not merely an environmental issue but also a profound human rights concern, as it has already affected the enjoyment of numerous rights, including the rights to life, self-determination, development, health, food, water and sanitation, adequate housing, and cultural rights. In this light, climate change may arguably be considered the most consequential human rights crisis of all time. The universality of human rights is now widely recognised. So too is the impact of climate change and other forms of environmental degradation on the enjoyment of human rights, including the right to life and the right to a clean, healthy, and sustainable environment. The connection between human rights and climate change has long been established in academic literature,<sup>8</sup> as well as in the work of United Nations human rights treaty bodies and other UN agencies.<sup>9</sup>

<sup>2</sup> UN, “Protection of global climate for present and future generations of mankind”, General Assembly resolution 43/53, 6 December 1988; available at: A/RES/43/53; Document Viewer

<sup>3</sup> UN, *United Nations Framework Convention on Climate Change*, 1992; available at: Convention text with Annexes - English

<sup>4</sup> UN, *Report of the United Nations Conference on Environment and Development*, Rio de Janeiro, 3-14 June 1992; available at: United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992 | United Nations; Document Viewer

<sup>5</sup> UN, *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, adopted at the 3<sup>rd</sup> Conference of the Parties meeting of the UNFCCC, Kyoto, 1-10 December 1997; available at: A/cpl07a01.wpd

<sup>6</sup> UN, *Paris Agreement*, adopted at 21<sup>st</sup> COP meeting of the UNFCCC, Paris, 2 December 2015; available at: Paris Agreement text English

<sup>7</sup> For a detailed examination see, generally, Bharat H. Desai (Ed.), *Regulating Global Climate Change: From Common Concern to Planetary Concern*, IOS Press, 2023; available at: *Regulating Global Climate Change* | IOS Press. Also see Bharat H. Desai, “Regulating Global Climate Change: From Common Concern to Planetary Concern”, *Environmental Policy and Law*, vol. 52, Issue 5-6, 2023, pp.333-347; available at: *Regulating Global Climate Change: From Common Concern to Planetary Concern* - Bharat H. Desai, 2022

<sup>8</sup> See generally, John H. Knox, ‘Climate Change and Human Rights Law’, *Virginia Journal of International Law*, 50 (2009), pp.163 ff.; Sumudu Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge, 2016); Stephen Turner, *A Global Environmental Right* (Routledge, 2013); Stephen Humphreys, *Human Rights and Climate Change* (Cambridge University Press, 2010); Patricia Birnie and Alan E Boyle, *International Law and the Environment* (Oxford University Press, 1993); See also Alan E Boyle, ‘Human Rights or Environmental Rights? A Reassessment’, 18 *Fordham Environmental Law Review* (2007), pp 471 ff.; John H. Knox, ‘Introduction to

It is increasingly recognised in both treaty law and case law that human rights constitute an important part of the toolkit in responding to climate change. For instance, the 2015 Paris Agreement on climate change calls upon States parties to ‘respect, promote and consider their respective obligations on human rights’ in the context of climate action.<sup>10</sup> Although this provision only appears in the preamble to the agreement, it marks the first explicit reference to human rights in a climate change treaty. As such, it has played a significant role in establishing a linkage between climate change and human rights.

Since the older generation of human rights treaties does not contain any specific provisions on environmental rights, efforts have been made to invoke other rights, such as the right to life, to hold governments accountable for failing to implement adequate mitigation measures in response to climate change and environmental degradation. Therefore, it is being increasingly recognised that these rights impose obligations on States to take proactive steps, including enacting legislation, to protect individuals not only from harm caused by the State itself, but also from interference by third parties, such as multinational corporations. Under international human rights law, states are duty-bearers, and their citizens are rights-holders. Accordingly, the state has a duty to protect its citizens from the harmful impacts of climate change and environmental degradation.

The decisions of international courts and tribunals have increasingly and extensively drawn upon human rights principles in climate litigation. In its landmark Advisory Opinion (23 July 2025), the ICJ affirmed that the protection of the environment and the protection of human rights have been “generally recognised as interdependent since at least the Stockholm Declaration of 1972”.<sup>11</sup> The Court held that States have human rights obligations in relation to the adverse impacts of climate change, and that a clean, healthy, and sustainable environment is a precondition for the enjoyment of many fundamental rights, including the

Symposium on UN Recognition of the Human Rights to a Healthy Environment’, *American Journal of International Law* (Unbound), vol.117, 2023, pp.162-166; Philip Alston, ‘The Right to a Healthy Environment beyond Twentieth Concepts of Rights’, *ibid.*, pp.167-171; Malgosia Fitzmaurice, ‘The Emerging Human Right to a Clean Environment and Its Limitations’, in Louisa Ashely and Nicolette Butler (eds.), *The Incoherence of Human Rights in International Law: Absence, Emergence and Limitations* (Routledge, London/New York 2024), pp.131-150.

<sup>9</sup> Office of the United Nations High Commissioner for Human Rights, “Climate Change Reports and Related Activities (from 2014 to 2016)”, online: OHCHR <<https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/ClimateChange.aspx>>.

<sup>10</sup> Preamble to the United Nations Framework Convention on Climate Change (2016) (known as the Paris Climate Change Agreement). [https://unfccc.int/sites/default/files/resource/parisagreement\\_publication.pdf](https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf).

Also see, Benoit Mayer, ‘Human Rights in the Paris Agreement’, *Climate Law*, vol. 6 (2016), pp. 109-117.

<sup>11</sup> ICJ Advisory Opinion, n.1, para 144.

rights to life, health, and an adequate standard of living. This opinion marks a significant development in international law, reinforcing the legal and moral authority of human rights frameworks in addressing climate-related harms.

In the year 1972, the United Nations convened its first-ever Conference on the Human Environment (UNCHE) in Stockholm. This landmark event marked the beginning of international recognition of the link between human activities and emerging degradation caused by unsustainable industrialisation and economic practices. The resulting Stockholm Declaration affirmed, for the first time, that there exists “a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”<sup>12</sup>

Another key achievement of the Stockholm conference was the initiation of a dialogue between the developed (Global North) and developing (Global South) world<sup>13</sup> to address the growing challenges of water, air, and ocean pollution, and to consider their adverse effects on human well-being globally. The dialogue was grounded in the recognition that environmental pollution is inherently transboundary in nature, and that effective responses require collaborative action by all States.

Since then, governments have taken the initiative through legal frameworks, policy instruments, and political commitments at the local, regional, and international levels to confront the global environmental crisis, and the 2015 Paris Agreement stands out as one of the most significant milestones in this regard. Scientific evidence provided by the Intergovernmental Panel for Climate Change (IPCC) underscores the urgent need to eliminate greenhouse gas emissions by 2050 and to reduce them in half by 2030.<sup>14</sup> A growing number of governments around the globe are working towards achieving carbon neutrality, with some aiming to do so as early as the 2040s.

As countries strive to meet their commitments under the 2015 Paris Agreement, many are enacting national legislation to support these goals. However, it is widely recognised that the current levels of climate ambition and climate action remain insufficient to meet the scale of the challenge. As a result, various stakeholders have increasingly turned to climate litigation as a means of compelling the enforcement of existing laws, advocating for stronger legal frameworks, extending the scope of current legislation to address

climate-related issues, and clarifying the relationship between human rights and the impacts of climate change.

The Global North and Global South often hold divergent perspectives on the intersection of human rights and international trade. While the Global North typically regards the universality of human rights and a liberalised international trade regime as foundational to the global liberal order, with a particular emphasis on civil and political rights. In contrast, the Global South frequently approaches these issues through the lens of historical power imbalances. Consequently, the Global South tends to advocate for treating human rights and trade as distinct domains and placing greater emphasis on economic, social, and cultural rights. However, when it comes to the relationship between human rights and climate change, as well as other forms of environmental degradation, the judiciaries in both the Global South and the Global North have adopted a broadly similar approach. They have shown a willingness to enforce both soft-law and hard-law standards.

This trend is likely to gain further momentum following the ICJ Advisory Opinion (23 July 2025) on the obligation of states in relation to climate change. In its opinion, the Court invoked four key principles of international law: customary international law, which is binding on all states; the duty to prevent significant environmental harm; the duty to cooperate; and the principle of due diligence. These principles were used to guide States on how to address the complex challenges posed by climate change.

The Court opined that international law obliges states to prevent significant harm to the climate system and affirmed that the duty to prevent environmental harm entails acting with due diligence. According to the Court, the standard of due diligence requires a state to use all the means at its disposal to avoid activities which take place in its territory, or any area under its jurisdiction, causing significant damage to the environment of another state.<sup>15</sup>

National and regional human rights courts have also recognised the interrelationship between human rights obligations and legal frameworks concerning the protection of the natural environment. There is now a near-universal consensus on the need to treat climate change and its consequences as a human rights issue. While human rights already provide a valuable foundation for climate litigation, the accelerating impacts of climate change and biodiversity loss are likely to reshape the entire human rights agenda in the years to come.

The question of whether the State bears a duty to safeguard individuals from the adverse effects of climate change and environmental degradation, and if so, whether a failure to

<sup>12</sup> UN, *Report of the United Nations Conference on the Human Environment*, Stockholm Declaration, Principle 1; <https://www.un.org/en/conferences/environment/stockholm1972>

<sup>13</sup> Bharat H Desai, “Destroying the Global Environment: Another North-South Issue”, *International Perspectives* (Ottawa), November/December 1986, pp.27-29. Also see, Bharat H. Desai, “Environment & Development: Making Sense of Predicament of the Developing Countries,” *World Focus*, May 2013, pp.3-8.

<sup>14</sup> Intergovernmental Panel for Climate Change (IPCC), “The evidence is clear: the time for action is now. We can halve emissions by 2030”, available at <https://www.ipcc.ch/report/ar6/wg3/>

<sup>15</sup> Citing its previous rulings in the *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, case (Judgment, I.C.J. Reports 2010 (I), p. 56, para. 101), the ICJ went on to elaborate its opinion to this effect in its advisory opinion the Climate Change case; see ICJ Advisory Opinion, n.1, paras 132, 175, 272 and 28.

implement adequate mitigation measures may constitute a breach of the human rights of those affected, has long been the subject of scholarly inquiry.<sup>16</sup> Over time, this question has increasingly found its way into the jurisprudence or case law of international, regional, and national courts and tribunals.

### *State responsibility for environmental harm*

The ICJ Advisory Opinion (23 July 2025) indicates that States have a responsibility under both treaty law and customary international law to take appropriate measures to address climate change and reduce greenhouse emissions. What is significant in this advisory opinion is that a breach by a State of any obligations identified by the Court constitutes an internationally wrongful act entailing the responsibility of that State. This may result in providing full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and injury.

Although establishing a sufficiently direct and certain causal nexus between the wrongful act and injury would be a challenge and would depend on a case-by-case analysis, the clear stipulation by the Court of state responsibility for such an internationally wrongful act should put the heavy polluter States on guard and potentially make them face lawsuits for reparations by those states severely affected by the consequences of climate change and other significant forms of environmental harm. The Court went on to outline that

“each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system and other parts of the environment. And where several States are responsible for the same internationally wrongful act, the responsibility of each State may be invoked in relation to that act. ... the rules on State responsibility admit the possibility of determining the responsibility of States in the climate change context. Factual questions arising in the context of attribution and apportionment of responsibility are to be resolved on a case-by-case basis.”<sup>17</sup>

A significant aspect of the advisory opinion is the Court’s affirmation that a breach by a State of any of the obligations it identified constitutes an internationally wrongful act, thereby engaging the responsibility of that State. This may

<sup>16</sup> Sumudu Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities* (Routledge, 2016); A. Boyle (eds.), *Human Rights Approaches to Environmental Protection* (Oxford: Clarendon Press, 1996); Stephen Turner, *A Substantive Environmental Right: An Examination of the Legal Obligations of Decision-Makers towards the Environment* (Kluwer Law International, The Netherlands, 2009).

<sup>17</sup> ICJ Advisory Opinion, n.1 (the Climate Change case), paras 431-432.

give rise to a duty to provide full reparation to injured States, which could take the form of restitution, compensation, or satisfaction, provided that the general conditions under the law of State responsibility are met. These include, notably, the requirement to establish a sufficiently direct and certain causal nexus between the wrongful act and the injury sustained.

Although establishing a sufficiently direct and certain causal nexus between the wrongful act and the resulting injury presents a considerable challenge and would require a case-by-case assessment, the Court’s unequivocal affirmation of state responsibility for such internationally wrongful acts should serve as a warning to major polluting States. These states may now face potential legal action for reparations brought by those severely affected by the consequences of climate change and other significant forms of most severely affected by the consequences of climate change and other significant forms of environmental degradation.

### *Climate action against states and companies: Jurisprudential foundation*

Climate change litigation is gaining significance not only in developed countries of the ‘Global North’ but also in the ‘Global South’, as a means of enforcing international climate obligations, such as those outlined in the Paris Agreement. In response to inadequate legislative and executive action by governments, litigation has increasingly become a tool to compel compliance with international legal standards. To date, more than 2,500 climate-related cases have been filed worldwide, and the field continues to evolve rapidly both geographically and in terms of legal substance.<sup>18</sup>

The effects of climate change on individuals and communities, particularly those in vulnerable populations residing in small island states or low-lying coastal regions, are increasingly recognised as matters of urgent international concern. States facing existential threats have taken the lead in referring cases to international courts and tribunals, seeking advisory opinions on the marine and environmental obligations of States under international law. On 21 May 2024, the International Tribunal for the Law of the Sea (ITLOS) issued an advisory opinion on States’ obligations to protect and preserve the world’s oceans from the

<sup>18</sup> See generally K. Guruparan and H. Moynihan, *Climate change and human rights-based strategic litigation*, Briefing Paper, London: Royal Institute of International Affairs ((2021);

<https://www.chathamhouse.org/2021/11/climate-change-and-human-rights-based-strategic-litigation>;

C. Rodríguez-Garavito, ‘Introduction’, in C. Rodríguez-Garavito (ed.), *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (Cambridge University Press, 2022); Chiara Maachi, ‘The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of ‘Climate Due Diligence’’, *Business and Human Rights Journal*, 6 (2021) p.93.

impacts of climate change, including ocean warming, sea-level rise, and ocean acidification.<sup>19</sup>

The Tribunal found that anthropogenic greenhouse gas emissions absorbed by the oceans constitute marine pollution, due to their harmful effects on the marine environment, including ocean acidification, ocean warming, and other detrimental impacts. It held that States are required to take “all necessary measures”, in accordance with the best available scientific evidence, to reduce their greenhouse gas emissions to the fullest possible extent. These obligations arise under the 1982 UN Convention on the Law of the Sea (UNCLOS), as well as other relevant international legal instruments.

In clarifying States’ responsibilities to protect the climate system and the legal consequences of failing to do so, the ICJ has stated in its advisory opinion (23 July 2025) that obligations pertaining to the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions, in particular the obligation to prevent significant transboundary harm under customary international law are obligations owed *erga omnes*. The Court emphasised that these duties are not merely aspirational but form part of binding international law, grounded in both treaty and customary norms.

The Court stated that these obligations arise not only from the climate change treaties, but also from customary international law. It further clarified that treaty obligations under the 1992 UNFCCC and 2015 Paris Agreement are *erga omnes partes*, on the basis that they protect the essential interest of all States in the safeguarding of the climate system, which benefits the international community as a whole. The Court opined that all States, or all State Parties, have a legal interest in ensuring compliance with these obligations, thereby enabling them to invoke the responsibility of other States that fail to fulfil their obligations. Thus, the ICJ has laid a jurisprudential foundation for future claims by affirming that states have a legal duty to reduce greenhouse gas emissions and are also accountable for emissions produced by companies operating under their jurisdiction.

What is particularly noteworthy is that cases such as *Urgenda Foundation v The Netherlands*, *Milieudefensie et al v Royal Dutch Shell PLC*, and Advisory Opinion of November 2017 issued by the Inter-American Court of Human Rights at the request of the Republic of Colombia,<sup>20</sup> illustrate how national and regional courts have sought to invoke, *inter alia*, international climate change obligations of

States in deciding climate-related human rights issues. These decisions establish a connection between the protection of human rights, especially the right to life, and the imperative to protect the environment.

The 2019 judgment of the Supreme Court of the Netherlands in *Urgenda* significantly broadened the scope for litigation against states on human rights grounds. The Dutch Supreme Court upheld the decisions of the lower courts, interpreting the standard of care in connection with the Netherlands’ obligations under the European Convention on Human Rights and the Kyoto Protocol. The Court concluded that the Netherlands breached its duty of care by failing to reduce its greenhouse gas emissions by at least 25% by the end of 2020. Judgments of this nature demonstrate that States are now not only obliged to refrain from causing environmental harm that infringes upon human rights, but also to take proactive measures to protect individuals from harm originating from other sources.

In the *Royal Dutch Shell case (Milieudefensie et al. v. Royal Dutch Shell plc)*,<sup>21</sup> popularly known as “The People versus Shell” case, proceedings were initiated in 2019 by Friends of the Earth Netherlands, alongside six other environmental organisations and over 17,000 individual claimants. The Hague District Court ordered Shell to reduce the CO2 emissions of the Shell Group by net 45% in 2030, relative to 2019 levels, through adjustments to its corporate policy. Although this landmark ruling was subsequently overturned by a Dutch Court of Appeal, it nevertheless signalled that major polluting companies may remain vulnerable to future climate-related legal challenges. This is particularly significant given that the court acknowledged the possibility of private companies bearing obligations under human rights law to mitigate the effects of climate change and to reduce emissions accordingly.

Similarly, in 2023, the African Court on Human and Peoples’ Rights delivered a judgment in *Ligue Ivoirienne des Droits de l’Homme (LIDHO) and Others v. Republic of Côte d’Ivoire*, commonly referred to as the *LIDHO* case,<sup>22</sup> concerning harm caused, including environmental damage, resulting from the dumping of toxic waste. The African Court held that “even though the responsibility [...] to respect the obligations of international law is incumbent primarily on States, it is also true that this responsibility is incumbent on companies, notably, multinational

<sup>19</sup> International Tribunal for the Law of the Sea, 21 May 2024 List of cases: No. 31 *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*.

<sup>20</sup> Inter-American Court of Human Rights, Advisory Opinion AO-32/25 of 29 May 2025; available at [https://www.corteidh.or.cr/docs/opiniones/seriea\\_32\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf)

<sup>21</sup> NL:RBDHA:2021:5339. For the 2024 appeal judgment from the Hague Court of Appeal, the case number is 200.302.332/01 and the judgment date was November 12, 2024, with its own ECLI: ECLI:NL:GHDHA:2024:2100.

<sup>22</sup> Solomon Dersso and Elsabé Boshoff, ‘Extending human rights accountability for corporate actors in the LIDHO v Cote d’Ivoire case of the African Court’, *EJIL:Talk!*, Blog of the European Journal of International Law, 21 February 2024: <https://www.ejiltalk.org/extending-human-rights-accountability-for-corporate-actors-in-the-lidho-v-cote-divoire-case-of-the-african-court/> (accessed on 21 September 2025).

companies”.<sup>23</sup> This ruling reinforces the notion that corporate actors, particularly multinationals, may bear direct obligations under international human rights law in relation to environmental harm. This ruling has opened the door for holding corporations accountable for actions that infringe upon human rights or cause significant environmental harm.

### *Duty of care doctrine: Application under tort law*

The application of tort law to address environmental harm by business organisations and their accountability for human rights abuses has initiated a silent revolution within the field.<sup>24</sup> Courts in several European jurisdictions, including the UK and the Netherlands, have increasingly relied on the principle of duty of care under tort law to adjudicate cases concerning both human rights and environmental protection against companies. These developments reflect a growing recognition of the legal responsibilities of states and corporations in safeguarding the environment and upholding fundamental rights.

National courts in various jurisdictions have adopted the duty of care approach under tort law to pursue corporate accountability. Notable examples of legal strategies targeting major polluters include *Smith v Fonterra* in New Zealand (common law), *Greenpeace et al. vs. ENI* in Italy (civil law), and *Asmania et al. vs. Holcim*, in Switzerland (civil law).<sup>25</sup> These cases reflect a growing trend of using domestic legal frameworks to address global environmental and human rights concerns.

### *Due diligence obligations: States and business organisations*

Although the content of due diligence obligations varies depending on various fact-specific considerations, including the circumstances and capabilities of the State in question, the ICJ provides in its advisory opinion a reasonably clear guidance to States on what is required of them under their due diligence obligations concerning climate change. The Court opines that the obligations of States to mitigate climate change to a level that holds warming to the Paris Agreement’s 1.5 °C threshold are found in several international environmental and human rights treaties as well as in the customary international rule to prevent significant harm to the environment.

The Court has elevated the concept of due diligence from a relatively soft and weak principle to a powerful standard,

against which to assess compliance of international obligations by states. Under the subheading, ‘Due diligence as the required standard of conduct’, the ICJ states in the Climate Change case that

“States must fulfil their duty to prevent significant harm to the environment by acting with due diligence. Due diligence is a standard of conduct whose content in a specific situation derives from various elements, including the circumstances of the State concerned, and which may evolve over time .... The following elements are particularly relevant when it comes to determining what due diligence requires from a State in a particular situation, including in the context of climate change.”<sup>26</sup>

By summing up the statements in its own previous judgments and advisory opinions in various cases, those of the ITLOS, and the various principles of international law, the ICJ AO (23 July 2025) then goes on to outline (paragraphs 281 to 299), the elements that are particularly relevant when it comes to determining what due diligence requires from a State and these elements include, appropriate measures, scientific and technological information, relevant international rules and standards, different capabilities, precautionary approach or principle and respective measures, risk assessment and environmental impact assessment, and notification and consultation.<sup>27</sup> It then concludes its assessment of these elements in the following words:

“Having considered certain elements of the due diligence standard ..., the Court notes that their proper application in a specific situation may be a complex operation due to the variable and evolving nature of the standard. However, the Court considers that the relevant elements, individually and in combination, provide guidance for the identification of an appropriate standard of conduct for different situations. The Court is therefore of the view that the question whether a risk of significant harm exists and whether or how a relevant element of the obligation to exercise due diligence to protect the environment applies in a particular situation should be determined objectively.”<sup>28</sup>

The concept of human rights and climate due diligence obligations of States to ensure are being implemented by states

<sup>23</sup> *Ibid.*

<sup>24</sup> Dalia Palombo, ‘Business, Human Rights and Climate Change: The Gradual Expansion of the Duty of Care’, *Oxford Journal of Legal Studies* 2024, Vol. 44, No. 4 pp. 889–919: <https://doi.org/10.1093/ojls/ggae023>

<sup>25</sup> Carlo Vittorio Giabardo, ‘Corporate Climate Responsibility After “Milieudéfense vs. Shell” Court of Appeal Decision’, *EJIL: Talk!*, 17 December 2024.

<sup>26</sup> ICJ Advisory Opinion, n.1 (the Climate Change case), para 280.

<sup>27</sup> Christina Voigt, “Doing the utmost”: Due diligence as the standard of conduct in international climate law’, “Doing the utmost”: Due diligence as the standard of conduct in international climate law - Climate Law Blog, September 3, 2025; Joshua Paine, ‘ICJ Advisory Opinion on Climate Change: The Variable and Evolutive Nature of Due Diligence Obligations’, *EJIL: Talk!*, 21 August, 2025: <https://www.ejiltalk.org/icj-advisory-opinion-on-climate-change-the-variable-and-evolutive-nature-of-due-diligence-obligations/>

<sup>28</sup> ICJ Advisory Opinion, n.1 (the Climate Change case), para 300.

through legislation. In doing so, they are passing on the due diligence requirements to corporate entities, mainly large companies, too. Accordingly, more stringent and comprehensive requirements for human rights and climate due diligence have been adopted by States, regional economic integration organisations such as the European Union (EU), and international organisations. For instance, in response to the challenges posed by climate change, environmental degradation, and their impact on human rights and sustainability, the EU has undertaken several key initiatives. Among these is the Corporate Sustainability Reporting Directive of the EU, which requires large and listed companies to disclose information on how they monitor and comply with a wide range of Environmental, Social, and Governance standards.<sup>29</sup>

The EU Directive represents a significant shift in corporate reporting, with a wider scope of companies impacted, more comprehensive data requirements, and increased scrutiny from stakeholders than ever before. The primary objective of the Directive is to enhance accountability and transparency, while promoting sustainable practices and responsible investments. Under its provisions, companies are required to report on a wide range of Environmental, Social, and Governance metrics, offering customers and investors comprehensive insight into their sustainability agenda.

Beyond fulfilling regulatory requirements, the Directive presents an opportunity for companies to deepen their understanding of the sustainability risks and opportunities facing their organisation, and to accelerate their strategic response. While the current requirements primarily target large and listed companies, small and medium enterprises are also likely to fall within the scope in the near future, highlighting the importance of developing and implementing robust sustainability strategies.

Business organisations are required to report on how their operations are affected by sustainability-related risks and opportunities, as well as how their activities impact society and the environment. This Directive establishes a corporate due diligence duty. Its core components involve identifying and addressing both potential and actual adverse impacts on human rights and the environment within a company's own operations, its subsidiaries, and, where relevant to its value chain, its business partners.

The rules on corporate sustainability due diligence are designed to be enforced through a system of administrative supervision. Each EU Member State will have to designate a national authority responsible for overseeing and enforcing compliance, including through the use of injunctive orders and effective, proportionate, and dissuasive penalties, in particular fines. At the European level, the European Commission will set up a European Network of Supervisory Authorities, bringing together representatives from national bodies to ensure a coordinated and consistent approach.

The EU has come under increasing pressure from civil society organisations, as well as from national, regional, and international courts, to introduce a series of measures to address climate change and other forms of environmental degradation. These efforts are aimed at fulfilling the obligations of EU Member States under international law, both treaty-based and customary.

Not being a party to an international environmental treaty is no longer a valid excuse for action, as these obligations arise from both treaty law and customary international law. Both are binding on all states. Consequently, EU Member States had no option but to act, translating their international obligations into domestic measures that place responsibility on large companies, including the so-called carbon majors. By complying with the EU's Directive, companies can, to a certain extent, shield themselves from legal action - particularly civil litigation - by demonstrating that they have fulfilled their obligations under the EU law. The same can be said about other international due diligence schemes.

## Conclusion

In view of the rapidly evolving national and international jurisprudence in favour of the environment, the inter-linkage between human rights, climate due diligence and the obligations of States to use all means at their disposal in order to avoid activities which take place in their territory, or in any area under their jurisdiction, causing significant damage to the environment of another State has now been firmly anchored in international law. While using "all means at their disposal", States are taking legislative and policy measures to ensure that such diligence is carried out by corporate entities too within their jurisdiction, and the EU's Corporate Sustainability Reporting Directive is an example.

There is a little risk of an approach similar to the ones taken by the EU, by which the public regulators (governments) may try to escape from some of their due diligence responsibilities for human rights and climate change by pushing the responsibility towards the private actors, especially large companies. Therefore, the private actors, rather than States, may stand the risk of being sued for environmental degradation, including climate change, whether it is under the general tort law principle of duty of care or

<sup>29</sup>. The Directive (EU) 2024/1203 of 20 May 2024 on the protection of the environment through criminal law; CM (2025)52-final - 134th Session of the Committee of Ministers (Luxembourg, 13-14 May 2025) - Council of Europe Convention on the Protection of the Environment through Criminal Law; available at <https://search.coe.int/cm?i=0900001680b5cfad>. See also Michael G Faure, "The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law?" *Journal of Environmental Law*, Volume 36, Issue 3, November 2024, pp. 323–342; available at <https://doi.org/10.1093/jel/eqae020>

the notion of corporate social and environmental responsibilities of companies as a ground for claims.

However, the ICJ AO (23 July 2025) makes it clear that the responsibility to protect the environment, prevent climate change and take adequate measures to mitigate the adverse impact of climate change on the enjoyment of human rights rests in the hands of States. It is up to the states how they wish to fulfil their obligations under international law. Therefore, the ICJ AO makes a significant contribution to the development of the concept of due diligence in international law and paves the way for more stringent and comprehensive requirements for human rights and climate due diligence by States, regional economic integration organisations such as the European Union, and other international organisations themselves as well as by business organisations in the years and decades to come in order to meet human rights and climate due diligence obli-

gations of States under international law outlined by the World Court.

### **Acknowledgement**

This article draws on the presentation made by the author at an interdisciplinary seminar (18 September 2025) at the School of Business, Economics, and Law, University of Gothenburg. Thanks are due to Mette Anthonsen, Trisha Rajput and Abhinayan Basu Bal (University of Gothenburg).

### **Funding**

The author received no financial support for the research, authorship, and/or publication of this article.

### **Declaration of conflicting interests**

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.