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He Who Laughs Last Laughs Best? A Contemporary Crusade on Public Interest, Climate Change and the Request of the Advisory Opinion of the ICJ

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Abstract: Climate change presents a significant challenge for both the international community and international law, constituting a clear public interest. In particular, the ICJ has been requested to provide an advisory opinion on the obligations related to climate change and the ramifications of their breach, considering not only interactions between states but also the rights and interests of peoples and individuals from both present and future generations. The ICJ is anticipated to be the last to deliver its advisory opinion, after the rulings of the International Tribunal of the Law of the Sea and the Inter-American Court of Human Rights. This paper is not envisioned as a predictor of the Court's potential pronouncements, but rather as a discussion on the issues the Court should relate, considering the current advances in public-interest international litigation and the anticipation of future contentious cases before the Court. As climate change obligations arise from merging environmental and human rights rules into an evolving legal realm, their occasionally oppositional dynamics should be central to the deliberations on substantive obligations. Concurrently, distinctive procedural challenges may loom contingent on how the Court addresses the substantive rules and obligations of states concerning climate change. This paper concludes with a reflection on the necessity for a bold Court, although with a prudent approach to the potentially extensive implications of public interest litigation.

Keywords: Public Interest in International Law, Climate Change, Advisory Opinion, Human Rights, Common But Differentiated Responsibilities (CBDR), *Erga Omnes* Obligations

(A) A ROADMAP TO PUBLIC INTEREST, CLIMATE CHANGE, CHANGE, AND ADVISORY PROCEEDINGS

The traditional understanding of international legal relations, characterised as reciprocal or synallagmatic, either within bilateral or multilateral bonds, has been enhanced by the existence of common interests.[1] These are embodied in public goods

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Multiple bibliographical references in the same footnote are ordered chronologically, and then alphabetically.

1 Specifically on environmental rules as a common concern, see J. Brunnée, 'Common Areas, Common Heritage, and Common Concern', in D. Bodansky, J. Brunnée & E. Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, Oxford, 2008) 550, at 553-556.

and universal values, governed by contemporary international rules encompassing areas such as human rights, environmental protection, and more to come, such as future international rules on prospective domains like artificial intelligence or cyberspace. In these fields, the eventually compromised state legal rights and interests may appear diffuse and not readily individualised. Sometimes, the directly impacted parties are individuals, irrespective of nationality, extending even to future generations, rather than the existing states themselves. Consequently, the settlement of disputes concerning the safeguarding of these common interests has traversed an evolutionary trajectory to adapt to these transformations.

(1) A Contemporary Crusade: Fighting for (on behalf of) Public Interest

Within domestic forums, public interest litigation (PIL) entails legal action "designed to serve (…) in cases where those affected by a wrong cannot afford to bring legal action themselves or for who for other reasons do not have access to the legal system. PIL is unique in that these legal actions can be brought by third parties, including NGOs, on behalf of a large group of affected persons or on behalf of the general public."[2] As such, this approach reflects a predominantly procedural understanding, with PIL addressing factual and legal standing deficiencies (*ius standi*).

Recently, a trend has emerged in public international law concerning PIL, which is predicated either upon interstate claims presented before international tribunals or through both individual and interstate applications to human rights courts. Consequently, scholarly literature addressing this trend is rapidly expanding.[3] The majority of these cases focus on the concept of *erga omnes* obligations, the ius standi in interstate proceedings, and thereby an expanded responsibility framework for *erga omnes* obligations. In that line, legal militia have assembled to combat genocide, which is viewed as the true moral and legal crusade of our era.[4]

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2 European Center for Constitutional and Human Rights, at https://www.ecchr.eu/en/glossary/public-interest-litigation/.

3 A discernible evolution in approach can be observed between 2010's and 2020's: E. Katselli, *The Problem of Enforcement in International Law. Countermeasures, the Non-Injured State and the Idea of International Community* (Routledge, 2010); and S. Villalpando, 'The Legal Dimension of the International Community: How Community Interests Are Protected in International Law', 21 *European Journal of International Law* (2010) 387 419 [https://doi.org/10.1093/ejil/chq038]; F. Lenzerini & A. F. Vrdoljak, *International Law for Common Goods: Normative Perspectives on Human Rights, Culture and Nature* (Hart Publishing, Oxford, 2014); T. Ruys, 'Legal Standing and Public Interest Litigation Are All *Erga Omnes* Breaches Equal?', 20 *Chinese Journal of International Law* (2021), 457 498 [https://doi.org/10.1093/chinesejil/jmab030]; S. Thin, 'Community Interest and the International Public Legal Order' 68 Netherlands International Law Review (2021) 35 59 [https://doi.org/10.1007/s40802-021-00186-7]; J. Bendel & Y. Suedi (Eds.), *Public Interest Litigation in International Law* (Routledge, 1st ed., 2023) [https://doi.org/10.4324/9781003433460]. Although literature in journals is becoming abundant, an excellent reading to start with, specifically focussed on the ICJ, may be found in the 'Symposium: Public Interest Litigation at the International Court of Justice', in The Law & Practice of International Courts and Tribunals (Volume 22, Issue 2, 2023), at. 229-337.

4 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 7 states intervening)*, application of 11 November 2019, ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel)*, application of 29 December 2023; ICJ, *Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany)*, application of 1 March 2024.

The notable distinction from the aforementioned domestic PIL is that the international perspective on PIL incorporates a substantive aspect alongside the procedural dimension. It not only pertains to an *expanded* legal ius standi, but concurrently *confines* it to the upholding of obligations of an *erga omnes* character, intended to protect common interests. International PIL constitutes not solely a procedural instrument, but particularly a mechanism for asserting and safeguarding public goods and universal values.

While the advisory function does not encompass a singular problem-solving scenario in the strict sense of litigation, it addresses the definition of rights and obligations in abstract terms and, consequently, delineates the roadmap for potential future contentious disputes. Consequently, the advisory function of international courts and tribunals is congruent with the promotion of public interests. Historically, advisory opinions (AO), often referred to as the "soft litigation strategy",[5] have articulated a range of International Law (IL) principles driven by statehood concerns (such as sovereignty and self-determination), human-centered issues, or both,[6] which reflect common interests. Presently, the advisory function of several international tribunals is particularly focused on determining states' climate change obligations, an uncontested instance for PIL.[7]

Between 12 December 2022 and 4 April 2023, the international litigation arena experienced a significant influx of requests for AO from the International Tribunal of the Law of the Sea (ITLOS),[8] the Inter-American Court of Human Rights (IACtHr),[9] and the International Court of Justice (ICJ),[10] in that specific sequence, concerning state obligations related to climate change. Simultaneously, several individual applications were under review at that precise time by the European Court of Human Rights (ECtHR)

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5 M. Stavridi, 'The Advisory Function of the International Court of Justice: Are states Resorting to Advisory Proceedings as a "Soft" Litigation Strategy?', *Journal of Public and International Affairs* (22 April 2024).

6 For the ICJ, suffice it to mention the very recent Advisory Opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, of 19 July 2924 and the previous Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, of 25 February 2019. The connection between AO and PIL looming natural in a sense, it should not be deemed automatic, as the cases of ICJ's AO on UN Administrative matters showcase. In the case of ITLOS, the low number of AO already delivered does not allow to determine the PIL profile of the advisory function. In our opinion, the InterAmerican Court of Human Rights Advisory Function results in a clear exercise for continuing PIL. This connexion, nevertheless, is to be further explored. An initial question could be 'What qualifies an advisory proceeding as PIL: the very nature of the proceedings, the participation there-in or the nature of the topic under analysis?'.

7 The body of scholarly literature concerning climate change litigation is expanding rapidly, providing both domestic comparative analyses and international frameworks. These extend across various domains including human rights, trade, and criminal responsibility, as well as more traditional interstate jurisdictions such ITLOS and ICJ. For a comprehensive review, refer to I. Alogna, Ch. Bakker, and J.-P. Gauci (eds.), *Climate Change Litigation: Global Perspectives* (Brill, 2021).

8 ITLOS, Case n. 31, *Request for an Advisory Opinion submitted by the Commission of Small Island states on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, introduced on 12 December 2022.

9 IACtHR, *Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile*, 9 January 2023.

10 A/RES/77/276, 4 April 2023, *Request for an advisory opinion of the International Court of Justice on the obligations of states in respect of climate change*, ICJ, *Obligations of states in respect of Climate Change*, Request for Advisory Opinion, 12 April 2023.

against one,[11] or even multiple,[12] state parties to the European Convention on Human Rights (ECHR) pertaining to climate change-related cases.

While the ECtHR rendered decisions on the three principal climate change cases submitted to the Grand Chamber on 9 April 2024,[13] and the request to the ITLOS was honored on 21 May 2024,[14] the proceedings before the IACtHR and the ICJ remain unresolved. It appears that the AO from the ICJ may be the final one to be issued. This is because the ICJ request was the last to be submitted, and the schedule for the written and oral proceedings is progressing accordingly.[15]

(2) Pursuing the ICJ's Holy Grail on Climate-Change state Obligations

Pursuant to the request,[16] the Court is tasked with addressing an intricate array of obligations about climate change.

> (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?
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> (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, concerning:
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> (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?

In the instance of the IACtHR's AO request, intellectual stimulation is already provided through the written submissions and the public recordings of oral

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11 ECHR, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* (no.53600/20); ECHR, *Müllner v. Austria* (no. 18859/21); ECHR, *Carême v. France* (no. 7189/21); ECHR, *Greenpeace Nordic and Others v. Norway* (no. 34068/21); ECHR, *The Norwegian Grandparents' Climate Campaign and Others v. Norway* (no. 19026/21); ECHR, *Engels v. Germany* (no. 46906/22).

12 ECHR, *Duarte Agostinho and Others v. Portugal and 32 Others* (no. 39371/20); ECHR, *Uricchio v. Italy and 31 other states* (application no. 14615/21) and ECHR, *De Conto v. Italy and 32 other states* (no. 14620/21); ECHR, *Soubeste and 4 other applications v. Austria and 11 other states* (nos. 31925/22, 31932/22, 31938/22, 31943/22, and 31947/22).

13 On that date, the ECHR adopted inadmissibility decisions on *Duarte Agostinho and Others* and *Carême*, while a judgement was passed concerning *Verein Klimaseniorinnen Schweiz and Others*.

14 ITLOS, Case n. 31, *Request for an Advisory Opinion submitted by the Commission of Small Island states on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal)*, Advisory Opinion of 21 May 2024, along with five declarations from the Judges Jesus, Pawlak, Kulyk, Kittichaisaree and Infante Caffi.

15 While the Inter American Court held oral audiences between 23 and 25 April 20224 in Barbados and on 24 and between 26 and 28 May 2024 in Brazil, the ICJ will hold oral proceedings from 2 to 13 December 2024 in The Hague.

16 For an examination of the request's historical context, consult M. Wewerinke-Singh, A. Garg & J. Hartmann, 'The advisory proceedings on climate change before the International Court of Justice. Questions of International Law', 102 *QIL, Zoom-in* (2023) 23-43, at 25-28.

presentations.[17] Conversely, the ICJ has yet to disclose the 91 written submissions received and the 62 written comments subsequently logged.[18] One hundred and ten participants are scheduled to present their oral arguments, comprising ninety-eight state delegations,[19] which include a joint statement from five Nordic countries, alongside twelve organizations. Meanwhile, beyond analysing the phrasing of the request,[20] there exists minimal public material from the ICJ's proceedings to scrutinize at the time of this reflection. Investigating the potential content of the forthcoming ICJ's AO on climate change becomes an almost unattainable pursuit, akin to a quest for the Holy Grail.

However, a positive aspect emerges, as the open context provides substantial room for personal musing. Lacking prophetic abilities, this should not be interpreted as a prognostic or clairvoyance. We present several reflections that the Court is neither obliged nor anticipated to consider in her advisory opinion according to the request *ad literam.* Considering the concept of PIL and established practices in international litigation, two distinct sets of questions should be examined, explicitly or implicitly.

On the one hand, letter a) of the request invites the Court to elaborate on the substantive aspects of the legal regulation concerning climate change. We do not intend to replace the Court's function; instead, we aim to scrutinize a transverse agenda concerning the substantive dimension of climate change and PIL (B. *Hidden in Plain Sight: Substantive Public Interest of Climate Change*). We will address letter b) of the request, focusing on the ramifications of a breach of the obligations, thereby providing a framework to develop insights on the procedural dimension of a prospective AO, in line with current practice associating PIL predominantly with procedural matters, such as *ius standi*. (C. *Going Too Far Too Quickly? Procedural Public Interest on Climate Change*).

The exercise delineated in Sections B and C might initially seem ambitious, given that the CIJ is unlikely to address the issues in the proposed way. However, we intend to conclude with a realistic and balanced approach. The opportunities and implications of the various potential pathways, whether expansive or limited, will be evaluated despite

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17 All written contributions were made public before the oral proceedings, at https://www.corteidh.or.cr/observaciones_oc_new.cfm?nId_oc=2634. The oral audiences video can be viewed at https://vimeo.com/corteidh.

18 According to Article 106 of the Rules of the Court, the written contributions and comments may be made public at the discretion of the Court, either 'on or after the opening of the oral proceedings.' However, certain contributions, mostly from nongovernmental institutions, have already been disseminated and published by specialized think tanks, such as the Sabin Center for Climate Change. Practice Direction XII establishes that 'Where an international nongovernmental organization submits a written statement and/or document in advisory proceedings on its own initiative, such statement and/or document is not to be considered part of the case file'. Those documents will be made accessible, although they will be treated as 'publications'.

19 Exceptionally, two states who submitted written statements will not participate in the oral arguments (Madagascar, Argentina). On the other hand, an additional 14 countries and one organization that did not file written statements will participate in the oral arguments (Cote d'Ivoire, Dominica, Fiji, Guatemala, Jamaica, Malawi, Maldives, Myanmar, the Pacific Community, Palestine, Panama, Senegal, Sudan, Syria, and Zambia). See Jon McGowan, '88 Countries Will Present Oral Arguments In International Court's Climate Change Opinion', *Forbes* (22 October 2024) updated with the ICJ Press Release 2024/72, of 8 November 2024.

20 A comparison between the requests to the ICJ's and IACtHR's is also detrimental to our effort. While the questions referred to the regional HR Court are extremely detailed, exposed throughout 14 pages, the request submitted to the ICJ is barely described in two hundred words.

the current uncertainty regarding the Court's stance at the time of delivering her AO (D. *Getting to a Close: a Public-Interest-In-Waiting at the Court*).

(B) HIDDEN IN PLAIN SIGHT: SUBSTANTIVE PUBLIC INTEREST OF CLIMATE CHANGE

As previously noted, this discussion will not delve into the particular obligations that the International Court is tasked with interpreting, including those related to prevention, precaution, reduction, control, monitoring, restoration, due diligence, and cooperation. The advisory opinion delivered by ITLOS in 2024[21] provides a judicious and relevant precedent for anticipating the International Court of Justice's approach towards the intricacies of climate change obligations. This is particularly pertinent as the General Assembly has situated the ICJ's inquiry within the framework of the United Nations Convention on the Law of the Sea and the obligation to safeguard and maintain the marine environment, among other legal references.

Two cross-cutting issues, hidden in plain view, have attracted our attention. First, climate change transcends the boundaries of traditional environmental legal issues, extending into other disparate legal domains.[22] As the text of the request depicts, it is the case for human rights law, wherein extraterritoriality increasingly assumes the role of a standard rather than an anomaly (*1. Something Larger than Environmental Obligations: Climate Change, Human Rights, and Extraterritoriality*). Second, the notion of common but differentiated responsibilities (CBDR) should be acknowledged as an integrated catalyst, transforming homogeneous, monolithic climate change rules into a diverse spectrum of varied responsibilities (*2. Same Rules for an Asymmetric Outcome: the Common But Differentiated Responsibilities Principle*).

(1) Something Larger than Environmental Obligations: Climate Change, Human Rights, and Extraterritoriality

The International Court of Justice (ICJ) has established a significant body of jurisprudence on environmental issues. However, the judicial engagement with climate change introduces a broader perspective. It encompasses the protection of a more extensive range of shared interests and values about the living conditions of current and future generations in a manner comparable to the Court's deliberation on the legality of the threat or use of nuclear weapons in 1996.[23] In particular, this includes examining

[21] We defer to the ITLOS' advisory opinion itself, along with the contribution of Prof. Dr. Eduardo Jiménez Pineda to this Agora, entitled 'The UNCLOS as a legal living instrument to combat climate change and its deleterious effects: the specific obligations of state Parties according to the interpretation of ITLOS'.

[22] R. M. Fernández Egea, 'La función consultiva de la CIJ al servicio de la lucha contra el cambio climático', in S. Torrecuadrada García-Lozano and E. M. Rubio Fernández (dirs), *La contribución de la Corte Internacional de Justicia al imperio del derecho internacional en tiempos convulsos: Aproximaciones críticas* (Thomsom Reuteres, Aranzadi, 2023) 209, at 230; [https://doi.org/10.1093/ejil/chqo38]; F. Jiménez García, 'Cambio climático antropogénico, litigación climática y activismo judicial: hacia un consenso emergente de protección de derechos humanos y generaciones futuras respecto a un medio ambiente sano y sostenible', 46 *REEI* (2023) 7-61, at 28-42 [DOI: 10.36151/reei.46.01].

[23] ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996.

potential related human rights violations, not being excluded the hardships and implications for human populations due to possible inundation and the disappearance of territorial states.

In this context, the legal framework circumscribing the AO is of utmost importance. While the ITLOS advisory opinion had a clear and constricted legal reference, the Convention on the Law of the Sea (the "UNCLOS"), the Interamerican Court was expressly requested to consider an enlarged set of rules, including the Paris Agreement.[24] Besides, the IACtHR has abundant practice to broaden its legal referential framework outside the American Convention of Human Rights through the so-called Interamerican *corpus iuris*. Having already reached out to environmental treaties and customary rules in the recent La Oroya decision[25], the Court will easily include these as an interpretative tool for the forthcoming AO. The request to the ICJ frames a wide legal landscape to which refer when analysing the climate change state obligations:

> Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

Nevertheless, even in its absence, the ICJ appears best positioned among the three tribunals for the bigger picture on overarching obligations related to climate change, considering that, unlike the other two court's jurisdiction, ICJ's is not constrained *ratione materiae*.

Climate change is attributed to both natural and anthropogenic causes. The Advisory Opinion seeks to define state obligations to mitigate the anthropogenic causes of climate change and their effects. Conceptually, substantive rules on climate change could be embodied in specific norms for that matter, which are presently non-existent. Therefore, state legal obligations regarding climate change and its detrimental effects must be extracted from existing obligations across a range of subjects. Undoubtedly, the Court must prioritize environmental law as the central framework from which limitations and consequences arise. Additionally, given the direct correlation between climate change and human living conditions, the regime in question must necessarily be linked to fundamental obligations in human rights (HR) law as well as international humanitarian law, in the context of armed conflict.

While the human rights international law regime, from a regional perspective, constitutes the eminent domain for the IACtHR, the other two Courts have a different involvement in

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[24] IACtHR, *supra* n. 9. Besides some references throughout the introduction (in page 2, and references in notes 2, 7 and 31), the question A.2 specifically refers to the Paris Agreement.

[25] IACtHR. *Caso Habitantes de La Oroya Vs. Perú. Excepciones Preliminares, Fondo, Reparaciones y Costas.* Sentencia de 27 de noviembre de 2023. Serie C No. 511, paras. 128 and 143 (English version still not available). Additionally, this judgment refers extensively to climate change and could be considered a prelusive test for its AO.

the HR dimension of climate change. The ITLOS' AO has barely referred to the matter[26]. The ICJ's future AO is supposed to be committed to it broadly. Not only has this Court deepened its jurisprudence on HR law when it was the subject matter of the case[27], but she has also accepted this HR perspective in cases where jurisdiction was not based on an HR treaty[28]. In addition, the request of the General Assembly expressly requires the Court to frame the obligations of climate change into 'the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights' and 'the rights recognized in the Universal Declaration of Human Rights'.

A significant issue arises from this context, namely how the International Court of Justice (ICJ) would address extraterritoriality concerning both environmental law and human rights law.

Extraterritoriality has historically been perceived as a unilateral extension of state power, frequently regarded as excessive. It is more readily accepted within the realms of legislative reach and judicial scope when a reasonable connection to the extraterritorial matter is present and repudiated when it comes to enforcement powers. Universal jurisdiction remains a separate issue. Within this context, extraterritoriality seems to support and legitimize the creation of new domestic regulations connecting human rights and associated environmental responsibilities, particularly of business, abroad.

Conversely, extraterritoriality has been adopted as a mechanism by HR bodies and Courts to control and oversee the state's exercise of power outside its territory. On that note, the HR extraterritoriality does not confer upon the state the authority to expand its jurisdiction, reading that expansion as a mere factual departing point. Quite the opposite, it encompasses an international obligation incumbent upon the state to guarantee that, when exercised extraterritorially under certain circumstances, its legislative, judicial, and even enforcement powers abide by the corresponding HR obligations. In this sense, HR extraterritoriality is not at the discretion of the state but imposed on him by IL rules and IL bodies when interpreting and applying those rules on HR. The extraterritoriality of HR, when circumstances are met, remains under the control of those same courts and bodies. At the same time, HR extraterritoriality does not extend an automatic endorsement, nor a validity control, of the state right to exercise extraterritorial competences, either legislative or judicial, and less of all, enforcing powers.

The developing jurisprudence of human rights courts and bodies identifies various categories or circumstances under which extraterritorial obligations are engaged. Traditionally, *territorial control* (a state enforcing rules over a foreign territory under its very control) has been the primary factor, with *functional control* (command over the

[26] ITLOS, *supra* n. 14, para. 66 solely. However, Judges Pawlak and Infante Caffi dedicate their respective Declarations to discussing the human rights implications of climate change.

[27] See ICJ's past cases based on the Genocide Convention and the Convention on the Elimination of All Forms of Racial Discrimination.

[28] Example of this tendency are the ICJ's cases on consular assistance (*Lagrand* in 2011, *Avena and others* in 2004, *Jadhav* in 2019), where jurisdiction was based on the Vienna Convention on Consular Relations, or *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, where jurisdiction was based in unilateral declarations submitted by both states.

acting agents in foreign territory) ranking second.[29] Currently, the notion of attributing responsibility for human rights violations through the lens of *control over effects* is being explored. This concept could potentially attribute accountability for human rights violations linked to climate change within the territory of a third state.[30]

The central question is whether the International Court of Justice (ICJ) might endorse a framework for the extraterritorial application of human rights (HR) concerning climate change obligations, and if so, one based on the theory of control over the effects recently rejected by the ECHR.[31] Conversely, given that the AO of the IACtHR is likely to be adopted before the ICJ decides upon the request and considering that the former has already examined the concept of extraterritoriality through the theory of effects linking human rights violations to environmental obligations,[32] this development would likely facilitate a progressive approach in this area.

Although improbable at present, such endorsement would effectively reconceptualize the current extraterritorial reach of domestic national legislation and jurisdiction over environmental issues, from being merely a right to rule and/or adjudicate to potentially becoming a duty in the form of an 'obligation to protect' HR within the context of climate change. One must not overlook the associated legal ramifications, particularly if any state interprets this as prompting a novel form of 'humanitarian' intervention. This interpretation would be based on the impact of climate change on HR conditions in third countries, whereby state enforcement authorities would be ascribed an extraterritorial duty to protect and uphold human rights on an international scale, potentially resulting in unforeseen outcomes.

(2) Same Rules for an Asymmetric Outcome: the Common But Differentiated Responsibilities Principle

Small and developing states disproportionately bear the brunt of climate change's impacts, despite contributing minimally to the anthropogenic causes of these recent

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29 J. González Vega, '¿Colmando los espacios de no «Derecho» en el Convenio Europeo de Derechos Humanos? Su eficacia extraterritorial a la luz de la jurisprudencia', 24 *Anuario Español de Derecho Internacional* (2008), 141-175 [https://doi.org/10.15581/010.24.28343]; J. D. Janer Torrens, *Conflictos territoriales y Convenio Europeo de Derechos Humanos, (Aranzadi, Cizur Menor, 2023); E. J. Martínez Pérez, 'Más allá del tradicional enfoque del control efectivo: los renovados vínculos jurisdiccionales que justifican la aplicación extraterritorial de los tratados internacionales de derechos humanos', 46 Revista Electrónica De Estudios Internacionales, 2023 at 171–194* [https://doi.org/10.36151/reei.46.05]; S. Salinas Alcega, 'Aplicación extraterritorial de la Convención Europea de Derechos Humanos. De la jurisdicción, como objeción preliminar, a la responsabilidad', 78 *Revista de Derecho Comunitario Europeo* (2024), at 65-101 [https://doi.org/10.18042/cepc/rdce.78.03].

30 CRC/C/88/D/104/2019, *Chiara Sacchi et al. v Argentina*, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 22 September 2021, para. 10.5.

31 ECHR, *Duarte Agostinho and Others v. Portugal and 32 Others*, dec. 9 April 2024, paras. 184-213.

32 IACtHR, Advisory Opinion OC-23/17, November 15 2017, on the environment and human rights. The extraterritoriality based on the effects is clearly set in the para. 81, although more nuanced and probably restricted in para. 93 to a territorial and functional approach to extraterritoriality. On this Interamerican approach, refer to N. Carrillo, P. Roa & F. Seazu, 'The Scope of the Extraterritorial Obligation to Respect in the Inter-American Human Rights System: An Approach Fully Consistent with the Demands of the Recognition of the Dignity of All Human Beings', 27 *SYbIL* (2023), 73-94 [https://doi.org/10.36151/SYBIL.2024.004].

effects. Furthermore, these states often lack the territorial and financial capacity necessary to mitigate such impacts. It is not coincidental that small insular states have initiated the two requests for advisory opinions to the ITLOS and the ICJ. This pattern is likewise evident in contentious cases within both domestic and international arenas, particularly in relation to human rights litigation.

International environmental law has already dealt with the specific and vulnerable situation of those states through the recognition of the principle of common but differentiated responsibilities (CBDR). It was formalized in the United Nations Framework Convention on Climate Change (UNFCCC). As a differential treatment clause, it has been included in different treaties such as the Montreal Protocol on Substances that Deplete the Ozone layer, the Kyoto Protocol, or more recently the Paris agreement. It is also recognized in international environmental customary law, being initially defined by Principle 23 of the Declaration of the United Nations Conference on the Human Environment 1972.

The complex issue of transporting the CBDR framework to the broader context of climate change arises from the repeated intersection of environmental law with human rights law. It raises the question of whether it is feasible to apply the CBDR principles not only to the scope of environmental obligations but to the human rights obligations intrinsically linked to climate change. A differential treatment clause, such as CBDR, possesses the potential to transform a uniform framework of climate change obligations into a multitude of possible compliance scenarios. It would be highly beneficial for the ICJ to deliberate on this matter as it is likely to become relevant in future contentious cases.

First, the CBDR principle must not be utilized by any state, whether small or developing, as a justification for failing to uphold human rights, particularly those rights recognized as ius cogens norms. Therefore, any derogation or suspension of these rights, as stipulated in the relevant human rights treaty provisions, should be deemed unlawful when allegedly based on the CBDR principle concerning climate change.

Second, attention should be given to the conditions under which the CBDR climate change principle could eventually be invoked in the context of the circumstances precluding wrongfulness in respect of the breach of any international legal obligation related to climate change. Some interpretations in this context should be avoided as to exempt small, developing countries from any share of responsibility based on this principle. The reduced contribution to climate change approach should not per se be considered as granting a right to invoke force majeure, distress or necessity, allowing to breach any other international obligations. As exceptions to responsibility rules, these must be interpreted stringently.

Finally, when examining compliance with international obligations, especially those encompassing negative and positive obligations on human rights, the principle of CBDR should grant greater latitude to small and developing states. Consequently, this principle would support a more flexible appraisal of these states' conduct, meticulously considering the state's margin of appreciation based on its genuine capacity for positive action, hence the broader concept of common but differentiated responsibilities 'and respective capabilities'.

In summary, applying the CBDR principle from environmental law to climate change obligations must not result in the expansion of clauses that permit the circumvention

of international human rights obligations or provide states with a justification to evade their international commitments in any other domain. Concurrently, CBDR should enable a judicious consideration of the extent of effective control by small developing states in fulfilling their international obligations on climate change, encompassing the effective safeguarding of human rights.

(C) GOING TOO FAR TOO QUICKLY? PROCEDURAL PUBLIC INTEREST ON CLIMATE CHANGE

The ICJ has been called to establish the obligations of states "to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases" along with the "legal consequences under these obligations". While the primary focus in this crusade remains a quest to define the obligations substantively, the request also brings to light some procedural matters linked to the secondary rules on responsibility on which the ICJ must elaborate according to the second part of the request. Therefore, within the confines of this short piece, we present two points connected to ius standi (1. *Owning the Obligations v. Defining the Beneficiaries*), and the standard of proof (2. *Attributing Responsibility or Liability Must Be Proven*).

(1) Owning the obligations v. Defining the Beneficiaries

This analysis will explore the ratione personae scope of obligations. An obligation may be conceptualized as a bilateral string connecting the obligor and the beneficiaries. Procedurally, this translates into the inquiry of which parties are entitled to seek protection in the event of non-compliance with the obligation. Consequently, the ICJ's interpretation of the legal nature of climate change obligations — whether they are merely reciprocal or otherwise — will significantly influence future adjudication in this area.

Following the development of the concept of obligations *erga omnes* over several decades, the Court has recognized in *Gambia v. Myanmar* (2022) a significant procedural outcome: the standing of parties not directly affected in a multilateral treaty that protects common interests through *erga omnes* obligations, whose violation is under deliberation[33].

The manner in which the International Court of Justice (ICJ) delineates the substantive obligations associated with climate change poses a formidable challenge. Initially, the Court must ascertain whether its legal framework is conventional or customary in nature, or both.[34] The Secretary-General of the United Nations has already submitted substantial legal documentation to the Court immediately following the registration of the request; additional materials are anticipated to be revealed with the input from states and International Organizations during the oral proceedings slated for December 2024. Subsequently, the Court's analysis may encompass the legal interests safeguarded as a shared interest. Furthermore, the *erga omnes* nature of obligations pertaining to climate

[33] ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar: 7 states intervening)*, Preliminary objections, Judgment of 22 July 2022, at para 106.

[34] J. Brunnée, *supra* n. 1, at 567-572, not being conclusive on the process of transformation of treaty rules into customary in the environmental domain.

change warrants thorough examination. The language in the request unequivocally facilitates this, taking into account intentional ambiguity or vagueness, in the pursuit of clarifying the states' responsibilities to protect the climate system 'for states and for present and future generations.'

On this line of argument, it would not be difficult to accept that violation of a treaty-based climate change-related obligation could be considered in light of article 42.2.ii) ARSIWA.

> A state is entitled as an injured state to invoke the responsibility of another state if the obligation breached is owed to: … b) a group of states including that state, or the international community as a whole, and the breach of the obligation:… ii) is of such a character as radically to change the position of all the other states to which the obligation is owed with respect to the further performance of the obligation.

Furthermore, it remains to be determined whether the Court will recognize the expanded ius standi for third states situated outside the framework of multilateral treaty arrangements, predicated upon customary *erga omnes* obligations, constituting an ultimate *actio popularis* in accordance with article 48 of ARSIWA.

> 1. Any state other than an injured state is entitled to invoke the responsibility of another state in accordance with paragraph 2 if: (a) the obligation breached is owed to a group of states including that state, and is established for the protection of a collective interest of the group; or (b) the obligation breached is owed to the international community as a whole.

Considering the current case law of the ICJ on *erga omnes* obligations, a similar approach for climate change could be more clearly reach from the human rights impact dimension, as scholars remain uncertain about the *erga omnes* nature of environmental obligations originating from principles such as the 'no harm' rule, even when acknowledging the baseline of common interest.[35]

While optimistically envisioning the broadest and most magnanimous affirmation of the shared commitment to safeguarding states, human populations, and future generations from the impacts of climate change, significant risks are apparent. The integration of these components recognition of common interest, *erga omnes* obligations, and an expanded ius standi for non-conventional obligations could transform climate change litigation into a comprehensive and unprecedented legal campaign, 'the mother of all crusades'. This framework would enable a state to initiate legal proceedings against another state on behalf of a third state, individuals, or even future generations, were the ICJ to describe the substantive obligations in such a manner. However, the Court is not, has never been, naïf.[36] Despite the current progressive case law gaining momentum,

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35 J. Brunnée, *supra* n. 1, at 566; 567-572; J. Brunnée, 'International Environmental Law and Community Interests: Procedural Aspects', in E. Benvenisti and G. Nolte (eds.), *Community Obligations in International Law* (Oxford Academic, Oxford, 2018) at 151-175.

36 In *Gambia v. Myanmar* preliminary objections judgment, the ICJ explicitly abstained from differentiating among 'injured state', 'directly injured state', or 'specially affected state', avoiding therefore to take sides for article 42 or 48 ARSIWA, in ICJ, *supra* n. 32, at para. 106.

the Court will encounter a challenging task in delineating the nature and scope of the substantive obligations.

(2) Attributing Responsibility, or Liability, Must Be Proven

Addressing the issue of the extent of ratione personae and its principal procedural implication, specifically the capacity to initiate a claim in the event of an alleged infringement, essentially unlocks Pandora's box. Upon its unsealing, a multitude of other issues emerge. Notably, the Court has been requested to adjudicate on the repercussions of potential breaches of climate-change obligations.

In a manner that may be considered somewhat obscure, the second question presented to the ICJ initiates a discourse on the legal origin for responsibility to arise concerning obligations related to climate change. The point at discussion is whether there is responsibility for wrongful act or liability for resultant damages. In accordance with the request, the ICJ is expected to articulate:

> (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?

The secondary relationship may be established based on one of three scenarios: firstly, when a state fails to fulfil its climate change-related obligations (a traditional perspective); secondly, when a state, through action or inaction, inflicts "significant damage" upon the climate system or environment, irrespective of its compliance with climate change obligations (an ambitious stance); thirdly, when a state violates a climate change obligation resulting in significant damage (the most conservative position), necessitating "significant harm" for responsibility to be attributed for the breach of the obligation.[37]

Although this text does not resolve the issue at present, the broader procedural concern impacts all contexts: The ICJ must address the delicate matter of establishing a standard of proof either to substantiate a breach of climate-change obligations or to establish causation of damage within a causal chain, or both. Challenges persist regardless of the *erga omnes* nature of the obligations involved, as states that are neither directly nor specifically injured, yet claim a violation, would also need to prove one of these links, unless the Court grants a reversal of burden of proof.

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[37] From a broader perspective, the inquiry into the relationship between responsibility and harm within the realm of environmental law potentially applicable to the issues of responsibility and liability concerning climate change is addressed in T. Fajardo, *La protección del medio ambiente y el desafío climático. 50 años después de la Declaración de Estocolmo* (Dykinson, 2024), at 143-162.

Regarding the standard of proof, it is imperative to consider several elements: firstly, the attribution criteria under the principles established in ARSIWA for wrongful acts or the liability standards concerning damage causation, particularly for assigning international responsibility to the state for the acts from the private sector, which includes both corporations and individuals concerning their climate-change-related decisions taken in a private capacity. Secondly, with specific regard to climate change, the role of an individual state as a contributor to a global series of events and outcomes, and the establishment of a causality link, are of significant importance. Lastly, the classification of climate change obligations as either obligations of means or obligations of results continues to present a fundamental challenge, with violations of obligations of means being more challenging to substantiate than those of obligations of results.

Concurrently, difficulties arise to reach a nuanced equilibrium in establishing evidence to allocate the share of responsibility between the anthropogenic and natural causes of climate change, with the latter having evolved over centuries and millennia. Consequently, the scientific component in potential contentious cases, particularly in relation to causation and evidence, should not be overshadowed.[38]

Ultimately, the Court could strengthen the procedural aspect of the aforementioned CBDR principle, thus reducing the evidentiary burden for the small and developing claimant states. In that line, unintended consequences of the CBDR principle could appear when discussing appropriate reparations if states argue either as claimant or defendant CBDR as clean hands or lack thereof to be considered. In both lines, the conceptualization of CBDR (either under the form of financial assistance to developing states or differentiated rates of national determined contributions) appears not only to be a substantial rule but a procedural one.

For the AO to achieve significant influence, it is imperative for the Court to thoroughly examine these subjects while articulating the implications of climate change obligations. This is especially crucial since the international community should be aligned and not take diverging sides in this contemporary crusade, with the common future of the planet and humankind at stake. In that line, we will briefly conclude with a two tiers set of reflections after the image of a courtesan lady-in-waiting, being she the public interest litigation at the Court, serving the international society of states for the sake of humanity.

(D) GETTING TO A CLOSE: A PUBLIC-INTEREST-IN-WAITING AT THE COURT

For most readers, the Advisory Opinion of the International Court will have been made public and subjected to discussion and analysis by the time they peruse these pages. At a minimum, all written submissions from participating states and International

[38] Both ITLOS and the ICJ have already explored the need for scientific knowledge to decide on cases. There is some bibliography on the topic, such as the excellent book of K. Kulyok, *Science and Judicial Reasoning: The Legitimacy of International Environmental Adjudication* (Cambridge University Press, Cambridge, 2021). The ICJ has taken the exceptional step of organizing a meeting with some authors of the reports of the Intergovernmental Panel on Climate Change (IPCC), scheduled November 26, 2024, ahead of the oral proceedings for the advisory opinion on climate change, ICJ, Press Release No. 2024/75.

Organizations will have been disclosed, thus illuminating potential directions regarding the anticipated content of the opinion.

As an old lady-in-waiting at the Court, 'what to expect while expecting' the ICJ's AO? This question features our formidable challenge. If the Court adheres to its previous patterns, the duration of waiting time shall not be extensive. It required eighteen months for the Court to render an opinion on the *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (2024), with participation from approximately sixty states and Organizations in the written and oral proceedings. In the AO on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius* (2019), the ICJ took twenty months to issue its decision, with engagement from approximately forty states. Although, in the instance, participation is more extensive and the ICJ is addressing a substantial and intricate docket, it is anticipated that the AO might be delivered by the end of 2025, or at the latest, early 2026. Meanwhile, the International Law Commission (ILC) remains actively engaged in examining the implications of sea-level rise in relation to International Law, while the COPs continue to convene, not only within the framework of the Paris Agreement but also regarding other environmental treaties such as the United Nations Convention on Biological Diversity. Concerns have already been expressed loudly regarding the potential risks and deficiencies of the forthcoming advisory opinions, including the one to be issued by the ICJ.[39]

Consequently, in drawing our reflections to a close, we present several considerations to assess the pivotal moment of 'dare or truth' for the ICJ. (1. *Does the ICJ Need to Go Beyond an Environmental Restatement?*) and the (r)evolutionary time for public interest definition (*2. Does Public Interest in International Law Progress from Here?*).

(1) Does the ICJ Need to Go Beyond an Environmental Restatement?

The relative latitude afforded to the Court when delivering any advisory opinion, unencumbered by the particular interests of involved parties, has been emphasized. This has resulted in ambitious and innovative opinions leaning towards the progressive development of international law,[40] as opposed to merely affirming extant international law in certain cases,[41] while exhibiting considerable self-restraint in others.[42] Nonetheless, the Court's liberty primarily encompasses a confident analysis concerning the articulation of law, alongside a more self-restrained discourse on the

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[39] B. Mayer, 'International advisory proceedings on climate change', 44 *Michichan Journal of International Law* (2023) 41-115.

[40] ICJ, *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of 11 April 1949; ICJ, *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion of 28 May 1951.

[41] ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004; ICJ, *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, Advisory Opinion of 22 July 2010, ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024.

[42] ICJ, *Legal Consequences for states of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971; ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996.

implications that general principles or rules, whether substantive or procedural, might entail in specific scenarios. Consequently, we expect a pragmatic approach regarding the Advisory Opinion on climate change obligations for states, the repercussions of their breaches, and the causation of damages either to other states or to individuals and future generations.[43]

The Court can readily rely on its established jurisprudence.[44] Although a specialized chamber for environmental issues was inaugurated in 1993,[45] it was dissolved in 2006 due to a lack of cases. Nevertheless, this has not hindered the Court from incorporating environmental considerations in various contentious cases and in at least one advisory opinion. Simultaneously, the ICJ is developing increasingly proactive jurisprudence concerning human rights issues. Importantly, it has rendered judgments on pecuniary reparations in both domains,[46] a practice that is rather uncommon.

The prospective AO is required to navigate the intersection of both domains within the discourse of climate change. This presents a challenge, as contradictory dynamics govern these two subsystems of international law: HR international law advocates for universal standards, whereas environmental law operates on a differential treatment principle (DBSR); environmental regulations pertain to a notion of extraterritoriality as a sovereign prerogative, while human rights extraterritoriality is considered an obligation for the state to ensure that extraterritorial activities comply with the framework of HR international law.

The Court might focus on environmental issues while adopting a less rigorous approach to HR concerns, as the ITLOS has previously done, relying on the IACtHR to address primarily the HR perspective. Such an approach may pay mere lip service to the comprehension of international law on a universal, global scale. We propose that the ICJ should not simply reiterate the law but rather engage deeply at the intersection of various branches of substantive rules, thereby genuinely addressing any issue of "fragmentation" in international law, as already debated.[47]

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43 On whether the Court needs or not to define the concept of future generations and the ramifications thereof, see P. Lawrence, 'The International Court of Justice Advisory Opinion on Climate Change and Future Generations', 8 *Chinese Journal of Environmental Law* (2024) 284-300, at 291-299.

44 We propose two general readings from Spanish scholars, aware that the topic is being extensively researched these days, although more from a singular case study perspective than a general one, as those we cite. J. Juste-Ruiz, 'The International Court of Justice and International Environmental Law', in: N. Boschiero, T. Scovazzi, C. Pitea, C. Ragni (eds), *International Courts and the Development of International Law* (T.M.C. Asser Press, The Hague, 2013), 283-411 [https://doi.org/10.1007/978-90-6704-894-1_30]; R. M. Fernández Egea, 'La protecciónmedioambiental en la jurisprudencia de la Corte Internacional de Justicia: ¿un reto irresoluble?', in S. Torrecuadrada García-Lozano (dir.), *Los nuevos retos de la Corte Inernacional de Justicia* (Wolters Kluwer, Madrid 2021), 105-134.

45 Based on Art 26 (1) of the ICJ Statute.

46 In relation to environmental obligations, ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua). Indemnisation due par la République du Nicaragua à la République du Costa Rica*, Judgment of 2 February 2018, at para. 157. On human rights, ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo). Compensation owed by the Democratic Republic of the Congo to the Republic of Guinea*, Judgment of 19 June 2012, at para. 61.

47 Concerning the potential for fragmentation as a result of the three successive AOs, see M. A. Tigre, 'It is (Finally) Time for an Advisory Opinion on Climate Change: Challenges and Opportunities on a Trio of Initiative', 17 *Charleston Law Review* (2023), 623-725, at 704-722.

(2) Does Public Interest in International Law Advance from Here?

Although the ICJ stance on climate change remains central to the Advisory Opinion, from a wider viewpoint, the Court faces a critical juncture: is it immersing itself into the unpredictable domain of public interest, or does it adhere to the more traditional synallagmatic frameworks? Will the Court contribute to the development of an international community, or will it uphold its role as the protector of interstate society? The increased level of participation in all three AO proceedings has been remarkable. However, by excluding involvement of non-state actors and recently expanding its discretion to potentially curtail oral phase in such proceedings[48] the ICJ's approach suggests an implicit endorsement of a restricted, arguably conservative, interpretation of public interest.

The approach to PIL in the current ICJ case law concerns the procedural avenues for a third state to claim *erga omes* obligations protecting shared common values of the international community. Whether the Court assumes this very approach for a broaden standing for climate change obligations, while defining them in terms of means or result and their status as treaty or customary international law, will definitely mark the openness for future contentious proceedings in terms of *ius standi*.[49] While the ICJ will soon provide the international community with its advisory *opinion* on climate change, it is important to acknowledge that AOs have[50] and will lay the law for subsequent contentious cases that both domestic and international judicial bodies may adjudicate.

Nevertheless, the establishment of a jurisdictional basis for contentious public international law obligations related to climate change presents an ongoing challenge. The identification of a treaty provision encompassing the entirety of climate change obligations remains elusive, and the prospect of a special agreement to address cases involving 'significant harm to the climate system and other environmental components' inflicted upon states, individuals, or future generations by a third party, is improbable. The most viable mechanisms for advancing a contentious submission are likely unilateral declarations, whereas the utilization of *forum prorogatum* appears to be a less probable alternative. A thorough comprehension by the Court of the procedural dimensions of

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48 J. McIntyre, 'The ICJ Changes the Rules for Intervention', *EJIL Talk*, 11 March 2024.

49 An interesting exercise for future contentious proceedings is offered by M. Wewerinke-Singh, J. Aguon, J. Hunter, I. Algona, C. Bakker, & J. Gauci, 'Bringing climate change before the International Court of Justice: prospects for contentious cases and advisory opinions', in I. Alogna, Ch. Bakker, and J.-P. Gauci (eds.), *Climate change litigation: Global perspectives* (Brill, 2021) 393, at 395-403; E. Sobenes and F. Sindico, 'Climate Change and the International Court of Justice', in F. Sindico, K. Mackenzie, G. Medici-Colomo and L. Wegener, Research *Handbook on Climate Change Litigation* (Elgar, 2024) 264, at 277-282.

50 On that effect, see ICJ, supra n. 32, at para 106. The ICJ founded Gambia's legal *standi* in the legal relationship established among states parties under the Genocide Convention, citing the *Advisory Opinion on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (I.C.J. Reports 1951, at p. 23): 'In such a convention the contracting states do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d'être of the convention. Consequently, in a convention of this type, one cannot speak of individual advantages or disadvantages to states, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.'

climate change litigation, as delineated in section C, might instigate a series of restrictive reservations to the existing unilateral declarations, as they are currently formulated.

However, the very effectivity in terms of responsibility for climate change will depend on the definition of the origin of responsibility, correlating wrongful acts and damage or opting for the first or the latter. Not only the origin, but the burden of proof concerning a broad array of questions from the standard for due diligence or prevention, the measurement of the specific contribution of a state (and the responsibility for acts of private and corporate persons), the share of anthropogenic vs. natural causes of climate change, or the consideration to be paid to material and moral damage calculation, are all key points that will not probably be dealt with by the ICJ in the coming AO, but will be on the table of prospective situations. These, although mostly related to procedural aspects, are the heart of a PIL case on climate change, briefly, for advancement in the realization of public interest in international law.

As we have outlined it in the first section, we are marching the peaceful crusades of our era, from fighting genocide to climate change, through law. International law should carry the banner, and the ICJ should set the pace, not only to defend the states but also to protect the core and purpose of their existence: human beings, whether they are current or future generations.