

STEERING COMMITTEE FOR HUMAN RIGHTS
COMITÉ DIRECTEUR POUR LES DROITS HUMAINS
(CDDH)

HUMAN RIGHTS AND THE ENVIRONMENT
DROITS HUMAINS ET ENVIRONNEMENT

Discussion of the possible implications of the conclusions of the advisory opinion of the International Court of Justice of 23 July 2025 on the obligations of States in respect of climate change and those of the advisory opinion OC-32/25 of 29 May 2025 of the Inter-American Court of Human Rights on the climate emergency and human rights

Discussion sur les répercussions éventuelles des conclusions de l'avis consultatif de la Cour Internationale de Justice du 23 juillet 2025 relatif aux obligations des États en matière de changement climatique et de celles de l'avis consultatif A0-32/25 du 29 mai 2025 de la Cour Interaméricaine des droits de l'Homme relatif à l'urgence climatique et les droits de l'Homme

02/07/2026

Presentations delivered by the speakers

Présentations des intervenants

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**CORTE INTERAMERICANA DE DERECHOS HUMANOS
INTER-AMERICAN COURT OF HUMAN RIGHTS
CORTE INTERAMERICANA DE DIREITOS HUMANOS
COUR INTERAMERICAINE DES DROITS DE L'HOMME**



Address to the Steering Committee for Human Rights (CDDH)

Council of Europe — Plenary Meeting – 2 July 2026

Advisory Opinion OC-32/25 — Climate Emergency and Human Rights

PRESIDENT RODRIGO MUDROVITSCH

Madam Chairperson,
Judge Aurescu, of the International Court of Justice,
Dr Jannika Jahn, Senior Research Fellow at the Max Planck Institute,
Distinguished members of the Steering Committee for Human Rights,
Excellencies, ladies and gentlemen,

It is a great honour to take part in this plenary meeting of the Steering Committee for Human Rights of the Council of Europe. I extend my warm thanks to your Chairperson, Ms Tonje MEINICH, and your Secretary David MILNER for their kind invitation, and to the members of this Committee for opening your work to a voice from the Inter-American system. I am especially glad to know that this discussion will inform the Committee of Ministers' consideration of a possible new legal instrument in this field — including options for a binding instrument to protect the right to a clean, healthy and sustainable environment.

International law, as we know it, is the product of the international community's incessant effort to provide common answers to the great existential challenges we share as humanity. Today, the great existential dilemma of our time is, without doubt, our confrontation with the climate emergency.

The persistent rise in greenhouse-gas emissions and the harmful environmental consequences of global warming have brought the balance of our ecosystems ever closer to a point of no return. Rising sea levels, the increasing recurrence of extreme weather events, the acidification of the oceans, the advance of droughts and desertification, and the loss of biodiversity place the survival of entire populations under serious threat. The problem of the climate crisis is, essentially, a human rights problem.

It was in this context that the Inter-American Court recently issued the paradigmatic Advisory Opinion No. 32, entitled “Climate Emergency and Human Rights”, published in July 2025.

The Advisory Opinion on the Climate Emergency and Human Rights adds a broad range of obligations to the Inter-American legal patrimony. Its effects bind the State, its agents and its entire institutional apparatus in decision-making and in the formulation of public policies that may affect the climate system.

On the basis of these findings, I wish to highlight **six contributions of the Advisory Opinion** that I consider fundamental.

The *first contribution* lies in the pioneering recognition of the “right to a healthy climate” as an autonomous and immediately enforceable human right. It is a legal expression that protects the conditions of life within a climate system. This system should be safe, balanced and free from undue, harmful and irreversible human-caused interference.

The second contribution lies in the broad reach of the right to a healthy climate, which may be understood in three senses. First, it protects us, who live on the planet today. For years, global warming was seen as a distant problem, left to future generations. That illusion is now gone: we can no longer postpone our response. This is why the title of the Opinion was so well chosen, a *Climate Emergency*. This is also why we must protect, above all, the people who already suffer its impacts. Second, it protects future generations. The right to a safe climate binds us in solidarity not only to those who share the planet with us, but also to those still to come: we have a shared duty to hand over a planet in conditions as good as, or better than, the one we received. And third it protects nature itself, one of the Opinion's most original features. The environment is no longer valued only for its usefulness to us; it becomes a good worthy of protection in its own right, for its intrinsic value.

From the right to a healthy climate flows, fundamentally, the obligation of States to adopt measures to mitigate the climate impacts of the activities carried out in their territories. This implies, above all, the setting of an adequate emission-control target. That target, although it must take into account the capacities and circumstances of each country, must be as ambitious as possible, with the horizon of contributing effectively to limiting the increase in global temperature.

The *third contribution* lies in the substantial commitment to the climate crisis response. More than setting a target for controlling the temperature increase, the Advisory Opinion calls on States to draw up national climate-adaptation plans so that the target may be pursued through a concrete, integral and enforceable strategy. The itinerary provided by the Court is clear: there must be (i) the assessment of the impacts, risks and vulnerabilities caused by climate change; (ii) technical, political and budgetary planning; (iii) the implementation of the plan, mobilising the resources available for that purpose; and (iv) the continuous work of monitoring and evaluating the fulfilment of the objectives.

That is why the Advisory Opinion mobilises the principle of common but differentiated responsibilities. Its purpose is to seek criteria that allow reasonable mechanisms to be established for allocating international and transnational efforts in combating the climate crisis. That is also why sustainable development occupies a prominent position in the Court's pronouncement.

According to the Court, sustainability must operate “not as a mere precondition [of development], but rather as a central objective that inevitably demands the protection of the environment”.

The *fourth contribution* lies in the differentiated attention to vulnerable groups. More than setting mitigation targets, States must act to prevent the specific impacts of climate change on populations and groups in situations of greater vulnerability to the effects of climate disasters. This presupposes adopting preventive measures and incorporating the precautionary principle into public policies, according to which the absence of scientific certainty about certain events cannot serve as a pretext to postpone actions to prevent climate change and to reverse its adverse effects.

The *fifth contribution* lies in the transversal approach to the relationship between climate and human rights. The Court recognised rights specifically linked to the climate question, such as the human right to a safe climate, to which I referred a moment ago, but it was also concerned with determining the content and scope of the State obligations involving other rights affected by the climate emergency.

This was done both from a substantive perspective — based on the impacts of climate change on the rights to life, integrity, health, housing, water, food, work, among others — and from a procedural perspective, dealing with the role that rights such as access to information, political participation and access to justice play in ensuring the legitimacy and effectiveness of actions to confront the climate crisis, especially in the context of democratic societies.

The *sixth contribution* lies in the recognition of the *jus cogens* status of the obligation not to cause irreversible harm to the climate system. By being included in that most select list — in keeping with its truly existential dimension for humanity — climate protection is raised to a higher hierarchical level. It prevails over other norms of international law as an imperative provision, of an *erga omnes* and non-derogable character.

The prohibition of causing irreversible harm to the environment and the climate, as an imperative and superior norm, projects itself over the entire international system and transcends the obligational limits of treaties and conventions. In the face of the *jus cogens* norm, the denunciation of a treaty on climate matters, or the decision not to ratify it, cease to be justifications for a given State to abstain from preventing climate damage: it remains bound before the entire international community to mitigate its emissions and to avoid massive harm to the environment.

The protection of the climate is a duty that arises directly from the present state of humanity's universal legal conscience. It communicates directly with the preservation of our conditions of life. As such, it admits no regression or action to the contrary. That is the fundamental message of the Court's Advisory Opinion: to affirm that the duty to protect the climate is a legal and a civilizational duty.

To think the climate emergency in these terms means understanding that the search for responses and mitigation solutions does not depend solely on high-level meetings of States and international organisations. The Advisory Opinion is a point of departure for the judge, the administrative authority, or whoever acts in the formulation of public policies to examine, through the lens of their office, the possibilities for intervening in the control of emissions and in the protection of the populations affected by the effects of climate change.

I thank you sincerely for your attention.

Bogdan-Lucian AURESCU

Judge, International Court of Justice / Juge, Cour Internationale de Justice

Topic: The implications of the climate change-related opinions of the International Court of Justice and the Inter-American Court of Human Rights: human rights aspects (including the content and legal status of the right to a clean, healthy and sustainable environment)

Note: This presentation does not engage the ICJ and only expresses the individual and informal view of the author. It cannot be cited as such and its only purpose is to contribute to the CCDH ongoing debate.

- The International Court of Justice's Advisory Opinion on the *Obligations of States with Respect to Climate Change*, delivered on 23 July 2025, is not just a landmark Advisory Opinion as many called it, but also one that took *inter alia* a strong human rights approach to the question posed, including through its contribution through the pronouncements regarding the right to a clean, healthy and sustainable environment.

Background to the Advisory Opinion

- The Advisory Opinion on the *Obligations of States in respect of Climate Change* was delivered unanimously on 23 July 2025. It answered a question posed by the General Assembly and transmitted to the Court on 29 March 2023, namely:
 - “(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
 - (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change? (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”.
- This request was adopted by consensus by the General Assembly in Resolution 77/276. As you may know, it was promoted by a Core Group of 19 Member States from all regional groups and co-sponsored by 132 Member States. I am glad that in my “previous life” of Foreign Minister of Romania I decided the active participation of my country in the Core Group.
- During the written proceedings, 91 written statements and 62 written comments (approximately 10,000 pages in total) were filed with the Registry of the Court representing the highest number and volume of written pleadings ever submitted in proceedings before the Court. The public hearings were held from 2 to 13 December 2024 during which the Court heard from 96 State and 11 International Organizations – again the largest number of participants in an advisory proceeding in the history of the Court.
- Many of these submissions had a strong human rights focus, which is reflected in the Advisory Opinion delivered by the Court.

- In paragraph 403 the Court made a very important and powerful statement. Thus, it considered that “the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment” and that “in order to guarantee the effective enjoyment of human rights, States must take measures to protect the climate system and other parts of the environment. These measures may include, inter alia, taking mitigation and adaptation measures, with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors”.
- In the operative part of the Opinion, the Court found in subparagraph E that “States have obligations under international human rights law to respect and ensure the effective enjoyment of human rights by taking necessary measures to protect the climate system and other parts of the environment”.
- This was an important conclusion to be reached by the Court, and reflective of the overall human rights approach taken by the Court in the Advisory Opinion. I will now explain three elements of that human rights approach.

The Human Rights Approach of the Court in the Advisory Opinion

- The **first** element of the Advisory Opinion’s approach on human rights is the Court’s confirmation that human rights law applies in the context of climate change. While some participants to the advisory proceedings argued that climate change treaties represent *lex specialis*, the Court rejected this argument and confirmed in paragraph 171 of the Opinion that “the principle of *lex specialis* does not lead to a general exclusion by the climate change treaties of other rules of international law”. Other rules of international law include human rights treaties and human rights recognized as customary.
- Thus, the Court also confirmed in more concrete manner this finding in paragraph 145 of the Advisory Opinion by stressing that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the human rights recognised under customary international law form part of the most directly relevant applicable law for the matter before the Court.
- The **second** element of the Court’s human rights approach is its declaration of the relationship between human rights and the climate change regime.
- On this point, the Court found in paragraph 403 that the adverse effects of climate change impact the enjoyment of human rights, and that the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment.
- Also, according to paragraph 404, States must take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations.
- Thus, the Court emphasized the interrelatedness of human rights and the protection of the environment, opining that the protection of the environment is a precondition for the enjoyment of human rights generally (paragraphs 373), and specifically important for the enjoyment of: the right to life (para. 377), the obligation of *non-refoulement* (para. 378), the right to health (para. 379), the right to an adequate standard of living (para. 380), and

the rights of women, children, Indigenous peoples, migrants, persons with disabilities and other people in vulnerable situations (para. 382).

Recognition of the Right to a Clean, Healthy, and Sustainable Environment

- I will now turn to the **third** element: the Court's pronouncements regarding the right to a clean, healthy and sustainable environment. They represent an important step made by the Court, reflecting the relatively recent development and crystallisation of this right in international law.
- The Court observed, in paragraph 391 of the Advisory Opinion, that over 100 States have enshrined the right to a clean, healthy and sustainable environment in their national constitutions or domestic legislation, and that several regional and national courts have pronounced on it. In paragraph 392 the Court acknowledged the recognition of the right in General Assembly resolution 76/300 of 28 July 2022, which was adopted with 161 votes in favour, 8 abstentions, and no votes against – I will come back later on the relevance of this resolution.
- The Court then concluded, in paragraph 393, that:
 “a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.”
- This statement is at least threefold. First, it constitutes an important acknowledgment, even if an implicit one, of the existence of this right. Second, in line with the other elements of the Court's human rights approach explained above, this statement emphasises the interdependent and complementary relationship between climate law, the right to a clean, healthy and sustainable environment, and other human rights.
- This statement of the Court also declares that its realisation is a prerequisite to the enjoyment of other human rights, and thus situates it within the larger regime of obligations in relation to climate change described by the Court in this Advisory Opinion.
- Finally, this statement about the right to a clean, healthy and sustainable environment emphasises the factual and legal connection between the protection of the environment and the realisation of human rights.

Separate Opinion: Right to a Clean, Healthy, and Sustainable Environment

- While I agree with all findings of the Court with respect to right to a clean, healthy, and sustainable environment, in my Separate Opinion to the Advisory Opinion, I regretted that

the Court, while accepting the existence of the human right to a clean, healthy and sustainable environment, was perhaps too cautious and did not find that this right is already a norm of customary international law. This – despite the existence of what I consider compelling evidence of the customary status of this right. Let me explain briefly.

- During the written proceedings, 22 submissions before the Court affirmed the customary nature of the right to a clean healthy and sustainable environment.¹ At the end of the public hearings on 13 December 2024, I posed the following question:
 “Some participants have argued, during the written and/or oral stages of the proceedings, that there exists the right to a clean, healthy and sustainable environment in international law. Could you please develop what is, in your view, the legal content of this right and its relation with the other human rights which you consider relevant for this advisory opinion?”
 Fifty-four replies were received by the Court to my question, which helped me understand better the customary character of the right.
- The customary character of this right is induced from the obvious (in my view) existence of uniform and widespread State practice and *opinio juris*. I have provided a more comprehensive presentation of that evidence in my Separate Opinion; however, I will give here a brief explanation of some of the key elements of that opinion.

State Practice:

- Of particular importance in terms of State practice is the multilateral recognition of the right to a clean, healthy, and sustainable environment. Already in 1972, the Stockholm Declaration, in its Principle I, affirmed the right to live in an environment conducive to dignity and well-being (paragraph 30 of the Separate Opinion). The 1992 Rio Declaration and the 2007 United Nations Declaration on the Rights of Indigenous Peoples also affirmed this right (paragraph 30 of the Separate Opinion).
- Important recognition of the right was made in October 2021 when the Human Rights Council explicitly recognized “the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights”. Following this, in July 2022, the General Assembly adopted Resolution 76/300 expressly recognizing “the right to a clean, healthy and sustainable environment as a human right”. The number of votes in favor of its adoption (161 votes), as well as the small number of abstentions (only 8) and the absence of any vote against are also relevant (paragraphs 30 and 42 of the Separate Opinion).
- Important strides for the recognition of the right to a clean, healthy and sustainable environment can be found in regional systems, including in the Americas – through the San Salvador Protocol, the Escazu Agreement, the American Declaration on the Rights of Indigenous Peoples; Europe – through the Aarhus Convention; the Arab Charter on Human Rights; the African Charter on Human and Peoples’ Rights and the Maputo Protocol on the Rights of Women in Africa, and in Asia through the ASEAN Declaration on Human Rights (paragraphs 32-37 of the Separate Opinion).

¹ See the Written Statements of African Union, Antigua and Barbuda, Bangladesh, Bolivia, Cook Islands, Comoros, COSIS, Costa Rica, Ecuador, European Union, Gambia, IUCN, Myanmar, Namibia, OACPS, Papua New Guinea, Saint Lucia, Samoa, Sri Lanka, Thailand, Tuvalu, Vanuatu.

- I also conducted a survey of the domestic implementation of the right to a clean, healthy, and sustainable environment. The cumulative body of evidence consists of:
- - o 110 States who have affirmed the right to a clean, healthy and sustainable environment in their Constitutions, of which 92 States do so with explicit constitutional recognition,² and 18 States with implicit recognition of the right;³
 - o 104 States which have corresponding legislative protection through instruments that either expressly affirm the right or establish legal frameworks that give effect to its essential elements of the right (paragraph 39 of the Separate Opinion).⁴ Of these 104, 83 States have both constitutional (either explicit or implicit) and legislative recognition.⁵
 - o Additionally, 134 States have a treaty-based recognition of the right to a clean, healthy, and sustainable environment.⁶ Of these, 70 States simultaneously provide for the right to a healthy environment across all three axes: Constitution, legislation and treaty.⁷

² Algeria, Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czechia, Democratic Republic of the Congo, Dominican Republic, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, Gabon, Georgia, Greece, Guinea, Guyana, Honduras, Hungary, Indonesia, Iran, Iraq, Jamaica, Kenya, Kyrgyzstan, Latvia, Malawi, Maldives, Mali, Mauritania, Mexico, Mongolia, Montenegro, Morocco, Mozambique, Nepal, Nicaragua, Niger, North Macedonia, Norway, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Sudan, Thailand, Timor-Leste, Togo, Tunisia, Türkiye, Turkmenistan, Uganda, Ukraine, Venezuela, Viet Nam, Zimbabwe.

³ Bangladesh, Cyprus, El Salvador, Estonia, Ghana, Guatemala, India, Ireland, Italy, Liberia, Lithuania, Malaysia, Namibia, Nigeria, Pakistan, Panama, Sri Lanka, United Republic of Tanzania.

⁴ Angola, Argentina, Armenia, Azerbaijan, Belarus, Belgium, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czechia, Democratic Republic of the Congo, Djibouti, Dominican Republic, Ecuador, El Salvador, Eritrea, Estonia, Finland, France, Gabon, Gambia, Georgia, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, India, Indonesia, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Lithuania, Madagascar, Malawi, Mauritania, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Palau, Panama, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Tajikistan, Thailand, Timor-Leste, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Republic of Tanzania, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

⁵ **Explicit:** Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czechia, Democratic Republic of the Congo, Dominican Republic, Ecuador, Finland, France, Gabon, Georgia, Greece, Honduras, Hungary, Indonesia, Kenya, Kyrgyzstan, Latvia, Malawi, Mauritania, Mexico, Mongolia, Montenegro, Morocco, Mozambique, Nicaragua, Niger, North Macedonia, Norway, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Sao Tome and Principe, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Thailand, Timor-Leste, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, Venezuela, Viet Nam, Zimbabwe. **Implicit:** Cyprus, El Salvador, Estonia, Guatemala, India, Liberia, Lithuania, Nigeria, Panama, United Republic of Tanzania.

⁶ Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Eswatini, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Honduras, Hungary, Iceland, Iraq, Ireland, Italy, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Libya, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Mexico, Montenegro, Mozambique, Namibia, Netherlands, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Republic of Moldova, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, South Sudan, Spain, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Yemen, Zambia, Zimbabwe.

⁷ Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Cabo Verde, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Greece, Guatemala, Honduras, Hungary, Kenya, Kyrgyzstan, Latvia, Liberia, Lithuania, Malawi, Mauritania, Mexico, Montenegro, Mozambique, Nicaragua, Niger, Nigeria, North Macedonia, Norway, Panama, Paraguay, Peru, Portugal, Republic of Moldova, Romania, Rwanda, Sao Tome and Principe, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Togo, Tunisia, Turkmenistan, Uganda, Ukraine, United Republic of Tanzania, Zimbabwe.

- This results in **a total of 164 States from all world regions affording at least one form of legal protection**, and this demonstrates a general and representative pattern of conduct directed towards the protection of a clean, healthy and sustainable environment (paragraph 40 of the Separate Opinion).
- The Court acknowledged in paragraph 391 of the Advisory Opinion the widespread recognition of the right by over 100 States, but did not take the next step of acknowledging the existence of the *opinio juris* and, eventually, of the customary status of the right.

Opinio Juris:

- Regarding the existence of *opinio juris*, the abovementioned national recognition of the right to a clean, healthy, and sustainable environment indicates its existence. The States which did it recognised the right through legally binding duties enforceable through administrative, civil, and criminal proceedings in those States. The language employed in a wide range of national Constitutions and legislative instruments unequivocally demonstrates the existence of *opinio juris* and supports an inference that States regard such obligations as having normative character.
- Further, the voting patterns in multilateral fora, particular with regard to General Assembly Resolution 76/300 mentioned above, reinforce the normative character of the State practice described and provides “evidence important for establishing the existence of a rule or emergence of an *opinio juris*”, in the words of the *Nuclear Weapons Advisory Opinion*.
- A substantial number of States, across all regions and legal traditions, engage in the recognition and implementation of the right to a clean, healthy and sustainable environment not as a mere matter of policy discretion or discretionary political preference, but out of a sense of legal duty.
- In conclusion, I believe that the statements, treaty participation, national constitutional and legislative provisions, judicial reasoning and official submissions form a convincing body of evidence of State convergence on the recognition of the right to a clean, healthy and sustainable environment as a customary norm.

Conclusion

- Overall, the Court’s Advisory Opinion made some important steps in regard to human rights in the context of climate change.
- The most notable elements of the human rights approach offered by the Court are, first, the rejection by the Court of the argument that climate treaties represent *lex specialis*, thus excluding the operation of other rules of international law. This allows for the conclusion that human rights law applies in the context of climate change. The second is the Court’s explanation of the relationship and interplay between various sources of law in this context since international human rights law must inform State’s obligations under climate treaties, as well as under customary international law, and vice versa.
- Third, the pronouncements of the Court regarding the existing right to a clean, healthy and sustainable environment may contribute to further evolutions, including its wider recognition as a norm of customary international law.

- I note that the follow-up resolution (A/80/L.65) to the 2025 ICJ Advisory Opinion, adopted on 20 May 2026 with 141 votes in favour, 8 against and 28 abstentions, makes a series of relevant references to these issues.
- For instance, its preamble includes a reference to the UN General Assembly resolution 76/300 of 28 July 2022 which recognized the right to a clean, healthy and sustainable environment as a human right, and “recall[es] the finding of the Court that the right is a precondition for the enjoyment of other human rights, such as the rights to life, health, and an adequate standard of living, including access to water, food and housing”.
- At the same time, while “[a]cknowledging the Court’s finding that the principle of *lex specialis* does not lead to a general exclusion by the climate change treaties of other rules of international law”, it notes that the most directly relevant applicable law governing States’ obligations in respect of climate change also includes the international human rights law.
- Importantly, its operative paragraph 2 calls upon all States to comply with their international obligations to ensure the protection of the climate system, such as “[r]especting and ensuring the effective enjoyment of human rights of peoples and individuals under international law, by taking necessary measures to protect the climate system and other parts of the environment.” Last, but not least, it recalls in its operative paragraph 8 the Court’s finding that States have obligations under the principle of *non-refoulement* where there are substantial grounds for believing that there is a real risk of irreparable harm to the right to life.
- Thank you for your attention!

Jannika JAHN
University of Trier / *Universität de Trèves*



Jürgen Fehrmann

The Right to a Healthy Environment for Europe?

Prof. Dr. Jannika Jahn LL.B. (London)



Outline

Doctrinal gap

Conceptual
bridge

Institutional
limits



Doctrinal gap



The Question After *KlimaSeniorinnen*

If Article 8 ECHR can address climate change, why add a right to a healthy environment?

Answer:

Because the triple planetary crisis often begins before individual harm materialises

Thesis:

A right to a healthy environment only adds value if it translates systemic environmental problems into duties of precaution



The ECHR's Grammar: Individualised Harm

The ECHR is powerful where environmental harm can be translated into:

- a victim
- a protected right
- a sufficient level of seriousness
- a direct connection

But: It does not protect the environment as such



Where is the gap?

Existing ECtHR case law can address systemic environmental harm — but usually only once its consequences have become visible as Convention harm

Examples:

- *Cordella v. Italy* — industrial emissions from the ILVA steel plant
→ serious risks to health and private life; lack of effective remedies.
- *Di Sarno v. Italy* — failure to manage waste collection and disposal
→ impact on private life and home under Article 8.
- *Cannavacciuolo v. Italy* — large-scale toxic waste dumping
→ failure to protect residents' lives under Article 2; general measures required.
- *Tătar v. Romania* — cyanide pollution risk from mining activity
→ precaution enters the Court's reasoning, but still through Article 8.



Where is the gap?

The pattern

Existing case law often addresses the consequences of harmful economic activity.

But the ecological crisis begins earlier

- in production systems
- consumption patterns
- subsidies
- supply chains



Where is the gap?

The Triple Crisis Is Systemic

Climate change, biodiversity loss and pollution are not structured as:

- one harm
- one victim
- one moment

They are:

- Diffuse
- Cumulative
- long-term
- unequally distributed
- often irreversible
- driven by public and private actors



Where is the gap?

Problem:

Legislation alone may come too late; fragmented subjective rights often do not capture systemic ecological failure.



Why Environmental Law and Aarhus Are Not Enough

Environmental law knows the environment, but often lacks strong rights-based enforcement

Human rights law knows enforcement, but often lacks the environment as a collective object

Aarhus matters — but it is primarily procedural

It gives the public a voice

It does not always give the public a substantive claim of failed environmental stewardship



What *KlimaSeniorinnen* Opened

The ECtHR moved from individual harm to framework review

- Adjustment of admissibility / qualified admissibility of associations
- Expansion of Article 8 protection to systemic and future-oriented climate risks — without recognising a free-standing right to a safe climate
- New form of regulatory framework review
 - a coherent regulatory framework
 - credible pathways
 - intermediate targets
 - implementation mechanisms
 - accountability and review

Open question:

Is *KlimaSeniorinnen* a climate-specific judgment — or a prototype for systemic environmental precaution?

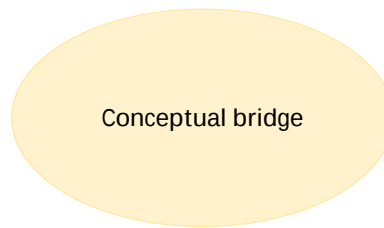


International Legal Context

There is no single global model

The Inter-American model is more collective, ecological and expansive

The ICJ legitimises the human-rights turn, but does not prescribe an ECHR model



A Right to a Healthy Environment fit for a Liberal Framework?

A right to a healthy environment is not a classical liberal right
It does not primarily protect the autonomous individual against isolated state interference.

But it is not pure collectivism either
It protects the ecological conditions under which individual freedom is possible.

→ A solidarity right with a freedom-protecting function.

Public Trust: The Conceptual Bridge

A right to a healthy environment could ask earlier: Is the state regulating the systems that predictably produce ecological degradation?

A right to a healthy environment need not mean unlimited public-interest litigation.
It can be understood as enforcement of public trust.

The state is not owner of ecological foundations. It is trustee.

The beneficiaries are:

- the public
- vulnerable groups
- future generations
- the ecological conditions of equal freedom

Not actio popularis — actio fiduciaria

Public Trust and Private Power

In several jurisdictions, the public trust doctrine generates fiduciary duties of governance (India, California and Pennsylvania)

The fiduciary duty is not a duty of state self-restraint, but a duty of protection and preservation of the environment for the benefit of present and future generations

Difference to existing positive obligations:

The object of protection is environmental elements themselves, without construing rights of nature; the right combines individual and common interests

ECHR positive obligations protect individuals from private environmental harm. Public trust protects ecological commons from private capture.

Public Trust and Private Power

It is also a duty to regulate private depletion of ecological commons

Duty of protection: maintain an effective framework to prevent and remedy degradation, including by restraining harmful private uses.

Duty of loyalty: prevent private capture

Duty of prudence: act with care, scientific attention and continuing supervision before harm becomes irreversible

Duty of impartiality: Give due regard to all beneficiaries, including vulnerable groups and future generations

Comparative anchors: *National Audubon* — continuing supervision; *M.C. Mehta* — anti-capture; *Robinson Township / PEDF* — prudence, loyalty, impartiality.



Institutional limits



The Limit: Translation, Not Transplantation

A right to a healthy environment cannot simply be imported into the ECHR
Institutional limits of the ECHR:

- No actio popularis: No abstract public-interest litigation without victim status or a sufficiently close representative link.
- No general ecological super-review: The Court should not decide which environmental policy is best / problem of enforceability and legal clarity
- No automatic rights of nature: Recognising non-human species or components of nature as rights-holders would be a transformative design choice, not a simple addition to the ECHR.



The Limit: Translation, Not Transplantation

Consequence: Tailored review

Not: Which environmental policy is best?

But: Has the state adopted a coherent, science-based and enforceable framework?

Intensity of review may vary:

- from manifest failure control in weak-consensus areas
- to more structured framework review where science, international commitments and state self-binding are dense.

Institutional choice depends on the design of the right



Conclusion

Is there a gap?

Yes. Existing ECHR doctrine can address environmental harm, but often only once systemic degradation has become Convention harm

Is there a conceptual bridge?

Yes. The ECtHR's approach in *KlimaSeniorinnen*; the doctrine of public trust offers a way to translate collective ecological interests into duties of state stewardship

Are there institutional limits?

Yes. The ECHR cannot simply absorb an unlimited actio popularis, rights of nature, or general ecological super-review.

Conclusion: A tailored right to a healthy environment should extend human-rights protection to systemic environmental problems, while preserving subsidiarity, democratic choice and the ECtHR's institutional role