A cura di
NICOLA GULLO

CLIMATE JUSTICE PERSPECTIVES IN THE AGE OF GLOBAL CONFLICT

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Indice

INTRODUCTION. CLIMATE JUSTICE IN THE AGE OF GLOBAL CONFLICT

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Abstract (It): L'articolo esamina l'evoluzione del diritto climatico, soffermandosi sulle prospettive della giustizia climatica in una fase geopolitica segnata da molteplici tensioni internazionali. Un focus particolare è dedicato al contenuto e alla portata del parere consultivo del 2025 della Corte Internazionale di Giustizia sulle obbligazioni degli Stati in materia climatica.

Abstract (En)*: This article examines the evolution of climate law, focusing on the prospects for climate justice in a geopolitical era marked by multiple international tensions. Special attention is paid to the content and scope of the International Court of Justice's 2025 Advisory Opinion on States' obligations in relation to climate change. The article concludes by considering the role that climate justice can play in strengthening public participation and accountability in climate governance.*

Parole chiave: diritto climatico - giustizia climatica - corte internazionale di giustizia - obbligazioni degli Stati

Keywords: *climate law - climate justice - International Court of Justice - State obligations*

1. Introduction. A new legal framework for climate policies.

This volume brings together the contributions presented at the final conference of the "Climat*e Justice Living Lab"*[1] project, promoted by the

[1] The European "Climat*e Justice Living Lab" p*roject was approved under the

University of Palermo, Rovira i Virgili University, Mariupol State University and the A-Sud Association, with technical support from P-Consulting. The central theme of this advanced training programme was climate justice, which has now become the "new frontier" not only of environmental law but, more generally, of contemporary law. Indeed, the challenges posed by climate change have prompted-through a painstaking process of collective awareness guided by scientific evidence concerning the seriousness of the climate crisis[2]-a profound transformation of the socio-economic system, in which international and domestic public law has played a driving role. The need to curb greenhouse-gas emissions generated by numerous sectors of national economies has required a gradual move away from fossil fuels and faster restoration of ecosystems and biodiversity, which provide natural sinks capable of reducing the presence of carbon dioxide (CO2) in the atmosphere. The steady rise in temperatures, which reached record highs again[3] this summer, is producing adverse effects at several levels, as it can disrupt the Earth's ecological balance and endanger quality of life, as well as the very survival of the human species.[4]

Erasmus+ KA220-HED Programme.

[2] Particularly illustrative in this respect are "the reports of the Intergovernmental Panel on Climate Change - IPCC. On the role of science in the evolution of environmental law and climate law, see", *ex multis, A. Bonomo, L'approccio science-based sul cambiamento climatico: quale spazio per il decisore pubblico?*, in *Rivista Quadrimestrale di diritto dell'ambiente,* n. 1, 2024, pp. 53 ss.; M. DELSIGNORE, *Il ruolo del giudice nel decostruire l'applicazione della scienza nelle controversi di diritto dell'ambiente,* in Rivista Quadrimestrale di diritto dell'ambiente, n. 1, 2024, pp. 133 ss.; BURGER, M., WENTZ, J., & HORTON, R. (2020). *The law and science of climate change attribution*. Columbia Law School Sabin *Center for Climate Change Law.* With specific reference to the role dell'IPPC see N.S. Ghaleigh, *Science and Climate Change Law-The Role of the IPCC in International Decision-Making,* in K. R. GRAY, R. TARASOFSKY, & C. P. Carlarne (eds.), *The Oxford Handbook of International Climate Change Law* Oxford University, 2016, pp. 1 ss.

[3] L. GILLIVER, E*state rovente in Europa, Mediterraneo "carico": che tempo farà a settembre?,* in https://it.euronews.com/2026/08/30/estate-rovente-in-europa-mediterraneo-carico-che-tempo-fara-a-settembre.

[4] On the scientific dimensions and social implications of climate change, see the contributions in J.-R. FALLADA-GARCÌA-VALLE, N. GULLO (EDS.), B. FelipE-PÉREZ, M. DI PIERRI, Y. KOVEINO (COORds.), Handbo*ok on Climate Justice,* Pa-

In recent years, environmental policies have not been limited to providing advanced technological solutions and identifying production models capable of reducing climate-altering emissions. They have instead established a broader and more sophisticated legal framework that conditions the activities and responsibilities of public authorities and influences the business strategies of economic operators, so as to pursue more effectively the reduction and containment targets for greenhouse gases that the scientific community no[5]w regards as urgent. The new regulatory model does not simply employ the traditional instruments of environmental law; nor does it draw exclusively on the classical legal resources of the rule-of-law State, or remain confined within international law's "enclosure", which preserves State sovereignty as an indispensable premise. Rather, it now operates in a field of intense legal experimentation, in which domestic legal categories must adapt to the emergency posed by climate change and the environmental crisis, while the potential of international environmental law must be enhanced through a systemic approach[6].

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lermo University Press, Palermo, 2026, and the scientific literature thereby cited.

[5] On the fundamental aspects, see R. Ferrara, F. FRACCHIA, N. OLIVETTI RASON, ENERGIA e *ambiente. La disciplina dell'energia nel diritto europeo e nazionale, Padova,* 2014; M. MARLETTA, TITOLO XX*I Energia - Art. 194, in A.* TizzaNO (A CURA di), Trattati *dell'Unione europea, Milano*, 2014, pp. 1651 ss.; O. PorchIA, LE POLIt*iche dell'Unione europea in materia ambientale, in R.* FerrARA, M.A. SANDULLI, TRATTat*o di diritto dell'ambiente. R. F*errARA, C.E. GALLO, (A CUra di), Vol. I, Le pol*itiche ambientali, lo sviluppo sostenibile e il danno, Milan*o, 2014, pp. 91 ss.; A. CATRICALÀ, M. TROISI, IL Mer*cato dell'energia elettrica e del gas, Mil*ano, 2017; F. VETRÒ, SVIlu*ppo sostenibile, transizione energetica e neutralità climatica, in* Rivi*sta Italiana di Diritto Pubblico Comunitario, 1,* 2022, 53 ss.; K. ARABADJIEVA, B. GALGOCZI, B., T.V. MELKEBEKE, JUst *Transition governance, i*n Boo*sting Participation in the Energy Transition, 6*, 2024; L. KASCHNY, Ene*rgy justice and the principles of article 194 (1) TFEU governing EU energy policy,* in Tr*ansnational Environmental Law,* 12*(2*), 2023, pp. 270 ss.; C. DE VINCENTI, A. MACCHIATI, P. RANCI, E*nergia per l'Europa 2025,* in A*strid Rassegna,* n. 15, 2025, pp. 1 ss.; C. BEVILACQUA, E*nti locali e comunità energetiche rinnovabili tra sussidiarietà e policentrismo energetico*, Torino, 2026.

[6] To appreciate the significance of the institutional and transformations that are in place or in implementation to face the ecological crisis, see M. CARDUCCI, *Cambiamento climatico (Diritto costituziona*le), IN R. BIFULCO, A. CELOTTO, M. OLIVEtti (a cura di*), Digesto delle Discipline Pubblicisti*che, Milano, 2021, pp. 71 ss.; F. DE LEONARDi*s, Lo Stato ecolo*gico, Torino, 2023; G. MARCHEtt*i, <<Il*

Accordingly, the new regulatory context displays a number of distinctive legal features: some are entirely novel, while others amount to a "recasting" of principles, instruments and legal schemes already found in contemporary environmental law. In summary, five features distinguish climate law-understood broadly as the body of legal rules, public policies, administrative action and judicial practice that remedy or mitigate the effects of climate change-which has recently been taking shape in the supranational legal order: (a) the multilevel character of the regulatory system; (b) the launch of a society-wide ecological transition; (c) the fundamental importance of the case law of international courts; (d) the "integrated" construction of States' international legal obligations; and (e) the importance of intra- and intergenerational equity and, consequently, of the climate-justice dimension.

a) As regards the multilevel dimension of climate law, since the climate crisis is a planetary emergency that threatens the continuity of human life and the climate may be regarded as a common good [7]of humankind, policies to curb greenhouse-gas emissions have, as is well known, been shaped by international organisations. This is particularly true of the United Nations, which has encouraged the conclusion of international agreements and the assumption by States of commitments towards the international [8]community. Regional supranational

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*principio fondamentale ambientali>>sta nella prospettiva multilivello e il suo impatto sull'assetto costituziona*le, Torino, 2024; E. FISHer*, Telling Meaningful Stories About Climate Change and Public* Law, i*n Journal of Environmental* Law, 37, 2025, pp. 1 ss.; S. BORRÁS, J. JARia*, Research Handbook on Global Climate Constitutionali*sm, Edward Elgar Publishing, 2019. For a careful reconstruction of a transnational administrative law, see E. CHITI, *Verso una sostenibilità plurale? La forza trasformatrice del Green Deal e la direzione del cambiamento giuridic*o, i*n Rivista Quadrimestrale di diritto dell'ambient*e, n. 3, 2021, pp. 130 ss.; M. DE BELLIS, *Transnational Administrative Law and Climate Change in the Age of the Green Deals: Introduction to the Special Issue*, in *Italian Journal of Public Law*, 2, 2024, pp. 325 ss.

[7] A. GIORDANO, I*ntroduzione alla tutela del clima come bene comun*e, Naples, 2024; to the same effect, A. LUPO, *Il sistema climatico: un nuovo bene giuridico?*, in *Diritto dell'economia*, 2024, 2, pp. 317 ff.

[8] H. VAN ASSELT, F. ZELLI, I*nternational Governance: Polycentric Governing by and beyond the UNFCCC,* in A. JORDAN, D. HUITEMA, H. VAN ASSELT, J. FORSTER (eds.), G*overning Climate Change: Polycentricity in Action?*

organisations, such as the European Union, have in turn helped to lay down increasingly stringent rules governing the shift to renewable[9] energy. Precisely because climate change requires a general effort by the entire community of States, the solution cannot be left solely to separate and autonomous initiatives by national authorities. Supranational coordination is required to redistribute tasks, objectives and responsibilities among States, in accordance with internationally established principles such as common but differentiated responsibilities[10] and climate neutrality[11].
Although this deep integration between international and domestic legal sources proves problematic in certain respects-especially when determining the margin of discretion to be accorded to States in implementing international obligations-it nevertheless unquestionably reproduces and accentuates a typical feature of environmental law.

b) The multiplicity of principles, legal rules, policy instruments and administrative decisions forming climate law has initiated a complex transformation of contemporary economies and societies. This broad phenomenon, which affects production models and the organisation of social life at several levels, has been described as the "ecological transition" both in legal scholarship and in official documents of international institutions[12]. Under this approach, ecological interests no longer operate merely as external limits on economic activities designed to prevent environmental harm; instead, they become priority objectives to be pursued by both public institutions and private economic operators[13].

Cambridge University Press, 2018, pp. 29 ss.; B. MAYER, *The International Law on Climate Change*, Cambridge University Press, 2018.

[9] S.R. SCHUBERT, J. POLLAK, M. KREUTLER, E*nergy Policy of the European Union*, London, 2016.

[10] E. HEY, S. PAULINI, C*ommon but Differentiated Responsibilities*, in *Oxford Public International Law*, October 2021.

[11] C. PESCE, L*a rilevanza giuridica dell'obiettivo della neutralità climatica nell'Unione europea*, in *IANUS*, https://www.rivistaianus.it, n. 28-2023, pp. 99 ss.

[12] J.-F. BOUCHER, J.-M. FRAYRET, L. GONDIM DE ALMEIDA GUIMARÃES, M. CHERIET, A*ccelerating the Socio-Ecological Transition: Strategies and Innovations for Sustainable Development,* Springer Nature Switzerland, 2024. Sul tema della transizione come complesso processo di trasformazione istituzionale e socio-economica guidato dal diritto pubblico si veda F. FRACCHIA, *Transizioni il punto di vista del diritto amministrativo*, Napoli, 2024.

[13]On the legal instruments for the ecological transition and climate change con-

c) In this setting, the case law-or*, more* precisely, the interpretative activity[14]-of international courts plays an increasingly central role in guiding the complex and layered action that States must undertake to meet climate targets[15]. This judicial integrative role has become more incisive as scientific knowledge of the anthropogenic origin of climate change has progressively spread.[16] Far from offering only mainstream interpretations and g*uidance o*f limited legal impact within domestic systems, international case law has sought to devise new legal paradigms capable of offsetting or limiting delays, inconsistencies and failures in States' climate policies, by giving effect to principles already emerging in international environmental law or by forging a closer link with the protection of human rights recognised in international conventions[17]. This approach has, as is well known, gradually taken shape and developed through so-called "climate litigation"[18].

d) Faced with climate cases that are heterogeneous and fragmented because of the diversity of the courts seised and the judicial actions brought, the most significant contribution of international courts has nevertheless been to develop an organic and integrated international system of principles and customary and treaty rules capable of grounding and supporting the legal obligations requiring States to adopt adequate

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trast, see J. VERSCHUUREN*, Research Handbook on Climate Change Adaptation* Law, Edward Elgar Publishing, 2013; C.P. CARLArn*e, Climate Change Law and Policy: EU and US Approach*es, Oxford University Press, 2016; A. BONOMO, *Il potere del clima. Funzioni pubbliche e legalità della transizione ambientale*, Bari, 2023.

[14]Advisory opinions delivered by international courts in the exercise of their advisory jurisdiction have also acquired considerable importance: see S. Forlati, The Advisory JURISDICTion of International Courts: A Functional Perspective, in The Italian Review of International and Comparative Law, 1, 2024, pp. 40 ff.

[15]For a general discussion, see A. GIORDANO, *La giustizia climatica ai tempi della transizione ecologica*, in *Ordine internazionale e diritti umani*, 2023, pp. 568 ff.

[16]P. SANDS, C*limate Change and the Rule of Law: Adjudicating the Future in International Law*, in *Journal of Environmental Law*, *28*(1), 2016, pp. 19 ff.

[17]D.R. BOYD, T*he right to a healthy environment: Revitalizing human rights for the Anthropocene,* Cambridge University Press, 2022; R. LUPORINI, A.U. KODIVERI, *The increasing role of human rights bodies in climate litigation*, LONDON, 2021.

[18]J. SETZER, C. HIGHAM, G*lobal Trends in Climate Change Litigation: 2024 Snapshot.* Grantham Research Institute on Climate Change and the Environment, London School of Economics, 2024.

instruments and measures to address climate change. Several opinions of international courts illustrate this interpretative trend: the Advisory Opinion of 21 May 2024 of the *International Tribunal for the Law of the Sea*[19]*; th*e Advisory Opinion of 29 May 2025 of the I*nter-American Court of Human Rights*[20]*;* and the Advisory Opinion *delivered by the Internationa*l Court of Justice (ICJ) on 23 July 2025. Although based on different legal premises and not entirely coincident lines of reasoning, the three opinions share a holistic reconstruction of the obligations incumbent on States in the face of the climate crisis, going beyond the provisions strictly inferable from sector-specific international conventions.

e) Finally, climate law, as defined by international conventions and articulated in international case law, also incorporates demands for social justice within climate policies. In other words, the so-called "solidarity" principles that have been a distinctive feature of environmental law- namely, the principle of common but differentiated responsibilities, the principle of sustainable development[21] and the principle of intergenerational equity[22] (which may be regarded as a corollary of the

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[19]Advisory opinion n. 31, 21 may 2024, of the International Tribunal for the Law of the Sea, on a request issued in December 2022 by the C*ommission of Small Island States on Climate Change and International Law* on the obligations that the United Nations Convention on the Law of the Sea, adopted in Montego Bay in 1982, sets on marine environment protection and climate damage. For a commentary, see A. LATINO, *Il parere consultivo n. 3 del Tribunale internazionale per il diritto del mare sul nesso fra gas climalteranti di origine antropica e tutela degli oceani*, in *Rivista giuridica AmbienteDiritto.it*, 2, 2024, pp. 1 ss.

[20]Advisory opinion n. 23 of 29 may 2025, made publicly available in 2025, of the Inter-American Court of Human Rights, which redefines the obligations of American States arising from the substantive rights enshrined in the American Convention on Human Rights and the Protocol of San Salvador in the context of a climate emergency; for an analysis, see V.A. CASTRO ALVES, F. TRENTINI, *Parere consultivo n. 32 del 2025 della Corte interamericana dei diritti umani: il concetto di emergenza climatica e la determinazione degli obblighi degli Stati americani, in Diritto e clima, 1, 2026, pp. 169 ss.; M. Carducci, Prima la natura. La svolta epistemologica nell'Opinione Consultiva n. 32/25 della Corte Interamericana dei Diritti Umani*, in *Diritti comparati*, in www.diritticomparati.it, 9 settembre 2025.

[21] On the complex content of this principle, see F. FracCHIA, IL PRIn*cipio dello sviluppo sostenibile, Nap*les, 2012; V. MauerHOFER (ED.), Lega*l Aspects of Sustainable Development, S*pringer, 2016; L. CUOCOLO, Di*ritto dello sviluppo sostenibile,* Bologna, 2025.

[22] B. BECKERMAN, J. PASEK, T*he Rights of Future Generations,* in J*ustice,*

former)-also profoundly shape the fundamental coordinates of climate law. Climate law seeks to balance legislative choices aimed at reducing fossil-fuel use against protection for the social groups called upon to bear the highest costs of the energy transition[23]. Ethical and equity-based concerns emerge from a dual perspective: reducing the adverse effects of climate change on the most vulnerable people and those with the least adaptive capacity[24], and redistributing the economic and social burdens imposed by the transition towards climate neutrality, while protecting economically weaker communities and individuals[25]. These ethical requirements therefore do not remain exclusively within the moral or political sphere; they acquire legal value, help make States' commitments under international climate conventions binding and more stringent, and guide the balancing exercise required when different mitigation and adaptation measures are adopted[26].

Posterity & the Environment, Oxford University Press, 2001.

[23] M. MEZEI, T*ransitional justice through the social fund for climate*, in *Juris Gradibus*, 4, 2024, pp. 56 ff.

[24] S. ARORA-JONSSON, S. V*irtue and vulnerability: Discourses on women, gender and climate change,* in *Global Environmental Change,* 21, 2011, pp. 744 ss.; M. GRAFF, *'Just energy transition'*, in D.J. FIORINO ET AL. (eds), *Elgar Encyclopedia of Climate Policy*, Edward Elgar Publishing Limited, 2024.

[25] Così, S.M. WHEELER, C*limate change and Social Ecology. A New Perspective on the Climate Challenge,* Routledge, 2012; E.C.H. KESKITALO, T*he social Aspects of Environmental and Climate Change. Institutional Dynamics Beyond a Linear Model,* Routledge, 2021; Y. HAGEER, B*ridging equity and resilience: A Systematic review of social sustainability in climate change mitigation and adaptation,* in E*nvironmental Science and Policy,* 173, 2025, pp. 1 ss. Si veda anche l'analisi contenuta in IPCC, S*ummary for policymakers,* in H.-O. PÖRTNER ET AL. (Eds.), C*limate change 2022: Impacts, adaptation and vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, 2022, pp. 3 ss. On the European measures on the just transition, see C. SANYA, D.M. KONISKY, *'The justice and equity implications of the clean energy transition'*, in *Nature Energy*, 5(8), 2020; H.M. OSOFSKY, *Energy Law and Climate Change: A Justice-Oriented Transition*, Cambridge University Press, 2021; E. JÜNGLING, G. SGARAVATTI, S. TAGLIAPIETRA, G. ZACHMANN, *Making the best of the new EU Social Climate Fund* (No. 14/2025), Bruegel Policy Brief, 2025.

[26] E. DONGER, L*essons on "Adaptation Litigation" from the Global South,* in V*erfassungsblog,* 2022; M. BURGER, J.B. WENTZ, J*U.S. Climate Litigation in the Age of Climate Accountability*, in *Sabin Center for Climate Change Law*, Report No. 2023/01.

In conclusion, it should be observed that the equity concerns relevant to climate litigation have moved far beyond the human dimension and are also connected to a cultural, philosophical and political trend oriented towards granting rights to animals and even natural entities, through recognition of their legal personality or, in any event, by moving beyond the anthropocentric paradigm of environmental protection[27]. Without examining the merits of this further legal approach here, it is necessary to note that the ethical and social dimension of the climate issue acquires its full significance through the judicial activism of environmental campaigners and spontaneous groups of citizens concerned about government policies and the inefficiency of administrative action[28]. Its theoretical and operational horizon is therefore found precisely in the category of "climate justice".

2. Climate justice

This conceptual expression, now widely used both in legal scholarship[29]

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[27] For a general overview, see A. PELIZZON, E*cological Jurisprudence: The Law of Nature and The Nature of Law,* Springer Nature, 2025; D.C. SÁNCHEZ-ZAPATA, M.F. CÁRDENAS, R*ights of nature as a response to the climate crisis and discourses on sustainability,* in C*limate Change Ecology,* 10, 2025, pp. 1 ss. Emblematic is the judgment of Erfurt Regional Court in Germany of 2 august 2024, Case (8 O 1373/21), that found that rights of nature can already be derived from the law currently in force, namely the EU Charter of Fundamental Rights, meaning that nature is not an object, but a subject with its own right to protection. Furthermore, see A. GARCÍA DE ENTERRÍA RAMOS, *La personalidad jurídica de los entes naturales: ¿un cambio de paradigma?,* in *Revista del Parlamento Vasco*, 4, 2023, pp. 8 ss.; L. ANZANELLO, *Dal riconoscimento dei diritti della natura al contenzioso sui cambiamenti climatici, in Rivista giuridica dell'Ambiente*, 2, 2025, pp. 261 ss.

[28] An ample reconstruction has been made by S. BORRÀS, M*ovimientos para la justicia climática global: Replanteando el escenario internacional del cambio climático*, in *Relaciones Internacionales, 33*, 2016, pp. 97 ss.; M. DI PIERRI, *Il contenzioso climatico*, Napoli, 2024.

[29] See, inter a*lios, A. SC*HAPPER, CLIMATE *Justice and Human Rights, in I*nterna*tional Relations, 2018*, pp. 275 ss.; S. KENEHAN, CLIMat*e Change and Global Justice, in G*. PELLEGRINO, M. DI PAOLA (EDS.), Handb*ook of Philosophy of Climate Change, Spr*inger Nature Switzerland AG, 2023, pp. 1 ss.; Z. ALIOZI, C*limate Justice and Human Rights, in a World in Climate Emergency, in* Glob*al Campus of Human Rights. Po*licy Briefs, 2021, pp. 3 ss., che afferma che "climate justice is the evolution of environmental justice, which in theory means that all living beings have a natural right to access and obtain the resources needed to

and in the official documents of international bodies and courts[30], denotes two distinct but connected dimensions. On the one hand, it refers to the ideals or values of social j[31]ustice that should inspire climate policies proposed by international organisations-particularly the United Nations-and implemented by States, on the basis of equity among social groups and States and between present and future generations, as noted above[32]. On the other hand, it refers to litigation brought before international and domestic courts by a very diverse range of actors-individuals, environmental associations, committees and organised groups[33]-seeking judicial determination of whether States, or companies that contribute most directly to the spread of pollution altering the planet's climate, have complied with their international-law obligations[34].

As numerous scholars have emphasised, climate justice in this second sense is not easy to delimit and summarise[35]. The different jurisdictions

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have an equal chance of survival and are entitled to exist free from harm". Furthermore, see T. TSOSIE, In*digenous people and environmental justice: The impact of climate change,* in U*niversity of Colorado Law Review, 78,* 2007, pp. 1625 ss.; H. SHUE, C*limate justice: vulnerability and protection*, Oxford University Press, 2014.

[30] R. LUPORINI, A. SAVARESI, I*nternational human rights bodies and climate litigation: Don't look up?*, in *Review of European, Comparative & International Environmental La*w, 32, 2023, pp. 267 ff.

[31] A. DOBSON, J*ustice and the Environment: Conceptions of Environmental Sustainability and Theories of Distributive Justice*, Oxford University Press, 1999; E.A. POSNER, D. WEISBACH, *Climate Change Justice*, Princeton University Press, 2010.

[32] See UN DESA, Cl*imate Change and Social Inequality,* United Nations Department of Economic and Social Affairs, 2017; M.A. HAQUE, C*onceptualizing Climate Justice,* in *Journal of Climate Policy*, 1, 2024, pp. 12 ss.

[33] K. BOOM, J.-A. RICHARDS, C*limate justice: the international momentum towards climate litigation,* in M. PEETERS, M.T. SANDERS (eds.), C*limate Law in EU Member States,* Edward Elgar, 2018; M.J. JESSEN, C. FERTNER, O. FRYD, *Social vulnerability in regional climate adaptation planning in Europe - Conceptions, operationalisations and shared challenges*, in *Environmental Science and Policy*, 171, 2025, pp. 171 ss.

[34] J. PEEL, H.M. OSOFSKY, C*limate Change Litigation: Regulatory Pathways to Cleaner Energy,* Cambridge University Press, 2018; B. GILL, D. CURTIN, L*itigating the Climate Crisis: Responsibility, Law and the Future*, Edward Elgar, 2022; E. GUARNA ASSANTI, *Il contenzioso climatico europeo*, Milano, 2024.

[35] D. MARKELL, J.B. RUHL, A*n Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?* in F*lorida Law Review, 6*4, 2012, 15-86; M. DELSIGNORE, I*l contenzioso climatico dal 2015 ad oggi,* in

involved-international courts, national supreme courts and domestic ordinary courts-have relied on profoundly different legal standards and criteria of review. The resulting legal solutions have therefore been heterogeneous and manifold[36], both as regards the methods of judicial scrutiny of possible failures by public institutions or companies and the remedies available when judgments finding liability are enforced[37].

Within the broad and cross-cutting field of climate litigation, which for several years has been systematically analysed and classified by various research centres[38]-the best known and most authori*tative of whi*ch is undoubtedly the Sabin Center[39]-two distinctive features have been identified which, if properly considered, make it possible to bring a measure of order to the survey of the complex transnational case law consolidated in this field[40].

G*iornale di diritto amministrativo,* 2, 2022, pp. 265 ss.; F. SINDICO, K. MCKENZIE, G.A. MÈDICI-COLOMBO (eds.), R*esearch Handbook on Climate Change Litigation*. Edward Elgar, 2024; UNITED NATIONS ENVIRONMENT PROGRAMME, *Global climate litigation report: 2023 status review*, 2023; J. SETZER, C. HIGHAM, *Global Trends in Climate Change Litigation: 2026 Snapshot*, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, 2026.

[36] D.R. BOYD, C. RODRÍGUEZ-GARAVITO, M. DE BONA, C*an judges help save the planet? Landmark court decisions on the right to a healthy environment,* in O*pen Global Rights,* 2024, September 29; G. NAGLIERI, C*limate changes in Courts: different judicial approaches to government actions on cutting greenhouse emissions. Comparing Europe and America through selected cases*, in *DPCE online*, 4/2022, pp. 1917 ss.

[37] I. ALOGNA, E. CLIFFORD, C*limate Change Litigation: Comparative and International Perspectives,* London, 2020; B. POZZO, *La climate change litigation in una prospettiva comparata,* in *Rivista giuridica dell'Ambiente*, 2, 2021, pp. 271 ss.

[38] Relevant sources include i rapporti degli organismi internazionali e centri di ricerca: UNITED NATIONS ENVIRONMENT PROGr*amme, Global climate litigation report: 2023 status r*eview, 2023, July 27; J. SETZER, C. HIgh*am, Global Trends in Climate Change Litigation: 2025 Snapsh*ot, Grantham Research Institute on Climate Change and the Environment, LSE, 2025.

[39] M.A. TIGRE, C*limate litigation in the Global South: Mapping report,* Columbia Law School Scholarship Repository, 2024; M.A. TIGRE, M. BARRY, *Climate Change in the Courts: A 2024 Retrospective*, Sabin Center for Climate Change Law, January 2025.

[40] C. VOIGT, C*limate justice in the courts: emerging legal pathways*, in *Journal of*

First, if the purpose or function of proceedings to establish climate-related failures is used as the frame of reference, it becomes clear that climate litigation very often plays a so-called "strategic" role, irrespective of whether a favourable judgment can be obtained in a particular case so as to affect immediately the mitigation or adaptation measures at issue[41]. Even when a court does not issue a judgment finding liability under the procedural rules governing the exercise of judicial functions, the legal action brought by claimants may nevertheless place pressure on political decision-makers, raise public awareness and mobilise networks of environmental organisations. This somewhat indirect effect of climate litigation explains its vitality despite several unfavourable judicial outcomes, as reflected in the exponential growth of climate cases and their wide geographical spread[42].

The second feature is the close correlation between climate litigation and human rights[43]. In the absence of specific procedural rules, failures to implement international climate law have been challenged-and, where appropriate, sanctioned-by reference to violations of fundamental human

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Environmental Law, 35(2), 2023.

[41] C. ECKES, S*trategic Climate Litigations before National Courts: Can European Union Law be used as a Shield?,* in G*erman Law Journal,* 25, 2024, pp. 1022 ss.; for a different perspective see M. DELSIGNORE, *Biodiverity litigation: in arrivo un nuovo contenzioso strategico?*, in *Rivista giuridica dell'Ambiente*, 3, 2025, pp. 603 ss.

[42] UN ENVIRONMENT PROGRAMME, C*limate change in Courtroom,* Climate Litigation Report 2025, Nairobi: as June 2025, more than 3.000 proceedings have been estimated; in Italy, over 30 climate proceedings have been recorded: https://www.contenziosoclimaticoitaliano.it/i-casi/.

[43] OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, R*eport of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights* (A/HRC/10/61), United Nations, 2009; S. ATAPATTU, H*uman rights approaches to climate change: Challenges and opportunities.* Routledge, 2016; UNITED NATIONS HUMAN RIGHTS COUNCIL, R*esolution 32/33: Human rights and climate change* (A/HRC/RES/32/33), 2016; J. PEEL, J., H.M. OSOFSKY, *Climate Change Litigation*. *The Annual Review of Law and Social Science*, 16, 2020, pp. 21 ss.; J.C. RUEDA ABAD, R C. VARGAS CASTILLEJA, *Los derechos humanos ante la emergencia climática*, in *Revista Internacional de Cooperación y Desarrollo*, 8, 2021, pp. 95 ss.; INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *Climate Change 2023: Synthesis Report. Summary for Policymakers,* 2023.

rights, whose effective enjoyment is jeopardised by the adverse effects of climate change[44]. The human-rights-based approach, which may have a legal foundation in international conventions or in national constitutions, especially those of the latest generation[45], has been decisive in supporting recognition of the legal significance of the obligations laid down by international climate law. On the interpretation often adopted by States, those obligations had been regarded as essentially flexible and as preserving an excessive margin of discretion for national authorities at the implementation stage.

This approach has opened up entirely new prospects-such as that outlined by the European Court of Hum*an Rights in th*e KlimaSeniorinnen judgment[46]-because it helps consolidate the legal foundations of climate policies by anchoring them in the undisputed importance of human-rights protection in the contemporary legal landscape.

There is nevertheless no doubt that national legal systems still display widespread difficulties and resistance, both in scholarship and in judicial approaches, to accepting judicial review of omissions and of legislative or policy instruments adopted by governments or parliaments in order to assess their compatibility with States' obligations under international conventions, particularly the 2015 Paris Agreement[47]. Concern about dis-

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[44] On the relevance of this nexus, see J.H. KNOX, C*limate ethics and human rights,* in J*ournal of Human Rights and the Environment,* 5, 2014, pp. 22 ss.; B. LEWIS, E*nvironmental Human Rights and Climate Change,* Springer, 2019; J.H. KNOX, C*limate change and human rights law,* in A*nnual Review of Law and Social Science,* 16, 2020, pp. 45 ss.; D.R. Boyd, T*he right to a healthy environment: Revitalizing human rights for the Anthropocene.* Cambridge University Press, 2022; J.H. KNOX, *Climate Change and Human Rights Law*, in I. ALOGNA, C. BAKKER, J. COURNIL (eds.), *Climate Change Litigation: Global Perspectives*, Springer, 2022, pp. 65 ss.; A. BOYLE, *Climate Change, Human Rights and the Environment: The Role of International Law*, Oxford University Press, 2023; B.H. DESAI, *The Essentiality of Human Rights for the Sustainable Environment*, in *Environmental Policy and Law*, 53(2), 2023, pp. 95 ss.

[45] For an overview on the new Constitutions, especially the south American ones, see D. AMIRANTE, *Costituzionalismo ambientale. Atlante giuridico per l'Antropocene*, Bologna, 2022.

[46] V*erein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20 (Eur. Ct. H.R., 9 April 2024).

[47] C. ECKES, ET AL., S*eparation of Powers,* in T*he Cambridge Handbook on Cli-*

rupting the legal architecture of the rule-of-law State-centred on the separation of powers, strict limits on the fact-finding and decision-making powers of domestic courts, and the non-justiciability of political acts-has tended to lead domestic courts towards restrictive outcomes and the dismissal of claimants' applications[48].

3. The Advisory Opinion of the International Court of Justice of 23 July 2025

Against the general background of climate litigation, it must be acknowledged that the present historical phase reveals a significant divergence between the approach of international courts, which are increasingly developing advanced interpretative pathways enabling direct judicial scrutiny of State failures, whether in the form of inaction or active breach of mitigation and adaptation obligations, and that of domestic courts, which, despite some important exceptions[49], deny the admissibility of judicial review capable of altering the fundamental legal characteristics of the national legal order.

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mate Litigation, Cambridge, Cambridge University Press, 2025; M. MATTALIA, C*ontenzioso climatico e condizioni dell'azione avanti al giudice amministrativo,* Torino, Giappichelli Editore, 2025; H. SCHOUKENS, C*limate change litigation and the separation of powers: effective legal protection as the ultimate yardstick?,* in F. SINDICO, K. MCKENZIE, G.A. MEDICI-COLOMBO, L. WEGENER (eds.), *Research handbook on climate change litigation*, 2024, pp. 184 ss.; S. VALAGUZZA, *Gli orizzonti del diritto dell'ambiente a partire dal contenzioso climatico*, in *Diritto Processuale Amministrativo*, fasc. 4, 2024, pp. 914 ss.; FRANCESCO GALLARATI, *La difficile strada del contenzioso climatico italiano. Considerazioni costituzionali a margine di due ordinanze piacentine*, in *Rivista giuridica dell'Ambiente*, 1, 2025, pp. 59 ss.

[48] Judgment n. 3552/2024 of the civil tribunal of Rome in the "Giudizio Universale" case declared a complete absence of jurisdiction: on the topic, see, e*x multis,* C.V. GIABARDO, *Qualche annotazione comparata sulla pronuncia di inammissibilità per difetto assoluto di giurisdizione nel primo caso di Climate Change Litigation in Italia*, in *Giustiziainsieme*, 29 april 2024.

[49] The Urgenda proceeding can be recalled, which ended with a Supreme Court judgment: U*rgenda Foundation v. The Netherlands,* Supreme Court (Civil Chamber), Judgment of 20 December 2019, ECLI:NL:HR:2019:2007; UNITED NATIONS ENVIRONMENT PROGRAMME, *Climate change in the courtroom: Trends, impacts and emerging lessons*, cit.

Which approach will prevail in the dialogue between courts is undoubtedly a crucial question, not only for humankind's expectations but also for the future prospects of action against climate change. If the multilevel character of environmental and climate law is to be preserved, the guidance and indications of international courts must be given due weight, and consideration must be given to the extent to which domestic procedural models can be modified in the face of the seriousness of the climate crisis.
In this setting, the Advisory Opinion delivered by the International Court of Justice (ICJ) on 23 July 2025, at the request of the United Nations General Assembly[50], defining *the "obligations of States in respect of climate chang*e", represents a highly significant qualitative leap. Drawing also on positions expressed by other international courts, it offers a broader and more systematic account of the foundations of climate policies and State responsibility.
This historic pronouncement was adopted in proceedings initiated by the Republic of Vanuatu, with the crucial support of a broad coalition of Small Island Developing States.
More specifically, in proceedings initiated under Article 96(1) of the Charter of the United Nations[51] and Article 65(1) of the Statute of the International Court of Justice, the United Nations General Assembly submitted two questions to the Court. The first concerned identifying States' obligations under international law in relation to greenhouse-gas emissions; [52]the second concerned clarifying the legal consequences of breaches of those obligations[53].

[50] The request was adopted by resolution A/RES/77/276, approved by consensus on 29 March 2023.
[51] Article 96(1) provides that the General Assembly (or the Security Council) may request an advisory opinion from the International Court of Justice on any "legal question".
[52] (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?
[53] (*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

Several matters of fundamental importance to climate governance deserve brief consideration[54].

First, the ICJ adopted a very broad conception of international-law obligations relating to the climate crisis. Those obligations are grounded not only in the specific climate-change conventions-that is, the climate lex spec*ialis-but a*lso in a very wide range of legal sources and even customary international law. In particular, certain mitigation obligations[55] are erga omnes and erga omnes partes obligations, in the sense that they are owed to the international community as a whole or to all other parties to climate treaties[56]. This means that protecting the climate system from changes caused by greenhouse gases must be linked to the customary principle of prevention[57]. It is therefore a binding obligation for all States, including those that have not signed or have withdrawn from international agreements, and cannot be regarded merely as the outcome of an entirely discretionary environmental-policy choice. States must consequently exercise due diligence by adopting the *most appr*opriate mitigation measures to prevent emissions produced within their territory or jurisdiction from causing significant harm to the planet's climate system[58] and, therefore, to future generations.

Moreover, the commitments undertaken under the Paris Agreement be-

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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?

[54]From a procedural perspective, it should be emphasised that the International Court of Justice considered approximately one hundred submissions from g*overnments*, international organisations and coalitions of States in its Opinion.

[55] The ICJ identifies three distinct categories of legal obligations: mitigation obligations, adaptation obligations and cooperation mechanisms.

[56] M. JACKSON, F. PADDEU, E*rga omnes and erga omnes partes obligations in the International Court of Justice's Climate Change Advisory Opinion*, in *Journal of Environmental Law*, 2026, 0, pp. 1 ff.

[57] The other customary principle invoked is the duty to cooperate in protecting the environment.

[58] In other words, the Court reasons that the general duty to prevent significant environmental harm also applies to the climate system: Ob*ligations of States* (n 1) [273].

come a fundamental benchmark for assessing the diligence required of all States by customary intern[59]ational law: the objective of limiting the increase in global temperature to 1.5°C above pre-industrial levels is a binding legal reference point for national authorities. The Na*tionally Determined Contributions (ND*Cs) submitted by individual States in accordance with the Paris Agreement must reflect their highest possible ambition and must be continuously updated in order to attain adequate mitigation standards[60].

State conduct capable of constituting an internationally wrongful act also includes failure to regulate private actors, including through the granting of exploration licences, the provision of public subsidies to extractive industries, or uncontrolled production or consumption of fossil fuels[61].

Furthermore, endorsing a well-established view, the ICJ recognised the inseparable link between the climate crisis and the enjoyment of fundamental human rights-the rights to life, health and an adequate standard of living-and went so far as to recognise an autonomous human right to a clean, healthy and sustainable environment, although it did not clearly reaffirm its customary-law status[62].

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[59] Legal scholarship emphasises that the content of the obligation of prevention was not precisely determined: B. MAYER, The *ICJ's application of customary international law to climate change mitigation, in* Jour*nal of Environmental Law, 20*26, 00, pp. 1 ff.

[60] The ICJ establishes that the content and implementation of NDCs are obligations of conduct based on a stringent due-diligence standard that limits any form of discretion: see D. Pauciulo, BREVE NOTA a*l parere consultivo della Corte Internazionale di Giustizia sugli obblighi internazionali degli Stati relativi al cambiamento climatico, in* Dirit*to e clima, 3,* 2025, p. 940.

[61] The Court identifies further obligations as implications of the duty of prevention, including the obligation to adopt "appropriate rules and measures", in particular "to regulate the conduct of public and private operators within the jurisdiction or control of States", and to implement "effective enforcement and monitoring mechanisms to ensure implementation": O*bligations of States* (n 1) [282].

[62]A degree of ambiguity therefore remains in the ICJ's position, which prompted several judges to append declarations advocating approaches more favourable to its classification as a customary rule: thus D. PAUCIULO, Br*eve nota al parere consultivo della Corte Internazionale di Giustizia sugli obblighi internazionali degli Stati relativi al cambiamento climatico, cited* above, p. 944.

Finally, as regards State responsibility for breaches of climate obligations, the Court clarified that obligations relating to the prevention of climate harm are owed erga omnes-to *the inte*rnational community as a whole-and that any State therefore has a legal interest in invoking the responsibility of another defaulting State. A breach of climate obligations entails the international responsibility of the State under customary rules, together with the resulting obligations to cease the wrongful conduct, guarantee non-repetition and provide adequate reparation for the harm caused.
The Opinion does not, of course, directly address the issue of remedies before domestic courts for citizens, natural persons and environmental associations affected by the adverse effects of climate change, through an action seeking a declaration that national authorities have failed to comply with climate obligations. It nevertheless provides a legal framework that encourages the search for more advanced solutions within domestic legal systems as well, by virtue of the renewed connection between environmental protection and the protection of human rights.

4. What prospects for climate justice in an age of global conflict?

The evolution of climate litigation must confront the political and social challenges of recent years. These concern not only a progressive political scaling-back of the fight against climate change[63], as a result of the position adopted by certain governments, such as the Trump Administration, but also geopolitical tensions that reveal the disintegration of the previous international order. Russia's invasion of Ukraine, escalating tensions in the Middle East and the conflict between Iran and the United States[64] have triggered a new economic crisis, prompting States to reconsider their energy strategies in order to achieve self-sufficiency in energy supply or at least reduce dependence on foreign sources. In this respect, the promotion

[63]In particular, this is due to the position adopted by the Trump Administration, which withdrew from the Paris Agreement on 27 January 2026 and began the process of leaving the United Nations Framework Convention on Climate Change in January 2026: Paris *Climate Agreement, at* https://eelp.law.harvard.edu/tracker/paris-climate-agreement/

[64]See the various issues devoted to the international situation by the journal L*imes:* https://www.limesonline.com/

of renewable energy sources, which makes it possible to move beyond reliance on fossil fuels, appears to be regaining force as an urgent objective[65].

Political and military conflicts, however, while objectively encouraging an acceleration of the energy transition, also contribute to environmental degradation, increase air pollution and diminish the ecological quality of territories, as demonstrated by the case of Ukraine. By causing a new phase of economic instability and rising energy prices, they also fail to encourage new and more substantial investment in ecological conversion[66].

Climate justice[67], in its dual meaning of social equity and judicial review of climate-policy choices, retains its full importance and contemporary relevance. Despite all the procedural difficulties that have emerged in legal practice in recent years, it can continue to inspire [68]forms of popular participation in the exercise of public functions governing the climate emergency, thereby holding political and administrative leaders to account and raising public awareness of the serious threat that climate change poses to the future of humankind.

[65]At European level, on 17 July 2026 the European Commission presented the El*ectrification A*ction *Plan a*nd a proposal to revise the EU ETS (Emissions T*rading System) in order* to balance climate objectives with industrial competitiveness: Proposal for a Directive of the European Parliament and of the Council of 17 July 2026, COM(2026) 616 final.

[66] ISPI, C*risi in Medio Oriente: più di uno shock petrolifero,* at https://www.ispionline.it/it/pubblicazione/crisi-in-medio-oriente-piu-di-uno-shock-energetico-238134.

[67] S. ZIRULIA, L. SANDRINI, C. PITEA (eds.), Wh*at future for environmental and climate litigation?,* Milano University Press, 2024.

[68] These matters are examined in greater depth in the other contributions to this volume.

LA GIUSTIZIA CLIMATICA DOPO LA CONFERENZA DI SANTA MARTA

Nuove prospettive della governance internazionale nella transizione oltre i combustibili fossili

MARICA DI PIERRI

Abstract La Conferenza di Santa Marta del 2026 costituisce un caso significativo di innovazione istituzionale nella governance climatica internazionale. Pur non rappresentando un processo negoziale formale né producendo obblighi giuridicamente vincolanti, il summit ha avuto il merito di spostare l'attenzione, in termini di azione climatica, dalla sola riduzione delle emissioni alla pianificazione della transizione oltre carbone, petrolio e gas. Il contributo esamina la Conferenza in prospettiva giuridico-istituzionale, collocandola nel quadro dei limiti dell'architettura dell'Accordo di Parigi, della progressiva emersione delle politiche climatiche dal lato dell'offerta energetica, della responsabilità delle Carbon Majors e delle contraddizioni connesse allo sfruttamento dei sussidi fossili. Nello specifico si analizzano la metodologia partecipativa, l'architettura tematica, gli output e le linee operative emerse dal report finale. Particolare attenzione è dedicata al rapporto tra phase-out, diritti umani, responsabilità d'impresa e diritto internazionale degli investimenti. La tesi sostenuta è che Santa Marta possa essere letta come strumento di governance plurilaterale, policentrica e sperimentale, complementare al sistema UNFCCC e potenzialmente idonea a colmare parte del divario tra impegni climatici generali e strumenti di attuazione.

Parole chiave: giustizia climatica; combustibili fossili; phase-out; governance climatica; diritti umani; UNFCCC; Santa Marta; ISDS.

The 2026 Santa Marta Conference represents a significant case of institutional innovation within international climate governance. Although it was not a formal negotiation process nor did it result in legally binding obligations, the summit had the merit of shifting the focus of climate action from merely reducing emissions to planning the transition away from coal, oil and gas. This contribution examines the Conference from a legal and institutional perspective, placing it within the broader context of the limits of the Paris Agreement architecture, the progressive emergence of supply-side climate policies, the responsibility of Carbon Majors, and the contradictions associated with fossil fuel subsidies. In particular, the article analyses the participatory methodology, thematic architecture, outputs and operational pathways emerging from the Conference's final report. Particular attention is devoted to the relationship *between fossil fuel phase-out, human rights, corporate responsibility and international investment law. The article argues that Santa Marta can be understood as a form of plurilateral, polycentric and experimental climate governance, complementary to the UNFCCC framework and potentially capable of bridging part of the gap between broad climate commitments and effective implementation mechanisms.*

***Keywords**: climate governance; fossil fuel phase-out; Santa Marta Conference; Paris Agreement; Carbon Majors; climate justice; human rights; international investment law.*

1. Introduzione

La Conferenza internazionale sulla transizione oltre i combustibili fossili, svoltasi a Santa Marta, in Colombia, dal 24 al 29 aprile 2026 e co-organizzata dai Governi di Colombia e Paesi Bassi, costituisce un passaggio rilevante nell'evoluzione recente della governance climatica. Il suo interesse giuridico non deriva dalla produzione di un trattato, di una decisione vincolante o di un nuovo organismo internazionale, ma dalla scelta di assumere la riduzione programmata della produzione e dell'impiego di carbone, petrolio e gas quale obiettivo specifico di cooperazione internazionale.[1]

[1] FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *Outcome Report of the First Conference on Transitio-*

Il contributo utilizza Santa Marta come caso di studio per verificare se e in quale misura processi plurilaterali, informali e multi-attore possano integrare l'architettura dell'Accordo di Parigi. L'ipotesi di ricerca è che la Conferenza abbia svolto una funzione di innovazione istituzionale potenzialmente rilevante: pur non avendo creato ad oggi nuovi strumenti di diritto internazionale *stricto sensu*, ha contribuito alla definizione di linee operative, alla costruzione di un'infrastruttura di coordinamento suscettibile di influenzare successivi sviluppi normativi e amministrativi nonchè alla propedeutica formazione di un lessico comune tra le parti coinvolte.[2]

La prospettiva adottata è prevalentemente giuridico-istituzionale. Il tema richiede tuttavia il dialogo con la teoria della governance climatica, poiché la transizione oltre i combustibili fossili coinvolge simultaneamente diritto climatico, diritto internazionale dell'ambiente, diritti umani, finanza pubblica, diritto degli investimenti, regolazione energetica e partecipazione procedimentale. L'analisi analizza pertanto il portato di Santa Marta alla luce delle nozioni di governance policentrica, sperimentale e per orchestrazione.[3]

2. I limiti della governance climatica internazionale

L'Accordo di Parigi[4], adottato nel 2015 nell'ambito della XXI Conferenza delle Parti della Convenzione quadro delle Nazioni Unite sui cambiamenti climatici (COP21), rappresenta un passaggio di particolare

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ning Away from Fossil Fuels, June 2026, disponibile in https://transitionawayconference.com/report.

[2] FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *Outcome Report*, cit.

[3] E. OSTROM, *A Polycentric Approach for Coping with Climate Change*, World Bank Policy Research Working Paper n. 5095, World Bank, Washington, 2009; C.F. SABEL-J. ZEITLIN, *Experimentalist Governance*, in D. LEVI-FAUR (a cura di), The Oxford Handbook of Governance, Oxford University Press, Oxford, 2012, pp. 169 ss.; K.W. ABBOTT-P. GENSCHEL-D. SNIDAL-B. ZANGL, *Two Logics of Indirect Governance: Delegation and Orchestration*, in British Journal of Political Science, 2016, vol. 46, n. 4, pp. 719 ss.

[4] Accordo di Parigi, *adottato dalla XXI Conferenza delle Parti della Convenzione quadro delle Nazioni Unite sui cambiamenti climatici, Parigi, 12 dicembre 2015, art. 2, par. 1, lett. a)*, disponibile in https://unfccc.int/process-and-meetings/the-paris-agreement.

rilievo nell'evoluzione della governance climatica internazionale, in ragione dell'ampia - pressochè universale - partecipazione statale e della definizione di un obiettivo climatico comune: contenere l'aumento della temperatura media globale ben al di sotto dei 2 °C rispetto ai livelli preindustriali, proseguendo gli sforzi per limitarlo a 1,5 °C. L'Accordo ha introdotto un modello di governance climatica fondato su un approccio prevalentemente cooperativo e decentrato, nel quale gli Stati determinano autonomamente i propri contributi alla mitigazione attraverso i Nationally Determined Contributions (NDCs), sottoposti a un meccanismo di progressione dell'ambizione e di revisione periodica. Tale architettura, che garantisce maggiore flessibilità rispetto ai precedenti modelli *top-down*, presenta rilevanti criticità sul piano dell'effettività, non prevedendo obblighi quantitativi uniformi né strumenti coercitivi di *enforcement* idonei ad assicurare il conseguimento degli obiettivi climatici globali[5].

Il modello degli NDC combina infatti obblighi procedurali con ampia discrezionalità sostanziale. Gli Stati devono predisporre, comunicare e mantenere i propri contributi, ma conservano un margine significativo nella definizione della relativa ambizione. Tale impostazione ha di fatto favorito l'adesione universale, ma non è riuscita a garantire che la somma delle politiche individuate sia coerente con gli obiettivi di temperatura.

Il divario tra impegni, misure effettivamente adottate e traiettorie compatibili con 1,5 °C rappresenta un problema strutturale e non meramente contingente del sistema di governance climatica.[6]

Secondo l'Emissions Gap Report 2024 dell'UNEP, per ricondurre le emissioni globali su una traiettoria a 1,5 °C sarebbero infatti necessarie riduzioni del 42 per cento entro il 2030 e del 57 per cento entro il 2035 rispetto ai livelli del 2019, ben lontane dalle traiettorie di riduzione ga-

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[5] *D. BODANSKY, The Legal Character of the Paris Agreement*, in Review of European, Comparative & International Environmental Law, 2016, pp. 142 ss.; S. OBERTHÜR-R. BODLE, *Legal Form and Nature of the Paris Agreement*, in Climate Law, 2016, pp. 40 ss.; L. RAJAMANI, *Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics*, in International and Comparative Law Quarterly, 2016, pp. 493 ss.

[6] UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP), *Emissions Gap Report 2024: No More Hot Air ... Please!*, United Nations Environment Programme, Nairobi, 2024.

rantite dalle misure effettivamente implementate. L'aggiornamento 2025 ha confermato la persistenza di un gap rilevante e la crescente difficoltà di conseguire gli obiettivi dell'Accordo di Parigi.[7] Il dato evidenzia un deficit prevalentemente riconducibile alla dimensione dell'attuazione (*implementation gap*) più che alla disponibilità di conoscenze scientifiche o di soluzioni tecnologiche. La presenza di scenari climatici consolidati, di tecnologie e di strumenti economici idonei alla decarbonizzazione non si è ancora tradotta in decisioni pubbliche capaci di incidere in modo strutturale sulle infrastrutture energetiche, sui modelli produttivi e sugli interessi economici consolidati. L'architettura delineata dall'Accordo di Parigi combina strumenti di trasparenza, monitoraggio, revisione periodica e pressione reputazionale, ma non prevede un sistema sanzionatorio assimilabile a quello presente in altri regimi internazionali fondati su obblighi vincolanti. In particolare, il meccanismo di facilitazione dell'attuazione e promozione della conformità previsto dall'art. 15 dell'Accordo opera secondo un approccio esclusivamente facilitativo, non contenzioso e non punitivo, escludendo l'accertamento di responsabilità o l'applicazione di conseguenze giuridiche in caso di mancato raggiungimento degli obiettivi nazionali[8].

3. La progressiva emersione della questione fossile

Per lungo tempo il diritto climatico internazionale ha privilegiato una regolazione fondata sul controllo delle emissioni prodotte, senza affrontare direttamente la disciplina delle attività economiche e infrastrutturali che ne determinano la generazione[9]. La governance climatica si è pertanto

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[7] UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP), *Emissions Gap Report 2025: Off Target*, United Nations Environment Programme, Nairobi, 2025.

[8] Accordo di Parigi, *artt. 13, 14 e 15*; D. BODANSKY, *The Legal Character of the Paris Agreement*, cit.; S. OBERTHÜR-R. BODLE, *Legal Form and Nature of the Paris Agreement*, cit.

[9] Sul prevalente orientamento della governance climatica internazionale verso la regolazione delle emissioni e sulla progressiva emersione delle politiche climatiche dal lato dell'offerta, *v. F. GREEN-R. DENNISS, Cutting with Both Arms of the Scissors: The Economic and Political Case for Restrictive Supply-side Climate Policies*, in Climatic Change, 2018, vol. 150, pp. 73 ss.; H. VAN ASSELT,

concentrata su strumenti quali gli obiettivi di mitigazione, i mercati del carbonio, i meccanismi di compensazione e le tecnologie di rimozione o abbattimento delle emissioni, mentre gli strumenti di regolazione dal lato dell'offerta (*supply-side climate policies*) - relativi all'esplorazione, al rilascio di nuove concessioni, alla realizzazione di infrastrutture fossili e alla pianificazione del declino produttivo delle fonti non rinnovabili - hanno ricevuto attenzione del tutto residuale, rimanendo al di fuori dei tavoli negoziali delle COP.

Le misure cosiddette di *supply-side climate policy* comprendono, tra l'altro, divieti o moratorie sulle nuove licenze, limiti alla produzione, ritiro dei sussidi ai produttori, pianificazione delle chiusure e gestione degli asset destinati a perdere valore. Esse non sostituiscono le politiche di efficienza, elettrificazione e sostegno alle alternative, ma ne costituiscono il necessario complemento e sono da considerarsi precondizione per un'azione efficace.[10] La letteratura sulle politiche climatiche dal lato dell'offerta ha contribuito a evidenziare l'insufficienza di una strategia concentrata sulla domanda[11].

Eppure, la centralità del ruolo del settore fossile nella sfida climatica è confermata da evidenze scientifiche, report e serie di dati consolidati[12], secondo cui la produzione e il consumo di combustibili fossili costitui-

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Governing Fossil Fuel Production: The Role of International Climate Law, in Climate Law, 2021, pp. 1 ss.; D. BODANSKY-J. BRUNNÉE-L. RAJAMANI, *International Climate Change Law*, Oxford University Press, Oxford, 2017.

[10] F. GREEN-R. DENNISS, *Cutting with Both Arms of the Scissors*, cit.; F. GREEN-D. KUCH, *Counting Carbon or Counting Coal? Anchoring Climate Governance in Fossil Fuel-Based Accountability Frameworks*, in Global Environmental Politics, 2022, vol. 22, n. 4, pp. 48 ss.

[11] M. LAZARUS-H. VAN ASSELT, *Fossil Fuel Supply and Climate Policy: Exploring the Road Less Taken*, Stockholm Environment Institute, Working Paper n. 2015-13, Stockholm, 2015; P. NEWELL-A. SIMMS, *Towards a Fossil Fuel Non-Proliferation Treaty*, in Climate Policy, 2020, vol. 20, n. 8, pp. 1043 ss.

[12] IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, a cura di H. Lee-J. Romero, IPCC, Geneva, 2023, pp. 42 e 68; D. WELSBY-J. PRICE-S. PYE-P. EKINS, *Unextractable fossil fuels in a 1.5 °C world*, in *Nature*, vol. 597, 2021, pp. 230-234; C. MCGLADE-P. EKINS, *The geographical distribution of fossil fuels unused when limiting global warming to 2 °C*, in *Nature*, vol. 517, 2015, pp. 187-190.

scono il principale fattore strutturale alla base delle emissioni clima alteranti. Di conseguenza, non solo il riscaldamento globale osservato è riconducibile prevalentemente alle emissioni antropogeniche di gas a effetto serra, generate in larga misura dalla combustione di carbone, petrolio e gas, ma il rispetto degli obiettivi climatici richiede che una parte maggioritaria delle riserve fossili rimanga inesplorata e non venga estratta[13].

Il *Carbon Majors Database* ricostruisce le emissioni operative e quelle derivanti dalla combustione dei prodotti commercializzati dai maggiori produttori di petrolio, gas, carbone e cemento. Il database attribuisce a un numero ristretto di soggetti una quota molto elevata delle emissioni storiche: l'aggiornamento relativo al 2024 collega trentadue imprese a oltre la metà delle emissioni mondiali di CO2 da combustibili fossili e cemento, attribuendo alle prime dieci il 27,6 per cento del totale annuo.[14]

Tali dati non fondano automaticamente una responsabilità giuridica, che richiede l'accertamento dei presupposti previsti dai singoli ordinamenti e dei nessi causali rilevanti. Essi assumono, tuttavia, valore probatorio e conoscitivo crescente nei contenziosi climatici e nella definizione di obblighi di diligenza, disclosure, prevenzione e riparazione. La concentrazione delle emissioni attribuibili ai principali produttori fossili consente inoltre di integrare la tradizionale dimensione della responsabilità climatica con una prospettiva orientata agli attori economici e istituzionali, evidenziando il ruolo delle grandi imprese energetiche nella configurazione dei sistemi produttivi e infrastrutturali alla base della dipendenza dai combustibili fossili e nella formazione delle politiche pubbliche.[15]

Ulteriore profilo a cui dedicare attenzione riguarda i sussidi pubblici alle fonti fossili. Il Fondo Monetario Internazionale stima che nel 2024 i sussidi espliciti abbiano raggiunto i 725 miliardi di dollari, mentre i sussidi

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[13] D. WELSBY-J. PRICE-S. PYE-P. EKINS, *Unextractable fossil fuels*, cit., p. 230.

[14] INFLUENCEMAP, *Carbon Majors: 2024 Data Update, London, January 2026*; INFLUENCEMAP, *The Carbon Majors Database: Launch Report, London, 2024.*

[15] R. HEEDE, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-2010*, in Climatic Change, 2014, vol. 122, pp. 229 ss.; B. FRANTA, *Early Oil Industry Knowledge of CO2 and Global Warming*, in Nature Climate Change, 2018, vol. 8, pp. 1024 ss.

impliciti - comprensivi della mancata internalizzazione dei costi climatici, sanitari e ambientali - siano ammontati a 6,7 trilioni di dollari, pari a circa il 5,8 per cento del PIL mondiale. Le due categorie rispondono a metodologie differenti e non devono essere confuse, ma entrambe segnalano la sottovalutazione pubblica del ruolo del sistema fossile nella crisi climatica, nonchè dei costi ambientali e sociali connessi[16].

Sotto il profilo giuridico, la riforma dei sussidi pone una questione di coerenza tra gli obiettivi climatici dichiarati e la coerenza dell'azione pubblica sotto il profilo della politica fiscale ed energetica. La tutela dei soggetti esposti alla povertà energetica deve essere distinta dal sostegno generalizzato al consumo o alla produzione di combustibili fossili. Una riforma graduale, trasparente e accompagnata da misure redistributive risponderebbe ai principi della transizione giusta e del buon andamento nell'allocazione delle risorse pubbliche.[17]

4, La traiettoria negoziale dell'UNFCCC: da Dubai a Belém

L'emersione della questione fossile nel processo negoziale dell'UNFCCC è relativamente recente. La decisione adottata a Glasgow nell'ambito della COP26 del 2021 ha rappresentato il primo riferimento esplicito alla necessità di ridurre progressivamente l'utilizzo del carbone non abbattuto (*unabated coal power*) e di eliminare gradualmente i sussidi ai combustibili fossili inefficienti (*inefficient fossil fuel subsidies*), senza tuttavia introdurre un riferimento complessivo alla riduzione della produzione e del consumo di petrolio, gas e carbone. La decisione adottata dalla COP28 di Dubai nel 2023 a conclusione del primo *Global Stocktake* ha

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[16] S. BLACK-I. PARRY-K. VERNON, *Underpriced and Overused: Fossil Fuel Subsidies Data 2025 Update, IMF Working Paper n. 2025/270*, International Monetary Fund, Washington, 2025.

[17] INTERNATIONAL ENERGY AGENCY (IEA)-ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), *Update on Recent Progress in Reform of Inefficient Fossil-Fuel Subsidies that Encourage Wasteful Consumption*, OECD/IEA, Paris, 2017; OECD, *OECD Companion to the Inventory of Support Measures for Fossil Fuels 2021*, OECD Publishing, Paris, 2021; INTERNATIONAL MONETARY FUND (IMF), *Energy Subsidy Reform: Lessons and Implications*, International Monetary Fund, Washington, 2013.

incluso, per la prima volta nell'ambito dell'UNFCCC, il riferimento al «transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner», segnando un passaggio storico verso il riconoscimento della necessità di una transizione strutturale dai combustibili fossili[18].

La rilevanza della formulazione introdotta dalla decisione di Dubai non deve però oscurarne i limiti giuridici e operativi. La decisione non stabilisce una data globale per il phase-out dei combustibili fossili, non introduce obiettivi quantitativi vincolanti differenziati a livello nazionale e non definisce criteri specifici per modulare il percorso di transizione sulla base delle responsabilità storiche, delle capacità economiche e delle diverse condizioni di sviluppo degli Stati. Inoltre, il riferimento è circoscritto ai sistemi energetici e si accompagna al riconoscimento del ruolo di combustibili a basse emissioni e di tecnologie di abbattimento, lasciando margini interpretativi circa la possibilità di mantenere una quota di produzione fossile nel quadro della transizione energetica[19].

Alla COP30 di Belém, il tentativo di tradurre il riconoscimento politico della necessità di una transizione oltre i combustibili fossili in una roadmap formalmente integrata nell'esito negoziale non ha raggiunto il consenso necessario. La Presidenza brasiliana ha tuttavia avviato l'elaborazione di una roadmap presidenziale collocata al di fuori del testo negoziale adottato dalle Parti. Tale sviluppo evidenzia la tensione tra la progressiva emersione, nel dibattito internazionale, della necessità di una pianificazione della transizione fossile e le difficoltà del processo decisionale multilaterale nel tradurre tale esigenza in strumenti operativi con-

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[18] UNFCCC, *Decision 1/CMA.3, Glasgow Climate Pact*, FCCC/PA/CMA/2021/10/Add.1, parr. 36 e 37; UNFCCC, *Decision 1/CMA.5, Outcome of the first global stocktake*, FCCC/PA/CMA/2023/16/Add.1, par. 28, lett. d); H. VAN ASSELT, *Governing Fossil Fuel Production*, cit.; P. NEWELL-M. PATERSON, *Climate Capitalism: Global Warming and the Transformation of the Global Economy*, Cambridge University Press, Cambridge, 2010.

[19] UNFCCC, *Decision 1/CMA.5, Outcome of the first global stocktake*, cit., par. 28, lett. d); H. VAN ASSELT-P. NEWELL, *Pathways to an International Agreement to Leave Fossil Fuels in the Ground*, in Global Environmental Politics, 2022, vol. 22, n. 4, pp. 28 ss.

divisi[20]. La mancata inclusione della roadmap nell'esito formale della COP30 non ha determinato dunque l'esaurimento della questione, ma ha evidenziato i limiti del consenso negoziale quando le decisioni incidono direttamente su strutture produttive consolidate, sistemi fiscali nazionali e interessi economici strategici.

È proprio nello spazio compreso tra il riconoscimento generale dell'esigenza di transizione e la definizione degli strumenti necessari alla sua attuazione che si colloca la Conferenza di Santa Marta[21].

5. Origine, natura e obiettivi della Conferenza di Santa Marta

La Prima Conferenza sulla transizione oltre i combustibili fossili (*First International Conference on Transitioning Away from Fossil Fuels*), annunciata nel contesto della COP30 di Belém, è stata organizzata dalla Colombia e dai Paesi Bassi e celebrata a pochi mesi di distanza. La Conferenza è stata preceduta da un processo preparatorio articolato, finalizzato alla costruzione condivisa dell'agenda e alla raccolta di contributi da parte dei diversi attori coinvolti. Tale fase ha incluso una serie di dialoghi online tematici e consultazioni con gli stakeholder, orientati a individuare prospettive, priorità e proposte operative in relazione alle diverse dimensioni della transizione oltre i combustibili fossili. Il processo preparatorio ha anticipato la metodologia partecipativa adottata durante la Conferenza, fondata sul coinvolgimento diretto di categorie di attori differenziate, non esclusivamente statali. Il programma della Conferenza si è articolato nei dialoghi guidati dagli stakeholder (*stakeholder-led dialogues*) svoltisi dal 24 al 27 aprile 2026 e in un segmento politico di alto livello tenutosi il 28 e 29 aprile. Secondo il report ufficiale, hanno preso parte al processo rappresentanti di 57 Stati e oltre 1.000 partecipanti appartenenti a 14 gruppi di stakeholder, comprendenti, tra gli altri, governi nazionali e locali, co-

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[20] UNFCCC, *COP30 Presidency Roadmaps, 2025-2026*, disponibile in https://unfccc.int/cop30/cop30-presidency-roadmaps; COP30 PRESIDENCY, *Twelfth Letter from the Presidency*, 27 gennaio 2026.

[21] Sul rapporto tra consenso negoziale, *interessi economici e difficoltà di regolazione della produzione fossile, v. H. VAN ASSELT, Governing Fossil Fuel Production*, cit.; F. GREEN-R. DENNISS, *Cutting with Both Arms of the Scissors*, cit.

munità indigene, organizzazioni della società civile, movimenti sociali, sindacati, comunità scientifica, istituzioni finanziarie e settore privato[22].

La Conferenza non si è collocata formalmente nell'ambito del processo negoziale dell'UNFCCC e non disponeva di un mandato per l'adozione di decisioni giuridicamente vincolanti. Se tale caratteristica può essere considerato un limite sotto il profilo dell'efficacia normativa, ha rappresentato, al contempo, un elemento di flessibilità istituzionale e consentito un confronto più ampio tra soggetti pubblici e privati, con maggiore attenzione alle condizioni concrete di attuazione della transizione. L'obiettivo del summit non era infatti la sigla di un nuovo accordo internazionale, bensì l'individuazione delle condizioni economiche, sociali, giuridiche e finanziarie necessarie a rendere operativo il processo di transizione oltre i combustibili fossili, favorendo l'elaborazione di strumenti e percorsi successivamente applicabili nei contesti nazionali, regionali e multilaterali[23].

La nozione di transizione «giusta, ordinata ed equa», già presente nella decisione sul primo Global Stocktake[24], è stata assunta a Santa Marta come criterio orientativo dell'intero processo di phase-out. In tale prospettiva, la dimensione della giustizia non è stata ricondotta esclusivamente agli effetti occupazionali della trasformazione energetica, ma è stata articolata in relazione a questioni quali la dipendenza economica dalle esportazioni fossili, il debito, l'accesso universale all'energia, la tutela dei diritti delle comunità coinvolte, la gestione dei territori interessati dalle attività estrattive, la responsabilità degli attori economici e la riforma dei sistemi

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[22] FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *Outcome Report*, cit.; MINISTRY OF FOREIGN AFFAIRS OF COLOMBIA, *First Conference on Transitioning Away from Fossil Fuels, 2026*, disponibile in https://www.cancilleria.gov.co.

[23] FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *Outcome Report*, cit.; K.W. ABBOTT-P. GENSCHEL-D. SNIDAL-B. ZANGL (a cura di), *International Organizations as Orchestrators*, Cambridge University Press, Cambridge, 2015.

[24] UNFCCC, *Decision 1/CMA.5, Outcome of the first global stocktake*, cit., par. 28, lett. d); J. NEWELL-D. MULVANEY, *The Political Economy of the "Just Transition"*, in The Geographical Journal, 2013, pp. 132 ss.; M. MCCAULEY-R. HEFFRON, *Just Transition: Integrating Climate, Energy and Environmental Justice*, in Energy Policy, 2018, pp. 1 ss.

di sostegno pubblico ai combustibili fossili. Il superamento della dipendenza dai combustibili fossili è stato pertanto interpretato non come una mera sostituzione tecnologica delle fonti energetiche, ma come un processo di trasformazione economica, sociale e istituzionale, posta al centro dei dialoghi della Conferenza.

6. Santa Marta come innovazione della governance climatica

La Conferenza di Santa Marta non deve essere interpretata come una forma di innovazione istituzionale meramente informale. Se è vero che non istituisce un'organizzazione internazionale, crea però un processo continuativo, con un gruppo di coordinamento, workstream intersessionali e una seconda conferenza programmata per il 2027. Il modello presenta elementi di plurilateralismo: un insieme non universale di Stati e attori coopera su obiettivi più specifici, mantenendo un collegamento con il regime multilaterale generale.[25]

Alla luce delle caratteristiche del processo, la Conferenza può essere analizzata attraverso alcune categorie sviluppate dalla letteratura sulla governance globale, che consentono di interpretarne il ruolo non come sede alternativa al sistema UNFCCC, bensì come esperienza complementare di coordinamento, produzione di conoscenza e costruzione di capacità attuative. In particolare, i paradigmi della governance policentrica, della governance sperimentale e della governance per orchestrazione offrono strumenti utili per comprendere le modalità attraverso cui attori diversi possono contribuire alla gestione di problemi complessi in assenza di un'autorità centrale dotata di poteri gerarchici.

La teoria della governance policentrica[26] consente di comprendere tale funzione istituzionale. In presenza di un problema globale caratterizzato

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[25] L. COTULA-K. TIENHAARA, *Santa Marta Conference Highlights Legal Barriers to the Energy Transition*, International Institute for Environment and Development, 18 maggio 2026, disponibile in https://www.iied.org.

[26] E. OSTROM, *Polycentric Systems for Coping with Collective Action and Global Environmental Change*, in Global Environmental Change, 2010, vol. 20, pp. 550 ss.; A. JORDAN-D. HUITEMA-H. VAN ASSELT-J. FORSTER (a cura di), *Governing Climate Change: Polycentricity in Action?*, Cambridge University Press, Cambridge, 2018.

da elevata complessità e da una pluralità di interessi e livelli decisionali, l'esistenza di molteplici centri di azione relativamente autonomi può favorire la sperimentazione di soluzioni differenziate, la produzione di processi di apprendimento e una maggiore capacità di adattamento rispetto a modelli esclusivamente centralizzati. La policentricità, tuttavia, non garantisce di per sé coerenza, equità o accountability; essa richiede meccanismi di coordinamento, trasparenza e confronto sistematico sui risultati conseguiti.

Santa Marta presenta inoltre elementi riconducibili alla categoria della governance sperimentale[27], ovvero: definizione di obiettivi generali condivisi, elaborazione di percorsi adattabili ai diversi contesti nazionali, produzione di conoscenza comparata, revisione periodica e apprendimento reciproco tra gli attori coinvolti. La rilevanza potenziale di tale modello non risiede tanto nella fissazione ex ante di regole uniformi, quanto nella capacità di sviluppare metodologie, indicatori e strumenti verificabili, suscettibili di successivo consolidamento o recepimento in quadri regolatori più formalizzati.

Un ulteriore paradigma interpretativo è quello della governance per orchestrazione[28]. I Governi promotori del processo non esercitano un'autorità gerarchica sugli altri partecipanti, ma svolgono una funzione di coordinamento e mobilitazione nei confronti di comunità scientifiche, organizzazioni sociali, autorità subnazionali e istituzioni finanziarie, chiamate a operare come intermediari nella produzione di conoscenze, capacità operative e standard condivisi. In tale prospettiva, l'efficacia del modello dipende dalla qualità degli intermediari coinvolti, dalla chiarezza degli obiettivi perseguiti e dalla possibilità di monitorare gli impegni assunti.

Ne deriva una qualificazione prudente ma che valorizza i potenziali

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[27] C.F. SABEL-J. ZEITLIN, *Experimentalist Governance*, cit.; C.F. SABEL-D. VICTOR, *Governing Global Problems under Uncertainty: Making Bottom-Up Climate Policy Work*, in Climatic Change, 2017, pp. 15 ss.

[28] K.W. ABBOTT-P. GENSCHEL-D. SNIDAL-B. ZANGL (a cura di), *International Organizations as Orchestrators*, cit.; K.W. ABBOTT-D. SNIDAL, *Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit*, in Vanderbilt Journal of Transnational Law, 2009, pp. 501 ss.

sviluppi del percorso: Santa Marta non costituisce una fonte autonoma di obblighi giuridici internazionali, ma può contribuire alla formazione di prassi, aspettative e standard tecnici condivisi. La sua rilevanza giuridica assume pertanto una dimensione mediata e prospettica, riconducibile alle funzioni del *soft law* e ai processi informali di elaborazione normativa, nella misura in cui gli orientamenti e gli strumenti prodotti saranno successivamente incorporati in contributi determinati a livello nazionale (*Nationally Determined Contributions*, NDCs), strategie climatiche di lungo periodo, legislazioni interne, atti amministrativi o accordi ulteriori[29].

7. Approccio metodologico e architettura tematica

Il metodo partecipativo ha rappresentato uno degli elementi qualificanti della Conferenza. Tra febbraio e aprile 2026 il processo preparatorio ha previsto la raccolta di contributi scritti, lo svolgimento di dialoghi online e sessioni tematiche di confronto; mentre durante la Conferenza di Santa Marta sono stati predisposti spazi distinti dedicati al confronto in seno a comunità scientifica, società civile, settore privato, rappresentanze dei lavoratori, governi subnazionali. La partecipazione dei settori sociali ha coinvolto, tra gli altri, rappresentanti delle popolazioni indigene, comunità afrodiscendenti, piccoli agricoltori, donne e gruppi diversificati, giovani, organizzazioni sindacali[30].

Ciò non significa, tuttavia, che la presenza formale di una pluralità di categorie di attori determini automaticamente una rappresentanza sostanziale ed equilibrata. Differenze nelle risorse disponibili, nelle competenze linguistiche, nell'accesso all'informazione e nella capacità di incidere sui processi decisionali possono infatti riprodurre asimmetrie anche all'interno di procedure formalmente inclusive. Dal punto di vista giuridico, la

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[29] Sul ruolo del *soft law* e dei processi informali nella governance internazionale, *v. A. BOYLE, Soft Law in International Law-Making*, in M. EVANS (a cura di), International Law, Oxford University Press, Oxford, 2018, pp. 118 ss.; D. BODANSKY, *The Art and Craft of International Environmental Law*, Harvard University Press, Cambridge (Mass.), 2010.

[30] FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *Outcome Report*, cit.; A. JORDAN-D. HUITEMA-H. VAN ASSELT-J. FORSTER (a cura di), *Governing Climate Change*, cit.

qualità della partecipazione deve essere valutata piuttosto alla luce dei criteri di tempestività, accessibilità, disponibilità di informazioni adeguate e possibilità effettiva di contribuire alla definizione degli esiti, elaborati nell'ambito del diritto ambientale internazionale e degli standard in materia di diritti umani[31]. Sotto il profilo metodologico, tale impostazione ha rappresentato in ogni caso un significativo elemento di innovazione rispetto ai tradizionali processi negoziali climatici, caratterizzati prevalentemente da una dimensione intergovernativa, introducendo forme più strutturate di partecipazione e confronto tra soggetti portatori di conoscenze, interessi e competenze differenti.

L'architettura tematica della Conferenza si è articolata attorno a tre pilastri: il superamento della dipendenza economica dai combustibili fossili; la trasformazione della domanda e dell'offerta energetica; il rafforzamento della cooperazione e della diplomazia climatica[32]. Tale impostazione assume rilievo perché colloca il *phase-out* all'interno delle condizioni economiche, sociali e istituzionali che ne determinano la concreta fattibilità, includendo questioni quali la dipendenza dalle entrate fiscali derivanti dal settore fossile, la gestione del debito, la diversificazione produttiva, l'accesso universale all'energia, la pianificazione della chiusura degli impianti, la bonifica dei siti, le regole commerciali e il trasferimento tecnologico. La considerazione congiunta della dimensione della domanda e di quella dell'offerta consente inoltre di superare due letture parziali della transizione energetica. Da un lato, l'idea che l'innovazione tecnologica e l'elettrificazione dei consumi possano determinare automaticamente una riduzione della produzione fossile; dall'altro, l'ipotesi che

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[31] Convenzione sull'accesso all'informazione, *la partecipazione del pubblico ai processi decisionali e l'accesso alla giustizia in materia ambientale, Aarhus, 25 giugno 1998*; UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE), *The Aarhus Convention: An Implementation Guide, II ed.*, United Nations, Geneva, 2014; UNITED NATIONS HUMAN RIGHTS COUNCIL, *Framework Principles on Human Rights and the Environment, A/HRC/37/59, 2018.*

[32] FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *Outcome Report*, cit.; H. VAN ASSELT, *Governing Fossil Fuel Production*, cit.; F. GREEN-R. DENNISS, *Cutting with Both Arms of the Scissors*, cit.

la limitazione dell'attività estrattiva possa essere perseguita indipendentemente dalla predisposizione di strumenti economici, industriali e sociali in grado di accompagnarne gli effetti distributivi e territoriali. La giustizia della transizione richiede piuttosto un approccio integrato, capace di coordinare la progressiva riduzione dell'offerta fossile con lo sviluppo di alternative energetiche, misure di protezione sociale e strategie di riconversione delle economie maggiormente dipendenti[33].

8. Esiti e strumenti operativi

Il rapporto finale della Conferenza[34], presentato nel corso della London *Climate Action Week* nel giugno 2026, individua dieci messaggi chiave e cinque percorsi operativi per accompagnare la transizione oltre i combustibili fossili. Tra le priorità indicate figurano il consolidamento di una coalizione internazionale di attori impegnati nell'attuazione, lo sviluppo di roadmap nazionali e regionali, la mobilitazione di risorse finanziarie, la riforma dei meccanismi di debito e fiscalità e l'integrazione dei principi di giustizia, diritti e partecipazione nelle politiche di *phase-out*.

Gli strumenti prospettati comprendono, tra gli altri, moratorie sul rilascio di nuove licenze, mappatura degli asset fossili, piani di chiusura e riconversione degli impianti, individuazione di aree prive di nuove attività estrattive, strategie di riconversione occupazionale, diversificazione economica e ampliamento dell'accesso all'energia pulita. Si tratta di strumenti di natura eterogenea, la cui attuazione richiede combinazioni differenti di interventi legislativi, amministrativi, fiscali, territoriali e di cooperazione internazionale[35]. Il rapporto assume pertanto la funzione di una piattaforma di orientamento e coordinamento delle politiche pubbliche più che quella

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[33] INTERNATIONAL LABOUR ORGANIZATION (ILO), *Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All*, International Labour Office, Geneva, 2015; M. MCCAULEY-R. HEFFRON, *Just Transition*, cit.; J. NEWELL-D. MULVANEY, *The Political Economy of the "Just Transition"*, cit.

[34] FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *Outcome Report*, cit.

[35] K.W. ABBOTT-P. GENSCHEL-D. SNIDAL-B. ZANGL (a cura di), *International Organizations as Orchestrators*, cit.; D. BODANSKY, *The Art and Craft of International Environmental Law*, cit.

di un atto normativo in senso proprio.

Un elemento di particolare rilievo è rappresentato dallo *Scientific Panel on Global Energy Transition*[36], lanciato nell'ambito del percorso di Santa Marta a partire dai dialoghi scientifici che hanno coinvolto circa 520 ricercatrici e ricercatori. Il Panel è concepito come una struttura internazionale, interdisciplinare e orientata all'attuazione, destinata a fornire supporto scientifico ai Paesi interessati alla definizione di roadmap, percorsi settoriali, indicatori e strumenti economici e finanziari per la transizione oltre i combustibili fossili.

La distinzione rispetto all'IPCC risulta centrale. Mentre il Panel intergovernativo ha il compito di valutare e sintetizzare lo stato delle conoscenze scientifiche sul cambiamento climatico, lo Scientific Panel mira a svolgere una funzione maggiormente orientata alla traduzione operativa delle evidenze disponibili, fornendo strumenti per affrontare questioni quali la definizione delle priorità di riduzione della produzione fossile, la pianificazione della chiusura degli impianti, la valutazione degli impatti occupazionali, la prevenzione di nuovi *stranded assets* e la misurazione dell'equità dei percorsi di transizione[37].

Sul piano istituzionale, il Panel può svolgere una funzione di interfaccia tra conoscenza scientifica e processo decisionale pubblico, contribuendo a ridurre le asimmetrie informative e le differenze di capacità tecnica che caratterizzano l'attuazione delle politiche climatiche a livello internazionale. Esso non può tuttavia sostituire la determinazione politica degli obiettivi né risolvere autonomamente i conflitti distributivi connessi alla transizione. Le sue indicazioni dovranno pertanto essere integrate in processi decisionali trasparenti, accompagnati da valutazioni di impatto e

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[36] FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *Outcome Report*, cit.; FIRST INTERNATIONAL CONFERENCE ON TRANSITIONING AWAY FROM FOSSIL FUELS, *The First Scientific Panel to Advise on the Global Energy Transition Is Created, 25 aprile 2026*, disponibile in https://transitionawayconference.com/press-releases; S. JASANOFF, *The Fifth Branch: Science Advisers as Policymakers*, Harvard University Press, Cambridge (Mass.), 1990.

[37] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), *Principles Governing IPCC Work*, IPCC, Geneva; A. JORDAN-D. HUITEMA-H. VAN ASSELT-J. FORSTER (a cura di), *Governing Climate Change*, cit.

da adeguati meccanismi di partecipazione e controllo democratico[38]. La sua autorevolezza dipenderà dalla capacità di garantire indipendenza scientifica, pluralismo disciplinare, trasparenza metodologica e integrazione dei saperi territoriali e indigeni.

La continuità del processo avviato a Santa Marta è stata affidata allo sviluppo di attività intersessionali e a un Coordination Group composto dai governi che hanno presieduto la prima conferenza e che co-presiedanno la seconda: Colombia, Paesi Bassi, Tuvalu e Irlanda. La seconda Conferenza è infatti prevista a Tuvalu nel 2027 e sarò co-presieduta dal Governo irlandese. La stabilizzazione di questi elementi organizzativi consentirà di valutare nel medio e lungo periodo se Santa Marta resterà un'iniziativa circoscritta nel tempo o se evolverà verso una forma più strutturata di cooperazione plurilaterale[39].

9. Il nesso tra tutela dei diritti umani e obblighi di defossilizzazione

Il rapporto della Relatrice speciale delle Nazioni Unite sui cambiamenti climatici e i diritti umani, Elisa Morgera, *The imperative of defossilizing our economies*[40], contribuisce a inquadrare il superamento della dipendenza dai combustibili fossili come una questione rilevante anche sotto il profilo degli obblighi internazionali in materia di diritti umani. Il documento evidenzia come l'intero ciclo di vita dei combustibili fossili - dall'esplorazione e dall'estrazione alla produzione, al trasporto, alla raffinazione, alla combustione e alla gestione delle infrastrutture dismesse - generi impatti potenzialmente lesivi di una pluralità di diritti, tra cui il diritto alla vita, alla salute, all'acqua, al cibo, all'abitazione, a un ambiente pulito, sano e sostenibile, nonché i diritti di accesso all'informazione e alla

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[38] L. RAJAMANI, *The Changing Fortunes of Differential Treatment in the Evolution of International Environmental Law*, in International Affairs, 2012, vol. 88, n. 3, pp. 605 ss.; Accordo di Parigi, *art. 11.*

[39] R.O. KEOHANE-D.G. VICTOR, *Cooperation and Discord in Global Climate Policy*, in Nature Climate Change, 2016, vol. 6, pp. 570 ss.

[40] E. MORGERA, *The Imperative of Defossilizing Our Economies: Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change*, U.N. Doc. A/HRC/59/42, 15 maggio 2025.

partecipazione[41].

La qualificazione della defossilizzazione come esigenza derivante dalla tutela dei diritti umani non comporta l'introduzione di un unico percorso temporale vincolante applicabile indistintamente a tutti gli Stati. Essa implica piuttosto che le decisioni pubbliche relative al rilascio di licenze, alla concessione di sussidi, alla pianificazione delle infrastrutture energetiche e alla definizione delle strategie di transizione siano valutate alla luce degli obblighi statali di rispettare, proteggere e garantire i diritti umani, nonché dei principi di non discriminazione, prevenzione e cooperazione internazionale[42]. In tale prospettiva assume rilievo anche il principio del massimo impiego delle risorse disponibili nella progressiva realizzazione dei diritti economici, sociali e culturali[43].

Il rapporto dedica attenzione anche al ruolo delle imprese[44], richiamando la necessità di adottare piani di transizione d'azienda coerenti con gli obiettivi climatici, interrompere l'espansione delle attività fossili, applicare processi di *due diligence* in materia di diritti umani, garantire trasparenza e accesso alle informazioni e contribuire alla riparazione degli impatti e ai costi di bonifica e riconversione. In questa prospettiva, la responsabilità delle imprese non può essere ricondotta al solo rispetto formale delle autorizzazioni rilasciate dagli ordinamenti nazionali, ma deve essere valutata alla luce degli standard internazionali sulla condotta d'impresa responsabile e sulla gestione degli impatti lungo le catene del valore[45].

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[41] E. MORGERA, *The Imperative of Defossilizing Our Economies*, cit.; UNITED NATIONS HUMAN RIGHTS COUNCIL, *Framework Principles on Human Rights and the Environment*, cit.; UNITED NATIONS GENERAL ASSEMBLY, *The Human Right to a Clean, Healthy and Sustainable Environment, A/RES/76/300, 2022.*

[42] Corte EDU, *Grande Camera, Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, ric. n. 53600/20, sentenza del 9 aprile 2024.*

[43] UNITED NATIONS COMMITTEE ON ECONOMIC, *SOCIAL AND CULTURAL RIGHTS, General Comment No. 3: The Nature of States Parties' Obligations, 1990, par. 9.*

[44] UNITED NATIONS, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, United Nations, New York-Geneva, 2011.

[45] R. HEEDE, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions*,

La prospettiva adottata da Santa Marta presenta elementi convergenti con tale impostazione, nella misura in cui collega il *phase-out* alla tutela dei diritti delle comunità coinvolte e alla distribuzione degli oneri della transizione. La giustizia climatica assume così una duplice dimensione, sostanziale e procedurale[46]: da un lato richiede che la riduzione del rischio climatico non produca effetti sproporzionati sui gruppi maggiormente vulnerabili; dall'altro implica processi decisionali inclusivi e attenti agli impatti territoriali, sociali e ambientali delle trasformazioni economiche necessarie alla transizione.

10. Investimenti, arbitrato e ostacoli giuridici al *phase-out*

La pianificazione dell'uscita dai combustibili fossili presenta rilevanti interazioni anche con il diritto internazionale degli investimenti. Gli accordi bilaterali di investimento e alcuni accordi commerciali contenenti capitoli sulla protezione degli investimenti possono consentire agli investitori stranieri di avviare procedimenti arbitrali nei confronti degli Stati per misure quali la revoca o il mancato rinnovo di concessioni, il diniego di autorizzazioni, la chiusura anticipata di impianti o l'introduzione di nuovi requisiti ambientali[47]. L'esposizione a richieste risarcitorie potenzialmente elevate può incidere sullo spazio regolatorio degli Stati, sollevando questioni relative al bilanciamento tra tutela degli investimenti e perseguimento di obiettivi di interesse pubblico, inclusi quelli climatici.

La questione non riguarda esclusivamente l'esito dei procedimenti arbitrali. La prospettiva di controversie onerose e di possibili responsabilità finanziarie può generare fenomeni di *regulatory chill*[48], inducendo le au-

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cit.

[46] S. CANEY, *Climate Change and the Duties of the Advantaged*, in Critical Review of International Social and Political Philosophy, 2010, pp. 203 ss.; M. MCCAULEY-R. HEFFRON, *Just Transition*, cit.

[47] S.W. SCHILL, *The Multilateralization of International Investment Law*, Cambridge University Press, Cambridge, 2009; UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD), *Investment Policy Framework for Sustainable Development*, United Nations, Geneva, 2015.

[48] K. TIENHAARA, *Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement*, in Transnational Environmental Law, 2018, vol. 7, n. 2, pp. 229 ss.; K. TIENHAARA, *Regulatory Chill*

torità pubbliche a rinviare, attenuare o modificare misure ambientali e climatiche per ridurre il rischio di contenzioso. Tale rischio assume particolare rilevanza per gli Stati con minore capacità fiscale e amministrativa e per quelli caratterizzati da una fitta rete di trattati di investimento contenenti clausole di protezione degli investimenti e meccanismi di sopravvivenza (*sunset clauses*). Tali vicende evidenziano come i conflitti tra protezione degli investimenti e capacità regolatoria pubblica non riguardino esclusivamente il settore fossile[49], ma possano estendersi alla definizione complessiva delle politiche di transizione energetica.

Le possibili risposte individuate dalla dottrina e dalla prassi internazionale[50] comprendono la revisione o la denuncia dei trattati di investimento, l'adozione di interpretazioni congiunte da parte degli Stati contraenti, l'introduzione di eccezioni o clausole di salvaguardia per misure climatiche (*climate carve-outs*), l'esclusione o limitazione dei meccanismi ISDS, nonché una ridefinizione degli standard di protezione degli investitori, quali il trattamento giusto ed equo e la tutela delle aspettative legittime. Particolare attenzione è inoltre dedicata alla possibilità di disciplinare gli effetti economici della chiusura degli impianti e della dismissione degli asset fossili. La presenza di clausole di sopravvivenza nei trattati rende tuttavia insufficiente un approccio esclusivamente unilaterale, rafforzando l'esigenza di forme di coordinamento internazionale.

Nell'ambito della Conferenza di Santa Marta, la questione del rapporto tra diritto degli investimenti e transizione fossile è stata inclusa tra gli ostacoli giuridici da considerare nella pianificazione del phase-out. Il processo non ha prodotto finora proposte operative specifiche in materia di arbitrati internazionali ma ha avuto il merito di includere l'ISDS tra i

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and the Threat of Arbitration: A View from Political Science, in C. BROWN-K. MILES (a cura di), Evolution in Investment Treaty Law and Arbitration, Cambridge University Press, Cambridge, 2011, pp. 606 ss.; UNCTAD, *Reforming Investment Dispute Settlement: A Stocktaking*, United Nations, Geneva, 2019.

[49] UNITED NATIONS WORKING GROUP ON BUSINESS AND HUMAN RIGHTS, *Energy Transition Should Not Replicate or Create New Violations of Human Rights, 13 ottobre 2023*, disponibile in https://www.ohchr.org.

[50] UNCTAD-INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT (IIED), *Policy Brief on International Investment Agreements and Climate Action*, 23 marzo 2022.

temi dell'agenda e di renderlo più visibile nel dibattito climatico. Tale elemento rappresenta uno dei profili destinato a richiedere ulteriori approfondimenti nell'evoluzione futura della cooperazione avviata a Santa Marta.

11. Verso una diplomazia climatica complementare

Vale la pena di sottolineare, in conclusione, che Santa Marta deve essere interpretata come un'esperienza di diplomazia climatica complementare, e non sostitutiva, rispetto al sistema multilaterale istituito nell'ambito dell'UNFCCC. Quest'ultimo mantiene una funzione insostituibile in ragione della propria universalità, della legittimazione politica derivante dalla partecipazione pressoché universale degli Stati, della definizione dei principi comuni e del coordinamento degli impegni nazionali[51]. Un processo plurilaterale esterno al regime convenzionale non può dunque replicarne il livello di rappresentatività né sostituire le decisioni formalmente assunte dalle Parti.

Al contempo va valorizzato che esperienze complementari possono contribuire a colmare alcuni limiti strutturali dei processi negoziali universali, consentendo a gruppi di Stati e ad altri attori rilevanti di elaborare strumenti operativi, sviluppare metodologie condivise e produrre conoscenze successivamente utilizzabili nel quadro multilaterale. La complementarità richiede meccanismi di connessione espliciti con gli strumenti centrali della governance climatica internazionale[52], inclusi i contributi determinati a livello nazionale (*Nationally Determined Contributions*, NDCs), le strategie di sviluppo a basse emissioni di lungo periodo, il Global Stocktake e le decisioni adottate nell'ambito della COP, al fine di evitare frammentazione normativa e proliferazione non coordinata delle iniziative. La legittimazione di tali forme di cooperazione dipende inoltre da condizioni sostanziali e procedurali: apertura alla partecipazione, ade-

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[51] D. BODANSKY-J. BRUNNÉE-L. RAJAMANI, *International Climate Change Law*, cit.; D. BODANSKY, *The Legal Character of the Paris Agreement*, cit.

[52] C.F. SABEL-D. VICTOR, *Governing Global Problems under Uncertainty*, cit.; A. JORDAN-D. HUITEMA-H. VAN ASSELT-J. FORSTER (a cura di), *Governing Climate Change*, cit.

guata rappresentanza dei Paesi del Sud globale, trasparenza dei processi decisionali, meccanismi di accountability, disponibilità di risorse e coerenza con il principio delle responsabilità comuni ma differenziate e delle rispettive capacità[53].

La formula della *coalition of doers*, emersa nel dibattito successivo alla Conferenza, può assumere rilevanza istituzionale ove accompagnata da strumenti di monitoraggio, apprendimento e aggiornamento periodico. L'efficacia di tali coalizioni può essere valutata, nel medio e lungo termine, sulla capacità di tradurre gli orientamenti condivisi in strumenti concreti: roadmap verificabili, interventi normativi, decisioni di bilancio, programmi di riduzione della produzione fossile e misure di tutela per lavoratori e comunità coinvolte[54].

12. Conclusioni

La Conferenza di Santa Marta non ha prodotto nuovo diritto internazionale vincolante, ma ha contribuito a rendere esplicita una questione che l'architettura climatica globale aveva a lungo affrontato prevalentemente attraverso la regolazione delle emissioni: la necessità di governare la progressiva riduzione della produzione e dell'utilizzo dei combustibili fossili. Il contributo principale del processo consiste pertanto nello spostamento dell'attenzione dall'obiettivo generale della decarbonizzazione alla costruzione delle condizioni giuridiche, economiche, finanziarie, scientifiche e procedurali necessarie a rendere praticabile il *phase-out*.

L'elemento innovativo di Santa Marta può essere ricondotto a tre profili principali. In primo luogo, l'integrazione della dimensione della produzione fossile (*supply-side climate policies*)[55] all'interno della governance climatica, quale complemento necessario alle politiche orientate alla riduzione della domanda e delle emissioni. In secondo luogo, l'elabora-

[53] E. OSTROM, *Polycentric Systems for Coping with Collective Action and Global Environmental Change*, cit.; L. RAJAMANI, *Differential Treatment in International Environmental Law*, Oxford University Press, Oxford, 2006.
[54] R.O. KEOHANE-D.G. VICTOR, *Cooperation and Discord in Global Climate Policy*, cit.
[55] H. VAN ASSELT, *Governing Fossil Fuel Production*, cit.; F. GREEN-R. DENNISS, *Cutting with Both Arms of the Scissors*, cit.

zione di un approccio integrato che connette dimensioni frequentemente trattate separatamente - debito, fiscalità, diritti umani, lavoro, investimenti, bonifica dei territori e partecipazione pubblica - riconducendole entro un'unica cornice di pianificazione della transizione. In terzo luogo, la costruzione di un processo plurilaterale continuativo, sostenuto da strumenti di produzione e trasferimento della conoscenza scientifica orientati all'attuazione.

Restano tuttavia rilevanti elementi di incertezza: l'assenza di obblighi giuridicamente vincolanti, la disponibilità effettiva di risorse finanziarie, la misurabilità della rappresentanza degli attori coinvolti, la definizione di adeguati meccanismi di *accountability* e il limitato avanzamento rispetto alla riforma delle regole internazionali sugli investimenti. La rilevanza istituzionale di Santa Marta dipenderà dalla capacità del processo di consolidare strumenti verificabili, dalla qualità delle roadmap elaborate e dalla loro progressiva integrazione nelle politiche nazionali, nei contributi determinati a livello nazionale (*Nationally Determined Contributions*, NDCs) e nei processi multilaterali dell'UNFCCC.

In conclusione, Santa Marta può essere qualificata come un laboratorio di *governance* climatica complementare. La sua funzione consiste nel contribuire a colmare il divario tra obiettivi climatici condivisi e strumenti di attuazione, attraverso forme di coordinamento plurilaterale, produzione di conoscenza e sperimentazione istituzionale[56]. Tale funzione mira nelle intenzioni a consolidarsi accompagnando all'innovazione procedurale la messa in pratica di principi di equità distributiva, partecipazione effettiva, controllo pubblico e progressiva traduzione degli orientamenti politici elaborati in strumenti giuridici e amministrativi verificabili.

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[56] L. COTULA-K. TIENHAARA, *Santa Marta Conference Highlights Legal Barriers to the Energy Transition*, cit.; D. BODANSKY, *The Legal Character of the Paris Agreement*, cit.; L. RAJAMANI, *Ambition and Differentiation in the 2015 Paris Agreement*, cit.

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INDIA'S CLIMATE LITIGATION: FROM ECO-RESISTANCE TO JUDICIAL ACTIVISM, A JOURNEY IN CONTINUATION.

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Abstract: India's position is unique and complex in two manners: its conflict with the development agenda and the rich climate ethos that shapes its understanding of dealing with the dilemma. History has dictated and quite literally paved the way for India's climate justice ethos, modern developments show a ground-up approach, rooted in Constitutionalism with the need for balancing economic interest. This note argues on the premise that climate litigation in India is not just a legal philosophy, it is backed by years of grassroots activism and continues to do so. The question however remains whether this approach can sustain much longer owing to India's dilemma for rapid development and modernisation. Another key question that arises is the interpretation by the judiciary in attempting to balance often conflicting and competing interests.

The Roots of Resilience: Introducing India's Ethos

India does not approach climate justice in a manner identical to most of the westernised world, it treats it as sacred action. In Indian culture, the sanctity of the environment stems from old intellectual frameworks that see nature as a living expression of the divine rather than a resource to be exploited. Indigenous environmental ethics are based on this worldview, which combines ecological balance, devotional prayer, and cosmology.[1]

According to Indian philosophy, humans are an essential component of nature rather than something distinct from it, and the environment is seen as a living system. This is rooted in traditional worldviews and writings that emphasize Panchatattva (the five components)[2], treat natural things with deep respect, and see nature as a divine being rather than a resource that can only be used. Hymns like the Prithvi Sukta ("Mata Bhumih Putro Aham Prithivyah" (Earth is my mother, and I am her child) are used in

[1] S. SUBHASMIRTA, S. BEHURA, *Environmental ethics in Indian thought: Ancient answers to modern environmental challenges*, in *International Journal of History*, 2025, vol. 7, n. 5, pp. 10-15.

[2] Organiser, *Pancha-tattva: Ancient Indian wisdom & its relevance in modern environmental conservation*, in *Organiser*, 28 December 2024.

classic texts to create this connection.

Furthermore, strong grassroots opposition and community driven ecological stewardship have historically demonstrated this philosophical reverence, directly laying the foundation for contemporary legislative actions. Community defense of nature has a long history, dating back to the centuries-old sacrifices of the Bishnoi community, exemplified by the historic Khejarli massacre[3] in which villagers hugged sacred Khejri trees to protect them from axes. The customary preservation of Devrais (sacred groves)[4] as pristine biodiversity repositories is another reflection of the same ideology of sacredness. These indigenous values have significantly influenced contemporary eco-resistance, evident in the renowned Chipko movement in the Himalayas[5], where villagers physically wrapped their arms around trees to prevent commercial logging. This influence can also be seen in modern urban and regional movements, such as the effort to protect Mumbai's Aarey Forest[6], the protests aimed at preserving the ancient Aravalli hills[7] from real estate and mining destruction, and the recent large-scale rallies in Dehradun[8] against the cutting down of thousands of trees in the Shivalik forest for a highway expansion project.

Critically, the groundbreaking Public Interest Litigation (PIL) revolution led by environmental lawyer M.C. Mehta gave these grassroots struggles their final legal grounding. Mehta's historic petitions, which ranged from the industrial pollution of the Taj Mahal and Doon Valley limestone quarrying to the articulation of the Absolute Liability principle following the Oleum gas leak[9] and the enforcement of the Polluter Pays Principle[10] broke the traditional locus standi norms and forced the judiciary

[3] D. CHAN, *Khejarli Massacre Case Study*, in *Tactics4Change: Case Studies in Nonviolent Resistance*, 2023, available at *www.tactics4change.org*.
[4] IUCN, *Sacred Groves, the secret wizards of conservation*, IUCN Blog, 28 August 2023, available at *www.iucn.org*
[5] R. GUHA, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, University of California Press, 1989.
[6] Citizen Matters, *Nine years of 'Save Aarey': The unique citizens' movement lives on in Mumbai*, in *Citizen Matters*, 27 December 2023, available at *www.citizenmatters.in*.
[7] BBC News, *Why India's Aravalli hills are at the centre of growing protests*, BBC News, December 2025, available at *www.bbc.com*.
[8] The Better India, *When a Highway Threatened Dehradun's 100-YO Sal Trees, Residents Brought Back the 'Chipko' Spirit*, in *The Better India*, 24 July 2026, available at *www.thebetterindia.com*.
[9] M. C. MEHTA v. Union of India (Oleum Gas Leak Case), 1987, 1 SCC 395.
[10] M. C. MEHTA v. Union of India (Taj Trapezium Case),1997, 2 SCC 353.

to move from passive review to active continuing mandamus. By analyzing how modern civil resistance converges with landmark rulings such as the formal recognition of the right against climate change in M.K. Ranjitsinh v. Union of India[11]and the strict oversight of environmental integrity in Vanashakti v. Union of India[12] this note highlights how Indian courts fuse ancient philosophical stewardship with constitutional mandates to bridge policy inertia and ecological survival in the Global South.

The Constitutional Metamorphosis

Over the course of four decades of judicial interpretation, the philosophical and popular love for nature was methodically incorporated into the formal framework of Indian constitutional law, leaving it beyond the realm of custom and ethical practice. This transformation of an inherited ecological consciousness into justiciable legal doctrine can be accurately described as constitutional metamorphosis, whereby provisions that were not initially drafted with environmental concerns in mind are now regarded as the main textual pillars of India's environmental jurisprudence.

This transformation began with the paradox that there was no express right to a clean and healthy environment in the unaltered Indian Constitution of 1950. Ecological issues did not have the political prominence they do today when the Constituent Assembly was debating civil liberties, federal architecture, and the mechanisms of parliamentary democracy in the wake of Partition and amid the pressing tasks of nation-building.[13]Articles 48-A and 51-A(g), which placed an obligation on the State to protect and improve the environment and a Fundamental Duty on every citizen, were only added to the Constitution with the Forty-second Amendment of 1976[14], which itself was a result of the environmental consciousness sparked by the Stockholm Declaration of 1972.[15]

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[11] *M.K. Ranjitsinh & Ors. v. Union of India & Ors.* Writ Petition (Civil) No. 838 of 2019, 2024 SCC OnLine SC 570, Supreme Court of India, 2024.
[12] *Vanashakti & Anr. v. Union of India & Anr.* Writ Petition (Civil) No. 1394 of 2023, 2026 INSC 761, Supreme Court of India, 2026.
[13] Constituent Assembly of India, *Debates (21 November 1949)*, official proceedings available at *www.constitutionofindia.net*.
[14] Constitution of India, Articles 48-A and 51-A(g) [inserted by the Constitution (Forty-Second Amendment) Act, 1976], available at *www.constitutionofindia.net*.
[15] United Nations, *Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration)*, 16 June 1972, UN Doc. A/CONF.48/14/Rev.1.

However, Directive Principles under Article 37[16]are by their very nature non-justiciable, regardless of how essential they may be to the nation's governance. Therefore, the task of bridging this gap between aspiration and enforceability fell on the shoulders of judiciary, namely the Supreme Court using its writ power under Article 32[17]. The doctrinal instrument chosen for this purpose was Article 21[18], the right to life and personal liberty, which the Court progressively expanded through a series of landmark pronouncements to encompass a substantive right to a wholesome environment. In *Subhash Kumar v. State of Bihar*[19], the Court held for the first time in unambiguous terms that the right to live includes the right to enjoyment of pollution-free water and air, thereby converting what had been a non-enforceable directive into an enforceable fundamental right by judicial interpretive fiat. This move exemplifies a broader interpretive methodology that Indian courts have applied across environmental litigation: reading Part III (Fundamental Rights)[20] and Part IV (Directive Principles)[21] not as hermetically sealed compartments but as mutually reinforcing dimensions of a single constitutional vision, in which the Directive Principles inform and give content to the otherwise open-textured guarantees of Part III.

The Supreme Court's most authoritative articulation of the explicit judicial recognition of a specific right against the negative consequences of climate change in M.K. Ranjitsinh v. Union of India (2024)[22] represents a further and more recent stage in this constitutional transformation. The Court held that the right to be free from the negative effects of climate change is traceable to both Article 21 (right to life) and Article 14 (right to equality)[23]. The Court reasoned that the disproportionate burden of climate

[16] Constitution of India, art. 37 [read in conjunction with art. 48-A and art. 51-A(g), inserted by the Constitution (Forty-Second Amendment) Act, 1976].
[17] Constitution of India, art. 32.
[18] Constitution of India, art. 21.
[19] Subhash Kumar v. State of Bihar, in *Supreme Court Cases*, 1991, vol. 1, p. 598.
[20] Constitution of India, Part III (Fundamental Rights, Articles 12-35).
[21] Constitution of India, Part IV (Directive Principles of State Policy, Articles 36-51).
[22] Id at 11.
[23] A. U. ARUN, P. SHAIJU, A. V. PILLAI, *Climate rights and environmental justice in India: constitutional responses to climate vulnerability and governance challenges*, in *Aposta. Revista de Ciencias Sociales*, 2026, vol. 24, n. 115, pp. 1-15, available at *www.revistaaposta.com*.

impacts on the poor and marginalized implicates the equality guarantee as much as it does the right to life. This ruling is noteworthy not only for its conclusion but also for its methodology, which shows the Court's ongoing readiness to extract new, independent rights from the Fundamental Rights chapter in a way that is exactly comparable to the earlier derivation of the environmental right itself from Article 21[24]. It also highlights the ongoing conflict at the core of India's climate jurisprudence: the need to protect ecosystems (in this case, an endangered species and its habitat) and the equally urgent need to expand renewable energy infrastructure in order to fulfill India's climate mitigation obligations. The Court attempted to resolve this conflict through a calibrated, expert-committee-supervised balancing exercise rather than a general prohibition.

Additionally, the National Green Tribunal (NGT) was established under the National Green Tribunal Act, 2010[25], as a specialized body with both judicial and technical expertise, empowered to apply the principles of sustainable development, the precautionary principle, and the polluter pays principle as substantive rules of decision.[26] This is because the growing docket of complex, technically demanding, continuously supervised environmental litigation eventually outgrew the capabilities of a generalist superior judiciary. The NGT and Supreme Court's recent involvement with sand mining, wetland encroachment, and forest diversion in cases like *Vanashakti v. Union of India,* which concerned the integrity of the environmental clearance process and the practice of ex-post-facto regularization of projects started without prior clearance, shows a persistent judicial vigilance against what could be called procedural erosion, the progressive weakening of environmental safeguards through administrative practices of retrospective sanction that hollow out the clearance regime from the inside. The Court's firm rejection of *ex-post-facto* environmental clearances in that line of cases reaffirms the precautionary logic that clearance must precede, not follow, the commencement of potentially damaging activity[27] drawing its statutory teeth from the overarching mandate

[24] S. JOLLY, A. TRIVEDI, *M.K. Ranjitsinh v Union of India: Climate Litigation as a Game-Changer to Place Human Concerns at the Core of Climate Crisis in India*, in *Chinese Journal of Environmental Law*, 2025, vol. 9, n. 1, pp. 107-116, available at *www.brill.com*.
[25] National Green Tribunal Act, 2010 (Act No. 19 of 2010).
[26] Chowdhury, N., & Srivastava, N. (2018). The National Green Tribunal in India: Examining the question of jurisdiction. *Asia Pacific Journal of Environmental Law*, *21*(2), 190-216. https://doi.org/10.4337/apjel.2018.02.06
[27] *Alembic Chemicals Works Co. Ltd. v. Rohit Prajapati & Ors.*, in *Supreme Court*

of the Environment Protection Act.[28]

The Development Dilemma: Balancing Ecology and Economy.

It is at this juncture that the central dilemma identified in the abstract to this note becomes most acute. On all accounts, India is still a developing economy with enormous unmet needs for energy access, infrastructure, housing, and industrial capacity.[29] At the same time, the country is particularly vulnerable to the physical effects of climate change, from the retreat of the Himalayan glaciers and increasingly unpredictable monsoon patterns to coastal vulnerability along its vast shoreline.[30]The constitutional theory of sustainable development was specifically designed to ease this tension, but theory by itself cannot resolve what is fundamentally a political and distributive dispute over the rate and mode of economic expansion.[31]

The judiciary's own jurisprudence betrays an awareness of this difficulty.[32] In balancing infrastructure and renewable-energy imperatives against habitat protection in M.K. Ranjitsinh, the Supreme Court acknowledged that an uncompromising order would endanger India's renewable energy ambitions and Paris Agreement obligations, therefore it had to loosen its strict command to underground all overhead power lines in bustard habitats. This draws attention to a particular conundrum in climate litigation: unlike traditional environmental lawsuits, which pit pollution against protection, climate conflicts frequently set one green priority (renewable energy) against another (biodiversity conservation), leaving courts without a universally ideal solution.[33]

The grassroots movements mentioned earlier in this note exhibit a similar tension. The recent protests discussed in the note are direct challenges to the material logic of infrastructure modernization, metro extensions, urban real estate demands, and connectivity, all of which have been reco-

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Cases, 2020, vol. 17, p. 443.

[28] Environment Protection Act, 1986 (Act No. 29 of 1986), Section 3; read with the Environmental Impact Assessment (EIA) Notification, 2006 (S.O. 1533(E)).

[29] N. K. DUBASH (ed.), *India in a Warming World: Integrating Climate Change and Development*, Oxford University Press, New Delhi, 2019, pp. 45-68.

[30] INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC), *Climate Change 2023: Synthesis Report*, IPCC, Geneva, 2023, pp. 55-72.

[31] L. RAJAMANI, *The Changing Climate of International Environmental Law*, Oxford University Press, Oxford, 2016, pp. 112-145.

[32] Id at 24.

[33] Id at 31.

gnized by successive governments as essential to economic growth rather than purely sentimental appeals.[34]Therefore, the question this note tackles is, whether the grassroots-judicial paradigm of climate constitutionalism can endure much longer given India's developmental aspirations is an empirically supported concern rather than a rhetorical device. Every new "urban development" leads to new litigation that challenges the judiciary's willingness to uphold the standards set by its own precedents or gradually allow environmental protections to be compromised in the name of an unquestionable public interest in development.[35]

There are reasons for cautious optimism as well as for concern. On the one hand, the judiciary has shown a willingness to reaffirm and even extend protective doctrine where the factual record indicates clear ecological harm, as the Vanashakti line of cases evidenced. However, the sheer number and variety of infrastructure and extractive projects that are currently passing through India's regulatory pipeline often under the guise of national programs for ports, highways, and renewable energy create a structural pressure toward regulatory dilution that judicial review, operating case by case and years after project inception, may be ill-equipped to withstand.[36]

Conclusion and Way Forward:

This note has attempted to show that comparative constitutional doctrine alone is insufficient to fully comprehend India's climate jurisprudence. Its uniqueness is found in the layered continuity between a modern constitutional apparatus that has transformed non-justiciable directive principles and an open-textured right to life into an enforceable body of environmental and, most recently, climate-specific rights through decades of judicial creativity, and an inherited philosophical ethos that views nature as sacred rather than merely instrumental.[37] Although the judiciary's interpretive leaps were made through litigation rather than legislative deliberation, the grassroots resistance of the Bishnoi, the Chipko movement, and their modern urban successors not only preceded this legal develop-

[34] N. K. DUBAHS (ed.), *India in a Warming World: Integrating Climate Change and Development*, Oxford University Press, New Delhi, 2019, pp. 112-134

[35] S. GHOSH, *Environmental Law and Policy in India: Cases and Materials*, Wolters Kluwer, Gurgaon, 2020, pp. 310-345

[36] Id at 31.

[37] M. FIRMINGER, *Sacred Ecology and Environmental Jurisprudence in India*, in *Journal of Environmental Law*, 2021, vol. 33, n. 2, pp. 315-338

ment chronologically but also provided the normative substratum, the felt sense of ecological obligation that made them culturally understandable and, in a crucial sense, democratically legitimate.

However, this deliberation has also attempted to clear an unquestioning admiration of the Indian model. M.K. Ranjitsinh's acknowledgment of a unique right against climate change is a doctrinal high point, but it also highlights the limitations of adjudication as a means of addressing resource-intensive, polycentric policy issues. The fundamental distributive question of how the costs and benefits of both development and environmental protection should be distributed among India's regions, income groups, and generations cannot be resolved by courts alone.[38] However, they can define rights, assign liability, and oversee compliance through ongoing mandamus. The legislative and executive branches should be in charge of that work as they have the institutional capacity budgetary, technological, and democratic that adjudication lacks.

Ultimately, the endurance of India's judicialized framework for climate governance relies heavily on forces outside the courtroom. It depends on whether Parliament formally codifies these judicially developed principles to lessen reliance on litigation, whether regulatory bodies can halt the spread of retrospective clearances, and whether grassroots activism, which historically drives both the facts and the moral urgency behind these cases remains vibrant. Without these parallel shifts, there is a distinct danger that India's visionary climate ethos, while rich in philosophy and constitutional ambition, will be overwhelmed by the immense scale of the developmental demands it seeks to balance.

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[38] S. CANEY, *Two Kinds of Climate Justice: Avoiding Harm and Sharing Burdens*, in *Journal of Political Philosophy*, 2014, vol. 22, n. 2, pp. 125-149

CLIMATE POLICIES AND BIODIVERSITY PROTECTION

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Abstract: Climate change and biodiversity loss are distinct but closely interconnected crises, and this interdependence is now well established in the international and European legal frameworks devoted to each of them. This recognition, however, does not automatically translate into the integration of the public policies designed to address the two phenomena. Turning convergent objectives into coordinated action requires public authorities to assess the interactions between climate and biodiversity measures, coordinate sectoral policies, and actively govern the conflicts that may arise during implementation - as the case of ecosystem restoration, and within it the experience of Marine Protected Areas, shows.

Keywords: biodiversity, climate change, ecosystem restoration, policy integration, Marine Protected Areas

1. Climate change and biodiversity loss as interconnected crises

Climate change and biodiversity loss constitute distinct objects of legal protection. Each is governed by its own conventions, pursued through its own instruments and entrusted to its own authorities, and each is identified by reference to parameters that are not interchangeable: the concentration of greenhouse gases in the atmosphere on the one hand, the condition of habitats, species and ecosystems on the other. Such differentiation does

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[1] This paper develops the contribution presented at the final conference of the Climate Justice Living Lab (CJLL) project, 'Climate Justice Perspectives in the Age of Global Conflict', held at the University of Palermo on 24 July 2026.

not represent a defect of the legal framework. The construction of a regime of protection presupposes the identification of a delimited object, to which criteria of assessment, thresholds of relevance and instruments of intervention may be referred; in the absence of that operation, protection would not be practicable. Differentiation constitutes, in this sense, a technique for the regulation of environmental complexity rather than a failure to perceive it[2].

A difficulty arises where the phenomena thus distinguished are, on the material plane, interdependent. The relation between the climate system and biological diversity operates in both directions, and neither of the two processes can be adequately described without reference to the other.

The first direction is the more extensively documented. IPBES ranks climate change third among the direct drivers of the decline of nature, after land- and sea-use change and the direct exploitation of organisms, and indicates it as the driver whose relative weight is expected to increase most substantially over the coming decades[3]. In its assessment of near-term risks of biodiversity loss, the IPCC places forest ecosystems and kelp and seagrass ecosystems in the moderate to high range, and Arctic sea-ice and terrestrial ecosystems and warm-water coral reefs in the high to very high range[4]. These assessments concern impacts already recorded, and not only risks projected for the future: shifts in the geographical distribution of species, alterations in the timing of biological cycles, and the first

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[2] On the complexity of environmental matters and the resulting articulation of the relevant legal regimes, see G. ROSSI (ed.), *Diritto dell'ambiente*, 5th ed., Turin, 2021; F. FONDERICO, *voce Ambiente*, in *Dizionario di diritto pubblico*, ed. S. CASSESE, Milan, 2006; G. MORBIDELLI, *Il regime amministrativo speciale dell'ambiente*, in AA.VV., *Scritti in onore di Alberto Predieri*, II, Milan, 1996, 1121 et seq. Sulla specificità dei problemi posti dalla regolazione ambientale e sul rapporto tra conoscenza scientifica e decisione giuridica: R. FERRARA, *Scienza e diritto nella società del rischio: il ruolo della scienza e della tecnica*, in *Il diritto dell'economia*, 2022, 3, 359 et seq.; F. FRACCHIA, *I procedimenti amministrativi in materia ambientale*, in A. CROSETTI - R. FERRARA - F. FRACCHIA - N. OLIVETTI RASON, *Introduzione al diritto dell'ambiente*, Rome-Bari, 2018, 177 et seq.

[3] IPBES, *Global Assessment Report on Biodiversity and Ecosystem Services*, IPBES secretariat, Bonn, 2019.

[4] IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report*, Cambridge University Press, Cambridge-New York, 2022.

extinctions attributed to warming.

The second direction is stated less frequently in legal terms, although its implications for public action are more immediate. Forests, peatlands, wetlands, coastal habitats and the ocean hold the carbon stocks that absorb a substantial share of anthropogenic emissions, and they perform that function only for as long as their ecological integrity is preserved. Where ecosystems are degraded, their capacity to act as carbon sinks may be reduced or lost and, in some cases, part of the carbon stored in biomass or soils may be released. Drained peatlands, for example, can become net sources of greenhouse gas emissions. Ecosystem degradation therefore affects the climate system in two respects: through the reduction of absorption capacity and through the possible release of previously stored carbon[5].

It follows that measures adopted within one of the two fields may affect the objectives pursued in the other irrespective of the purpose for which they were adopted. The compliance of each decision with the discipline governing its own sector does not, in itself, ensure the overall coherence of public action. The problem does not lie in the existence of distinct regimes, but in the possibility that decisions taken separately may determine the same environmental outcome without being adequately connected to one another[6].

A further difficulty concerns the construction of one of the two objects of protection. The Convention on Biological Diversity defines biological diversity as "the variability among living organisms from all sources", including "terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part", and extends the notion to diversity within species, between species and of ecosystems[7]. The

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[5] IPCC, *Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report*, Cambridge University Press, Cambridge-New York, 2022; H.O. PÖRTNER ET AL., *IPBES-IPCC co-sponsored workshop report on biodiversity and climate change*, IPBES and IPCC, 2021.

[6] On the relationship between the differentiation of environmental functions and the need for coordination of public action, see M. RENNA, *L'allocazione delle funzioni normative e amministrative*, in *Diritto dell'ambiente*, ed. G. ROSSI, 2nd ed., Turin, 2011, 135 et seq.

[7] Convention on Biological Diversity, opened for signature at Rio de Janeiro on 5

definition designates not a set of entities capable of enumeration, but a property of the relations among them: organisms, the systems they compose, and the interactions through which those systems persist. The properties of the whole cannot be explained by reference to its components alone, and the whole cannot therefore be preserved by protecting those components in isolation from one another[8]. Biodiversity thus defined is distributed across the natural environment and does not possess a perimeter of its own[9], with the consequence that its delimitation as an object of regulation, and the allocation of the corresponding functions, present a difficulty that Italian scholarship encountered from its earliest reflections on the environment considered as a unitary legal good[10].

June 1992, entered into force 29 December 1993, art. 2.

[8] On the relational and systemic character of biodiversity, and on the environment as a unitary good constituted as a system, see R. AGNOLETTO, *Natura e ambiente nella prospettiva della biodiversità*, in *Foro amministrativo (II)*, 2018, 7, 1377 et seq. The underlying premise is of Gestalt derivation - *Das Ganze unterscheidet sich von der Summe seiner Teile* - subsequently taken up in environmental philosophy: A. NAESS, *Il movimento ecologico: ecologia superficiale ed ecologia profonda. Una sintesi* (1973), in M. TALLACCHINI (ed.), *Etiche della terra. Antologia di filosofia dell'ambiente*, Vita e Pensiero, Milan, 1998, 143 et seq.; A. PORCIELLO, *Filosofia dell'ambiente. Ontologia, etica, diritto*, Carocci, Rome, 2022, 72 et seq.

[9] The two objects are not symmetrically anchored in the primary law of the Union. Art. 191, para. 1, TFEU expressly lists among the objectives of environmental policy the promotion of measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change; neither that provision nor Art. 37 of the Charter, which is confined to a high level of environmental protection and to the improvement of environmental quality, refers to biological diversity. The reference to diversity in Art. 191, para. 2, TFEU concerns the diversity of situations in the various regions of the Union, understood as social, economic and cultural requirements and regional and local characteristics, as recital 70 of Regulation (EU) 2024/1991 confirms.

[10] M.S. GIANNINI, *Ambiente: saggio sui diversi suoi aspetti giuridici*, in *Rivista trimestrale di diritto pubblico*, 1973, 15 et seq. In the subsequent literature, see G. PERICU, *voce Ambiente (tutela del) nel diritto amministrativo*, in *Digesto delle discipline pubblicistiche*, I, Turin, 1987, 573 et seq.; P. D'AMELIO, *voce Ambiente (tutela dell')*, in *Enciclopedia giuridica Treccani*, II, Rome, 1988; M. MONTEDURO, *Ambiente, ecosistemi e servizi ecosistemici tra materialità ed immaterialità*, in *Rivista quadrimestrale di diritto dell'ambiente*, 2025, 1, 656 et seq. See also Corte cost., 28 May 1987, no. 210; Corte cost., 30 December 1987,

The interdependence between the two phenomena has been acknowledged at the science-policy interface. In December 2020 experts selected by a scientific steering committee constituted by the two bodies took part in the first workshop jointly sponsored by IPBES and the IPCC; the resulting report, published in June 2021, concluded that the two crises may be addressed jointly and warned that measures directed exclusively to climate mitigation and adaptation are liable to produce adverse effects upon nature and upon its contributions to people[11]. The report itself records that it was not subjected to the governmental review procedures of either body, and that co-sponsorship of the workshop does not imply endorsement or approval of its conclusions. Recognition of an interdependence and assumption of the corresponding obligations remain, in this respect, distinct operations.

The persistence of biodiversity decline, notwithstanding the expansion of environmental legislation over recent decades, has been read as the symptom of a structural misalignment between the architecture of legal systems and the architecture of the environment they are intended to protect, attributable to conceptual as much as to practical causes[12]. The interdependence of climate change and biodiversity loss is no longer contested, and the objectives pursued in the two fields have progressively converged; what remains distinct is the allocation of functions among the authorities called upon to decide, together with the criteria on which those decisions are taken. The difference between a differentiation of the instruments of protection and a separation of the decision-making processes bearing upon the same environmental outcome emerges, therefore, on the plane of implementation rather than on that of the objectives.

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no. 641.

[11] H.O. PÖRTNER ET AL., *IPBES-IPCC co-sponsored workshop report on biodiversity and climate change*, IPBES and IPCC, 2021

[12] E. CISCATO, *Il carattere trasformativo del Regolamento europeo sul Ripristino della Natura nelle politiche ambientali*, in *Rivista giuridica dell'ambiente*, 2024, 4, 1105 et seq., esp. 1108; see also S. VALAGUZZA, *La direzione attuale del diritto dell'ambiente*, in S. VALAGUZZA (ed.), *Esplorazioni di diritto dell'ambiente*, Editoriale Scientifica, Naples, 2024, 1 et seq.

2. From the convergence of objectives to the integration of policies

The international and European legal frameworks have progressively recognised this interdependence, although unevenly and along distinct paths.

The two regimes share a common origin, the UNFCCC and the CBD having been opened for signature at the 1992 Rio Earth Summit[13], and thereafter developed for three decades along largely separate institutional tracks, within frameworks characterised by broad obligations and comparatively weak enforcement mechanisms[14]. A change occurred in December 2022, when the fifteenth Conference of the Parties to the CBD adopted the Kunming-Montreal Global Biodiversity Framework, which sets four long-term goals for 2050 and twenty-three targets for 2030 and replaces the largely unmet Aichi Targets with a more specific and measurable set of commitments[15]. Two years later, the Conference of the Parties adopted a decision devoted to biodiversity and climate change, which records the interdependence of the two phenomena and calls for coherence among the processes established under the Rio conventions[16].

The connection so established between the two regimes rests, for the most part, upon instruments of a voluntary character; the trajectory has

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[13] United Nations Framework Convention on Climate Change, opened for signature at Rio de Janeiro on 4 June 1992; Convention on Biological Diversity, opened for signature at Rio de Janeiro on 5 June 1992.

[14] On the multi-level construction of biodiversity law and on the international instruments preceding the Kunming-Montreal Framework, see A.M. CHIARIELLO, *Il sistema multilivello del diritto della biodiversità*, in L. BELVISO, M. DELSIGNORE, A. MARRA, S. VERNILE (eds.), *Il diritto della biodiversità. Fondamenti e sfide*, Editoriale Scientifica, Naples, 2025, 37 et seq.; L. MARFOLI, *Biodiversità: un percorso internazionale ventennale*, in *Rivista quadrimestrale di diritto dell'ambiente*, 2012, 3, 155 et seq.; A. BOYLE, *The Rio Convention on Biological Diversity*, in M. BOWMAN, C. REDGWELL (eds.), *International Law and the Conservation of Biological Diversity*, Kluwer Law International, London, 1996, 33 et seq.

[15] CBD COP15, *Kunming-Montreal Global Biodiversity Framework*, Decision 15/4, 19 December 2022.

[16] CBD, *Biodiversity and climate change*, Decision CBD/COP/DEC/16/22, adopted at Cali on 1 November 2024.

been reconstructed in detail elsewhere[17].

At European level the convergence is more advanced. The European Green Deal, presented by the Commission in December 2019, opens by identifying climate change, biodiversity loss and pollution as three interconnected crises to be addressed jointly, and situates the protection of biodiversity within the path towards climate neutrality by 2050[18]. Its distinguishing feature lies less in the objectives it enumerates than in the logic to which it conforms, which brings into view the interactions among the elements composing ecosystems and the condition of those ecosystems as a whole, and which for that reason bears directly upon the organisation and the activity of national administrations[19]. The EU Biodiversity Strategy for 2030 subsequently set the objectives of legally protecting at least 30% of the Union's land and sea areas, of which at least one third under strict protection, and of restoring degraded ecosystems on a large scale[20].

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[17] See M.V. FERRONI, *Il Kunming-Montreal Biodiversity Framework e la Nature Restoration Law (Regolamento UE 2024/1991 sul ripristino della natura)*, in L. BELVISO, M. DELSIGNORE, A. MARRA, S. VERNILE (eds.), *Il diritto della biodiversità*, cit., 53 et seq., esp. 62-67.

[18] Communication from the Commission, *The European Green Deal*, COM(2019) 640 final, 11 December 2019.

[19] On the Green Deal as a strategic regulatory instrument and on its effects upon national administrative systems, see E. CHITI, *Pubblica amministrazione e transizione ecologica*, in *Giornale di diritto amministrativo*, 2024, 6, 737 et seq.; ID., *Il sistema amministrativo italiano alla prova del Green Deal*, in *Giornale di diritto amministrativo*, 2023, 5, 573 et seq.; D. BEVILACQUA, *La normativa europea sul clima e il Green New Deal. Una regolazione strategica di indirizzo*, in *Rivista trimestrale di diritto pubblico*, 2022, 2, 297 et seq.; D. BEVILACQUA, E. CHITI, *Green Deal*, il Mulino, Bologna, 2024; L. KRÄMER, *Planning for Climate and the Environment: the EU Green Deal*, in *Journal for European Environmental & Planning Law*, 2020, 3, 267 et seq.; F. FERRARO, *L'evoluzione della politica ambientale dell'Unione: effetto Bruxelles, nuovi obiettivi e vecchi limiti*, in *Rivista giuridica dell'ambiente*, 2021, 4, 777 et seq. On the consequences of the ecological transition for administrative action, see F. FRACCHIA, *La transizione e il diritto amministrativo*, in *Rivista quadrimestrale di diritto dell'ambiente*, 2025, 1, 155 et seq.; F. DE LEONARDIS, *La transizione ecologica come modello di sviluppo di sistema: spunti sul ruolo delle amministrazioni*, in *Diritto amministrativo*, 2021, 4, 779 et seq.

[20] Communication from the Commission, *EU Biodiversity Strategy for 2030 -*

That last document also modified the position occupied by protected areas within the European framework. The Marine Strategy Framework Directive pursues the protection of marine ecosystems through the definition, attainment and maintenance of good environmental status, and is constructed around that parameter rather than around protected areas, which it does not place at the centre of its architecture[21]. The Strategy for 2030, by contrast, connects the strengthening of protected areas and of strictly protected areas to the objectives of biodiversity recovery, and Regulation (EU) 2024/1991 subsequently treated such areas as sites in which recovery may be achieved where pressures arising from human activities are reduced or brought to an end[22]. The two instruments therefore assign a different function to the same administrative apparatus, and they do so without modifying the authorities to which that apparatus is entrusted.

Regulation (EU) 2024/1991 on nature restoration, applicable since 18 August 2024, has translated the objectives of the Strategy into binding obligations[23]. It establishes a Union-wide target of restoration measures

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Bringing nature back into our lives, COM(2020) 380 final, 20 May 2020.

[21] Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy, arts. 1 and 3, point 5; in Italian law, Legislative Decree No. 190 of 13 October 2010. On the persistence of good environmental status as an unattained objective, see Report from the Commission on the implementation of the Marine Strategy Framework Directive, COM(2020) 259 final, 25 June 2020, and Report from the Commission on the assessment of the Member States' programmes of measures as updated under Article 17, COM(2025) 3 final, 4 February 2025. On the institutional obstacles to implementation, see J. VAN LEEUWEN, J. RAAKJAER, L. VAN HOOF, J. VAN TATENHOVE, R. LONG, K. OUNANIAN, *Implementing the Marine Strategy Framework Directive: a Policy Perspective on Regulatory, Institutional and Stakeholder Impediments to Effective Implementation*, in *Marine Policy*, 2014, 50, 325 et seq.; J. VAN LEEUWEN, L. VAN HOOF, J. VAN TATENHOVE, *Institutional Ambiguity in Implementing the European Union Marine Strategy Framework Directive*, in *Marine Policy*, 2012, 36, 636 et seq.

[22] Recital 10, Regulation (EU) 2024/1991.

[23] Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869. On the Regulation, see E. CISCATO, *Il carattere trasformativo*, cit.; M. FERRARA, *A prima lettura del regolamento UE sul ripristino della natura (reg. UE 2024/1991)*, in *federalismi.it*, 2024, 24, 114 et seq.; E. PARISI, *Considerazioni in*

covering at least 20% of land areas and at least 20% of sea areas by 2030, and all ecosystems in need of restoration by 2050[24], and it requires each Member State to improve to good condition, according to a timetable set for 2030, 2040 and 2050, progressively increasing shares of the habitat types not in good condition listed in Annex I for terrestrial, coastal and freshwater ecosystems and in Annex II for marine ecosystems[25]. Among the objectives it states for itself, the Regulation includes not only the recovery of biodiversity and of ecosystem resilience, but the attainment of the Union's general objectives of climate change mitigation and adaptation and of land degradation neutrality[26].

The convergence so described is not confined to the programmatic level. It corresponds to a principle of positive law. Article 11 TFEU provides that environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, while Article 37 of the Charter of Fundamental Rights reflects the same orientation by requiring a high level of environmental protection and the improvement of environmental quality to be integrated into Union policies[27]. The principle proceeds from the recognition that the protection of the environment does not depend exclusively upon the policies expressly directed to it, since decisions adopted for energy, industrial, agricultural, infrastructural or land-use purposes may equally affect the attainment of environmental objectives[28]. Integration and differentiation

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tema di ripristino ecologico, in *federalismi.it*, 2025, 30, 226 et seq.; M. MELI, *La protezione della natura tra interventi di conservazione ed obblighi di ripristino*, in *Le nuove leggi civili commentate*, 2025, 2, 269 et seq.; R. BIFULCO, *Il nuovo 'nomos della terra' europeo. Uno sguardo al regolamento UE sul ripristino della natura*, in *Diritto e clima*, 2025, 3, 767 et seq.

[24] Art. 1, para. 2, Regulation (EU) 2024/1991; see also recital 11.

[25] Art. 4, para. 1, Regulation (EU) 2024/1991, for the habitat types listed in Annex I, and Art. 5, para. 1, for the marine habitat types listed in Annex II. Under both provisions the 2030 threshold is computed on the aggregate area not in good condition and the 2040 and 2050 thresholds on the area of each group. Group 7 of Annex II, comprising marine soft sediments, is subject to a separate regime under Art. 5, para. 1, points (c) and (d).

[26] Art. 1, para. 1, points (a) and (b), Regulation (EU) 2024/1991.

[27] Art. 11 TFEU; Art. 37 of the Charter of Fundamental Rights of the European Union.

[28] On the principle of integration and on the relationship between sectoral spe-

therefore perform complementary functions. Differentiation identifies a specific object of protection and determines the objectives, parameters and instruments directed to it; integration operates so that those objectives are not confined within the corresponding regime where their attainment depends also upon decisions taken in other sectors. The autonomy of the several policies is not thereby suppressed, nor are their purposes absorbed into environmental protection.

Instruments through which such connections are established already exist, and they are binding. Environmental impact assessment requires the significant direct and indirect effects of certain projects to be identified and evaluated in relation to a plurality of factors, among which biodiversity and the climate expressly appear; strategic environmental assessment extends that evaluation to the formation of plans and programmes; integrated pollution prevention and control requires the several impacts of a single installation to be considered together, so as to prevent the reduction of pollution in one medium from producing its transfer to another[29]. Regulation (EU) 2024/1991 adds an obligation of a different order, since a national restoration plan cannot be drawn up without engaging agriculture, forestry, fisheries, water management, spatial planning and energy at the same time.

These instruments operate, however, upon a determinate plane.

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cialisation and fragmentation in environmental protection, see R. FERRARA, *La tutela dell'ambiente e il principio di integrazione tra mito e realtà*, in *Rivista giuridica di urbanistica*, 2021, 1, 12 et seq.; M. RENNA, *I principi in materia di tutela dell'ambiente*, in *Rivista quadrimestrale di diritto dell'ambiente*, 2012, 1-2, 63 et seq.; C. FELIZIANI, *Industria e ambiente. Il principio di integrazione dalla rivoluzione industriale all'economia circolare*, in *Diritto amministrativo*, 2020, 4, 843 et seq.; F. FERRARO, *I grandi principi del diritto dell'Unione europea in materia ambientale*, in *DPCE online*, 2023, special issue 2, 41 et seq.

[29] Directive 2011/92/EU, as amended by Directive 2014/52/EU; Directive 2001/42/EC; Directive 2010/75/EU on industrial emissions. In Italian law the relevant provisions are contained in Part II of Legislative Decree No. 152 of 3 April 2006. See G. MANFREDI, *VIA e VAS nel codice dell'ambiente*, in *Rivista giuridica dell'ambiente*, 2009, 1, 63 et seq.; D.M. TRAINA, *Problematiche applicative e rapporti tra le procedure di VAS, VIA e AIA*, in *federalismi.it*, 2023, 13, 224 et seq.; S. VERNILE, *L'autorizzazione integrata ambientale tra obiettivi europei e istanze nazionali*, in *Rivista italiana di diritto pubblico comunitario*, 2015, 6, 1697 et seq.

Environmental assessment and integrated prevention widen the range of effects considered within a given decision-making process or in the regulation of a given activity; they do not modify the allocation of the functions among which those decisions are distributed. Where the causes of a phenomenon depend upon decisions taken in different sectors, the requirement of integration concerns the relationship between the policies and the fields of intervention within which such decisions are adopted[30].

The authority competent for energy, for agriculture or for fisheries retains its own mandate, its own objectives and its own criteria of assessment, and the assessment procedure affords an occasion on which the interests pertaining to other sectors may be considered without displacing the authority that decides.

The convergence recorded at international and European level has accordingly modified the content of the obligations imposed upon Member States more extensively than it has modified the distribution of the functions through which those obligations are performed. Where the two operations diverge, the difficulty concerns implementation and not the definition of the objectives, and it becomes apparent only where a single legal framework is directed to both objectives at once and the obligations of planning, monitoring and revision are imposed upon the same authorities. Ecosystem restoration presents those characteristics.

3. Ecosystem restoration as a bridge between climate and biodiversity policies

Neither the protection of biodiversity nor the notion of ecological restoration is novel to European environmental law. Both were present, in less structured form, in the Habitats Directive and in the Marine Strategy Framework Directive, which provided for interventions directed to re-establishing the ecological conditions necessary for the conservation of habitats and species[31]. What Regulation (EU) 2024/1991 introduces is a

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[30] M. RENNA, *L'allocazione delle funzioni normative e amministrative*, cit.

[31] Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora; Directive 2008/56/EC, cit. On the ecological network established by the former, see W. TROISE MANGONI, *La rete natura 2000: ZPS, ZSC e SIC*, in L. BELVISO, M. DELSIGNORE, A. MARRA, S. VERNILE (eds.), *Il diritto della biodi-*

binding framework accompanied by quantitative targets, result indicators and planning obligations. Parisi has described the effect of that shift by observing that biodiversity ceases to be merely a good to be protected and becomes an objective, a matrix of action and a parameter of intervention[32].

Article 3 of the Regulation defines restoration in deliberately broad terms, as "the process of actively or passively assisting the recovery of an ecosystem in order to improve its structure and functions", pursued with the aim of conserving or enhancing biodiversity and ecosystem resilience, whether by bringing an area of a habitat type to good condition, by re-establishing the favourable reference area, or by bringing the habitat of a species to sufficient quality and quantity[33]. Ecological theory distinguishes within that notion two approaches. Ecological restoration in the strict sense, as elaborated by the Society for Ecological Restoration, pursues the recovery of the original ecosystem and is regarded as complete once the principal structural and functional characteristics of its communities have been re-established and are functionally active. Rehabilitation pursues an adequate level of ecosystem functioning without reconstituting original conditions, reactivating the most significant ecosystem relations and strengthening the populations capable of shifting ecosystem equilibria[34]. Operationally, both approaches converge in Nature-based Solutions, which the United Nations Environment Assembly has defined as "actions to protect, conserve, restore, sustainably use and manage natural or modified terrestrial, freshwater, coastal and marine ecosystems", addressing social, economic and environmental challenges effectively and adaptively while providing human well-being, ecosystem services,

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versità, cit., 573 et seq.; I. SICIGNANO, *La rete Natura 2000 tra interessi economici e conservazione della natura*, in *federalismi.it*, 2025, 25, 75 et seq.

[32] E. PARISI, *Considerazioni in tema di ripristino ecologico*, cit., 234.

[33] Art. 3, point 1, Regulation (EU) 2024/1991.

[34] Food and Agriculture Organization of the United Nations - Society for Ecological Restoration - International Union for Conservation of Nature, *Standards of Practice to Guide Ecosystem Restoration. A Contribution to the United Nations Decade on Ecosystem Restoration 2021-2030*, Rome, Washington, DC and Gland, 2024; National Biodiversity Future Center, *Il restauro della biodiversità: esperienze e innovazioni della ricerca*, CNR, Rome, 2025, 10, from which the distinction drawn in the text is taken.

resilience and biodiversity benefits[35].

That operational openness allows ecosystem restoration to function as a connection between climate and biodiversity policy. Chapter II of the Regulation extends binding restoration obligations well beyond habitats previously subject to strict protection, covering terrestrial, marine, urban, agricultural and forest ecosystems, as well as river connectivity and pollinator populations[36]. Each of those obligations carries a climate dimension that the Regulation itself makes explicit. Degraded ecosystems with the greatest potential to capture and store carbon are singled out for restoration, and the recitals treat nature and nature-based solutions, including natural carbon stocks and sinks, as fundamental to countering the climate crisis[37]. Restored urban green infrastructure is credited, in the recitals, with the reduction and control of natural disaster risk such as floods and heat island effects, with cooling, and with water and air filtration, alongside climate change mitigation and adaptation[38]. Under the current European framework, restoration operates as a cross-cutting instrument of the climate transition, and not as a biodiversity policy that happens to yield climate co-benefits.

Marine Protected Areas illustrate how that function operates in practice. Their relevance for the implementation of the Regulation derives from the ecological value of the habitats and species they host, and also from the fact that they are already subject to specific regimes of

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[35] United Nations Environment Assembly, Resolution UNEP/EA.5/Res.5, 7 March 2022, in which a common definition of Nature-based Solutions was first settled. On the classification of such actions by degree of intervention, see H. EGGERMONT, E. BALIAN, J.M.N. AZEVEDO ET AL., *Nature-based Solutions: New Influence for Environmental Management and Research in Europe*, in *GAIA - Ecological Perspectives for Science and Society*, 2015, 4, 243 et seq.; National Biodiversity Future Center, *Il restauro della biodiversità*, cit., 11.

[36] Arts. 4, 5, 8, 9, 10, 11, 12 and 13, Regulation (EU) 2024/1991. Arts. 6 and 7, on the derogations for renewable energy and national defence, are discussed below, § 4.

[37] Recital 7, Regulation (EU) 2024/1991, on the commitment to restore degraded ecosystems, in particular those with the greatest potential to capture and store carbon; see also recitals 16 to 19, and L. BELVISO, *Il fitorisanamento fra nature based solutions, regole procedimentali e sviluppo urbano sostenibile*, in *Rivista giuridica dell'ambiente*, 2023, 4, 1079 et seq.

[38] Recital 47, Regulation (EU) 2024/1991.

management, monitoring and regulation of human activities, characteristics that make them suited to support both the cognitive and the implementing phases of national restoration plans. On that basis, Marine Protected Areas may be read as structural components of a polycentric system for implementing environmental law, capable of integrating three distinct functions: a cognitive function, consisting in the collection and validation of data and in the closing of the information gaps that still affect the monitoring of marine biodiversity; a planning function, exercised through the contribution to maritime spatial planning; and a verification function, consisting in the continuous monitoring of restoration objectives[39]. These functions are not uniformly assigned to Marine Protected Area managing bodies as such, but identify the contribution that those bodies may provide, within the applicable national framework, to the preparation, implementation and monitoring of restoration measures. The cognitive and monitoring capacity of Marine Protected Areas is being reinforced in Italy through a dedicated PNRR investment in the digitalisation of national parks and Marine Protected Areas[40].

A fourth, potentially significant function deserves separate mention. Marine Protected Areas may provide permanent spaces for consultation and for the co-design of Nature-based Solutions, involving local authorities, researchers, fishing and tourism operators, associations and coastal communities. That function is consistent with the principles of inclusion and horizontal cooperation set out in the recitals of the Regulation, which call upon Member States to engage the relevant stakeholders and the general public in all phases of the preparation, review and implementation of national restoration plans, and with the participatory rights enshrined in the Aarhus Convention[41]. In a national

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[39] This analytical framing of Marine Protected Areas as components of a polycentric system for implementing environmental law, combining cognitive, planning, verification and participatory functions, was first proposed in G. TORTA, *Custodire e rigenerare: le Aree Marine Protette nel nuovo scenario europeo*, forthcoming in *federalismi.it*, 2026. On the information gaps affecting marine habitats, see recitals 73 and 74, Regulation (EU) 2024/1991.

[40] Piano Nazionale di Ripresa e Resilienza, Mission 2 - Component 4 - Investment 3.2, *Digitalizzazione dei parchi nazionali e delle aree marine protette*.

[41] Recital 83, Regulation (EU) 2024/1991, on the engagement of local and re-

context still lacking a homogeneous procedural framework for environmental participation, that function is far from marginal, since it is what allows restoration measures to acquire the social legitimacy on which their durability ultimately depends[42].

Taken together, these functions show why ecosystem restoration, and Marine Protected Areas within it, may be treated as a paradigmatic case of policy integration rather than as one further biodiversity instrument. They translate the convergence of objectives into something closer to an operational infrastructure.

4. The limits of integration: conflicts and implementation challenges

The relationship between climate and biodiversity policy, even where formally convergent, is not always synergistic in practice. Regulation (EU) 2024/1991 offers a clear illustration of that at the point where it intersects with another climate priority, namely the rapid deployment of renewable energy infrastructure.

Articles 6 and 7 of the Regulation introduce distinct mechanisms for reconciling restoration objectives with renewable energy deployment and with national defence. For the purposes of the derogations provided for in Articles 4(14) and (15) and 5(11) and (12), Article 6 presumes the planning, construction and operation of plants for the production of energy from renewable sources, their connection to the grid, the grid itself and the

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gional authorities, landowners and land users, civil society organisations, the business community, research and education communities, farmers, fishers, foresters, investors and the general public in all phases of the preparation, review and implementation of national restoration plans; recital 82, on access to justice; arts. 6, 7 and 8, Aarhus Convention, 25 June 1998, ratified in Italy by Law No. 108 of 16 March 2001.

[42] On stakeholder involvement in the management of protected areas, see A. IANDOLI, *La funzione sociale delle aree protette*, in *federalismi.it*, 2025, 7, 1 et seq.; F. SICURO, *La sostenibilità democratica delle tecniche di gestione delle aree naturali protette*, ivi, 105 et seq. On participation in administrative proceedings more generally, see M.R. SPASIANO, *La partecipazione al procedimento quale fonte di legittimazione dell'uso del potere amministrativo*, in *Nuove Autonomie*, special issue 1/2025, 217 et seq.; C.P. SANTACROCE, *Territorio e comunità nella teoria giuridica della partecipazione*, Giappichelli, Turin, 2023.

related storage assets to be in the overriding public interest, and permits Member States, where such projects have been subject to a strategic environmental assessment or to an environmental impact assessment, to exempt them from the requirement that no less damaging alternative solutions be available. Article 7 separately permits Member States to exempt areas used for activities the sole purpose of which is national defence from restoration measures incompatible with their continued military use and, subject to the conditions there laid down, to presume defence-related plans and projects to be in the overriding public interest[43].

The presumption of overriding public interest attached to renewable energy installations, first codified at Union level by Regulation (EU) 2022/2577 and subsequently confirmed by the RED III Directive, reflects the heterogeneous rationale of the Regulation itself, which pursues not only the protection of species and habitats but also climate mitigation and adaptation[44].

Decarbonisation requires a rapid transformation of energy and grid infrastructure, and that transformation is in principle synergistic with the effort to counter climate change. It is not, for that reason alone, automatically compatible with the protection of habitats, species, landscape and soil. The climate qualification of an intervention does not by itself guarantee its overall environmental sustainability, and part of the scholarship has read the balance struck by the Regulation, however consistent with the broader push towards accelerated renewable deployment, as tilted more towards energy needs than towards biodiversity values[45]. The detailed regime governing the authorisation of renewable energy installations raises questions of its own. What these derogations

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[43] Arts. 6 and 7, Regulation (EU) 2024/1991; see also recitals 38 and 39.

[44] Council Regulation (EU) 2022/2577 of 22 December 2022; Directive (EU) 2023/2413 (RED III).

[45] U. SALANITRO, *La tutela preventiva della biodiversità nel Regolamento europeo sul ripristino della natura (Nature Restoration Law)*, in A*mbienteDiritto.it*, 2025, 1, 1 et seq.; D. BEVILACQUA, *La dialettica tra la promozione delle energie rinnovabili e la tutela degli altri beni ambientali*, in *Giornale di diritto amministrativo*, 2024, 1, 125 et seq.; P. CHIRULLI, *Energie rinnovabili e tutela degli interessi sensibili, tra Repower e Direttiva RED III*, in *Rivista giuridica di urbanistica*, 2024, 2, 196 et seq.

reveal about integration is different: the differentiated conditions governing the two mechanisms show that the convergence between climate and biodiversity policy is not self-executing, even where a presumption of overriding public interest narrows the scope for individualised balancing, and that it must be actively governed at the stage of implementation.

This is where integrated planning instruments become relevant, and where the experience of maritime spatial planning supplies a useful set of categories. Directive 2014/89/EU, establishing a framework for maritime spatial planning, and the ICZM Protocol to the Barcelona Convention before it, respond to the same underlying problem as the renewable energy derogations of Regulation (EU) 2024/1991, namely the co-presence, within the same space, of competing economic uses and of conservation needs increasingly reshaped by climate change. Both instruments rely upon an ecosystem approach and upon effective intersectoral coordination among the administrative services and the regional and local authorities concerned[46]. The practical implementation of that framework has often lagged behind its ambitions, as the considerable delay preceding the approval of the Italian maritime spatial plans illustrates[47]. The model it proposes nonetheless remains significant, since it shows that the co-presence of different interests and objectives may be governed through coordinated planning, ex ante assessment and continuing monitoring, rather than through the sequential or hierarchical resolution of conflicts between climate and biodiversity goals.

The domestic implementation of the Regulation offers a further and

[46] Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning; Protocol on Integrated Coastal Zone Management to the Barcelona Convention, Madrid, 21 January 2008, art. 6.

[47] Ministerial Decree No. 237 of 25 September 2024, Italian Ministry of Infrastructure and Transport, approving the Italian maritime spatial plans pursuant to art. 5(5) of Legislative Decree No. 201 of 17 October 2016. On the delay preceding their approval, see WWF, *Realizzare la pianificazione dello spazio marittimo attraverso l'approccio ecosistemico*, Position paper, 2021; G. TORTA, *Il delicato equilibrio tra la tutela dell'ambiente e la promozione delle attività economiche nella pianificazione dello spazio marino*, in *ambientediritto.it*, 2023, 1, 1 et seq.

more recent illustration of the same problem. Member States must submit their draft national restoration plans to the Commission by 1 September 2026[48], and the discretion left to them in setting national restoration priorities remains considerable, as the Regulation itself confirms and as recent scholarship on its implementation has observed[49]. In Italy, Legislative Decree No. 80 of 2026 identifies the Ministry of the Environment and Energy Security and the Ministry of Agriculture, Food Sovereignty and Forests as the competent national authorities, organises the coordination required for the preparation of the national restoration plan, and expressly includes the managing bodies of protected natural areas among the authorities responsible, within their respective competences, for its implementation[50]. The Decree distributes restoration-related functions among ministries, regions, protected-area managing bodies, river basin district authorities and local authorities, and establishes, within the Ministry of the Environment and Energy Security, a Steering and Strategic Coordination Table involving the administrations concerned. Whether that distributed architecture produces integration, or reproduces fragmentation at national level, depends upon the manner in which those several authorities are in practice made to interact.

In both cases, planning, assessment, monitoring and institutional coordination emerge as the administrative infrastructure without which the legal convergence between climate and biodiversity policy risks remaining formal rather than effective.

5. Conclusions: integrating decisions, not only objectives

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[48] Art. 16, Regulation (EU) 2024/1991. The uniform format for national restoration plans was adopted by Implementing Regulation (EU) 2025/912.

[49] Art. 14, para. 9, Regulation (EU) 2024/1991; E. LEES, O.W. PEDERSEN, *Restoring the Regulated: The EU's Nature Restoration Law*, in *Journal of Environmental Law*, 2025, 37, 75 et seq.

[50] Legislative Decree No. 80 of 8 April 2026, adopted pursuant to the delegation contained in Law No. 91 of 13 June 2025. On the allocation of functions between the competent national authorities and the administrations responsible for implementation, see Arts. 2-4 of the decree. See also Art. 5 on the Steering and Strategic Coordination Table established within the Ministry of the Environment and Energy Security.

The interdependence between climate change and biodiversity loss has progressively led to a convergence of international and European objectives: a common origin in the Rio conventions, an increasingly close institutional dialogue between the two regimes, and, at Union level, a Green Deal architecture that places biodiversity protection and climate neutrality within a single strategic design. That convergence of objectives is not, by itself, an integration of policies. The integration principle laid down in Article 11 TFEU and echoed in Article 37 of the Charter does not require that climate and biodiversity targets be listed alongside one another within the same programmatic document; it requires that the effects of measures adopted in one field be assessed, and where necessary corrected, in the light of their impact upon the other.

Ecosystem restoration, and within it the case of Marine Protected Areas, makes that requirement concrete. A single regulatory framework may be designed to serve climate and biodiversity objectives at once, yet its implementation may generate new tensions when restoration obligations encounter other climate-related priorities, as the renewable energy derogations of Regulation (EU) 2024/1991 illustrate.

What ultimately distinguishes a convergence of objectives from an integration of policies is not the ambition of the targets adopted, but the administrative capacity to plan, to monitor, to coordinate and, where necessary, to arbitrate among competing measures. That capacity cannot be legislated into existence by restating shared goals. It has to be built through the institutional infrastructure which ecosystem restoration, and integrated planning experiences such as maritime spatial planning, already exemplify, however imperfectly, in current practice. The national restoration plans due across the Union by September 2026 offer an immediate test: whether the architecture that Italy and the other Member States are now putting in place succeeds in translating convergence into a genuine integration of decisions, or reproduces at national level the fragmentation it was designed to overcome, is a question that only the practice of the coming years will answer.

FRAMING THE EVOLUTION OF CLIMATE LITIGATION IN ITALY THROUGH THE LENS OF THE 'GIUDIZIO UNIVERSALE' CASE IN LIGHT OF NATIONAL, EUROPEAN, AND INTERNATIONAL CASE LAW DEVELOPMENTS

ALESSIA TISCI
A SUD

SUMMARY: 1. Introduction. **- 2.** The climate emergency in Italy: scientific evidence, impacts, and risks. **- 3.** *A Sud et al. v. Italy*: the judgment of the Civil Court of Rome in the 'Giudizio Universale' case. **- 4.** The contribution of the European Court of Human Rights' climate jurisprudence following the landmark judgment in *Verein KlimaSeniorinnen Schweiz et al. v. Switzerland*. **- 5**. The ruling delivered by the Joint Chambers of the Italian Supreme Court in the Order issued in *Greenpeace Italy et al. v. ENI S.p.A. et al.* **- 6.** The landmark Advisory Opinion of the International Court of Justice on States' obligations in respect of climate change. **- 7.** Conclusions: reassessing 'Giudizio Universale' case in a changing judicial landscape.

1. Introduction

In recent years, climate litigation has increasingly emerged as an important legal tool for clarifying the nature, content, and scope of the legal obligations relevant for States and non-State actors in the context of the climate crisis[0]. This trend encompasses judicial and *quasi*-judicial proceedings in which climate change mitigation, adaptation, or climate science constitute material issues of law or fact, including selected proceedings before administrative and other adjudicatory bodies where climate-related issues are central to the dispute[0]. It reflects the growing

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[0] M. WEWERINKE-SINGH, S. MEAD, *introduction*, in M. Wewerinke-Singh, S. Mead, *The Cambridge Handbook on climate Litigation*, Cambridge University Press, 2025, p. 172 ss.
[0] UNEP, *Climate change in the courtroom. Trends, impacts and emerging*

diversity of legal avenues through which climate-related claims are pursued[0]. As highlighted in the most recent assessment by the Grantham Research Institute on Climate Change and the Environment, climate litigation has become an increasingly influential component of the global climate governance architecture. Although the pace of new filings has recently stabilised, it continues to expand in complexity, geographical reach, and strategic significance, reinforcing accountability, shaping public and private decision-making, integrating scientific evidence into judicial reasoning, and increasingly influencing financial and regulatory practices[0]. Against the persistent mismatch between the objectives of the Paris Agreement and the climate policies implemented by States, this tool can - albeit only as a complementary governance mechanism - contribute to strengthening the effectiveness of climate governance by promoting the progressive alignment of public policies and private conduct with national, regional and international climate objectives. At the same time, judicial decisions in this area can encourage the adoption of more ambitious mitigation and adaptation measures, consistent with energy priorities and the legal obligations identified by the courts, in particular under international climate and environmental law and international human rights law. In doing so, courts are increasingly called upon to address complex legal questions concerning the relationship between the separation of powers and governmental discretion in the design of climate policies, the evidentiary role of climate science in assessing the conduct of States and private actors, and, more broadly, the identification of the content and scope of the legal obligations applicable to climate change[0].

From a domestic perspective, *A Sud et al. v. Italy*, commonly referred to as the 'Giudizio Universale' case (hereinafter GU), is Italy's first and

lessons, 2025, pp. 1-2.

[0] J. PEEL, *Situating the ICJ's advisory opinion in the wider ecosystem of international climate litigation*, in *Review of European, Comparative & Environmental Law*, 2025, p. 1.

[0] J. SETZER, C. HIGHAM, *Global trends in climate change litigation: 2025 snapshot*, 2025, 49-51.

[0] F. SINDICO, M. M. MBENGUE, K. MCKENZIE, *Climate Change Litigation and the Individual: An Overview*, in F. SINDICO, M. M. MBENGUE (eds.), *Comparative Climate Change Litigation: Beyond the Usual Suspects*, Springer Nature, 2021 pp. 9 - 22.

only government framework climate case. Brought in 2021 by more than two hundred claimants, including civil society organisations and individuals, the proceedings challenge the inadequacy of the Italian State's mitigation policies in light of its obligations arising under domestic, European, and international law. In its judgment of 26 February 2024 (No. 3552), the Civil Court of Rome (CCR) declared the claims inadmissible, holding that they concerned matters falling within the political discretion of the legislative and executive branches and were therefore beyond the scope of judicial review. Consequently, the Court declined to assess the adequacy of the State's climate policies or their scientific basis, adopting a particularly restrictive understanding of the justiciability of climate policy[0].

The GU case is especially significant because the first-instance judgment preceded a series of major developments in domestic, European, and international climate jurisprudence. These developments have addressed several of the central legal questions underlying climate litigation from perspectives that differ, at least in part, from those adopted by the Italian court. Indeed, between 2024 and 2025, three judicial developments proved particularly significant: the judgment of the European Court of Human Rights (ECtHR) in *Verein KlimaSeniorinnen Schweiz et al.* v. Switzerland[0]; the ruling of the Joint Chambers of the Italian Supreme Court (Corte di Cassazione or ISC) in Greenpeace Italy et al. v. *ENI S.p.A.* et al. (the 'ENI case')[0]; and, most recently, the Advisory Opinion of the International Court of Justice (ICJ) on States' Obligations in Respect of Climate Change[0]. Collectively, these decisions have reinforced the role of scientific evidence and of obligations derived from

[0] On the legal arguments and judgement, see F. CITTADINO, *The A Sud v Italy Case after the KlimaSeniorinnen Judgment: Implications of the ECtHR's Decision for Climate Litigation in Italy*, 2024.

[0] On the multiple issues addressed for the first time by the ECtHRs in this leading case, see M. Bönnemann, M. A. TIGRE, *The Transformation of European Climate Litigation*, Verfassungsbooks, 2024.

[0] G. VALENTINI, C. GENTILE, *A Step Forward in Italian Climate Litigation Preliminary Remarks on Greenpeace and Others v. ENI and Others*, in *Verfassungsblog on Matters Constitutional*, 2025.

[0] On the various issues addressed in the Advisory Opinion, see the contributions collected in M. A. TIGRE, M. BÖNNEMANN, A. DE SPIEGELEIR (eds.), *The ICJ's Advisory Opinion on Climate Change*, Verfassungsbooks, 2025.

international climate law and international human rights law as central benchmarks for judicial review of public action, particularly in relation to greenhouse gas (GHG) mitigation policies. In this context, this paper examines the evolution of climate litigation in Italy through the lens of the GU case. Following an overview of the Italian climate context and an analysis of the judgment of the CCR, this analysis discusses how subsequent developments in national, European and international climate case-law may influence the legal arguments put forward in the pending appeal.

2. The climate emergency in Italy: scientific evidence, impacts, and risks

Climate change has now reached a critical stage at international level, but the situation is even more alarming in certain areas. As confirmed by the first Global Stocktake under the Paris Agreement, current global GHG emissions are not aligned with the mitigation pathways required to achieve the treaty's temperature goal, warning that the remaining window to limit global warming to 1.5° C above pre-industrial levels is rapidly closing[0]. In this context, the Parties to the Paris Agreement have recognised, in the light of the scientific evidence provided by the IPCC's Sixth Assessment Report (AR6), that limiting global warming to 1.5 °C, without exceeding this limit, or with only a limited overshoot, requires deep, rapid and sustained reductions in global greenhouse gas emissions of 43 per cent by 2030 and 60 per cent by 2035 relative to the 2019 level and reaching net zero carbon dioxide emissions by 2050[0]. Recent scientific evidence confirms that the climate crisis is unfolding more rapidly than previously anticipated. Globally, 2025 was the third-warmest year on record, with the current level of global warming estimated at approximately 1.4° C above the pre-industrial average[0]. At the same time, the effects of climate change are already evident across Europe, both in terms of severe heat stress and their negative impact on national economies. In this regard, it is estimated

[0] UNEP, *Emissions Gap Report 2025: Off Target - Continued Collective Inaction Puts Global Temperature Goal at Risk - Executive Summary*, 2025, p. IV ss.
[0] UNFCCC, *Decision 1/CMA.5, Outcome of the First Global Stocktake, UN Doc.FCCC/PA/CMA/2023/16/Add.*1, 2024, paras. 24-27.
[0] COPERNICUS CLIMATE CHANGE SERVICE, *European State of the Climate. Summary*, 2025, p. 2 ss.

that between 1980 and 2024, extreme weather events caused economic losses estimated at around 822 billion euros. Given that climate change has a significant impact on all aspects of human life, it is important to emphasise that heatwaves have become an increasingly serious public health issue. Indeed, during the exceptionally hot summer of 2022, Europe recorded around 61.672 heat-related deaths, of which around 18.010 were in Italy - the highest national toll of any European country[0].

According to the CMCC foundation, the absence of effective mitigation and adaptation policies could reduce Italy's GDP by up to six percentage points by 2050, highlighting the potentially profound economic consequences of climate inaction[0]. Within this broader context, Italy ranks among the twenty countries most affected by climate change worldwide over the period 1995-2024[0]. Furthermore, its climate performance has deteriorated considerably in recent years, falling from 30th place in 2022 to 46th place in the 2026 Climate Change Performance Index[0]. At the European level, the European Union (EU) has committed, through the European Climate Law (ECL), to achieving climate neutrality by 2050 and to reducing net GHG emissions by at least 55% by 2030 compared with 1990 levels. To this end, among different EU relevant commitments, the Effort Sharing Regulation (ESR) establishes binding national emission reduction targets for sectors not covered by the EU Emissions Trading System (EU ETS), including transport, buildings, agriculture, waste and small industry. Italy's binding ESR target requires a 43.7% reduction in emissions from these sectors by 2030 compared with 2005 levels. However, current projections indicate that emissions will decline by only 41%, suggesting that Italy remains off track to meet its

[0] J. BALLESTER, M. QUIJAL-ZAMORANO, R. F. MÉNDEZ TURRUBIATES, F. PEGENAUTE, F. R. HERRMANN, J. M. ROBINE, X. BASAGAÑA, C. TONNE, J. M. ANTÓ, H. ACHEBAK, *Heat-related Mortality in Europe During the Summer of 2022*, in *Nature Medicine*, vol. 29, 2023, p. 1857 ss.

[0] CMCC, *Climate Spread: The Cost of Warming for Italy's Public Finances and Economic Growth*, 2026.

[0] GERMANWATCH, *Climate Risk Index 2026. Who Suffers Most from Extreme Weather Events?*, 2026, p. 25.

[0] GERMANWATCH, *Climate Change Performance Index*, 2022-2026.

legally binding target[0].

This implementation gap is further compounded by the absence of a comprehensive national climate framework law. Indeed, unlike several other European States, Italy still lacks an overarching legislative framework establishing long-term climate objectives, governance mechanisms and accountability provisions. As a result, national climate governance remains fragmented and mitigation policies insufficiently coherent and effective, thereby increasing both Italy's vulnerability to climate change and the risks posed to the enjoyment of the fundamental rights of individuals within its territorial jurisdiction. Against this background, it is important examine how these shortcomings have been brought before Italian courts and how subsequent developments in European and international climate case law have progressively clarified the legal standards against which State mitigation action may be assessed.

3. *A Sud et al. v. Italy*: the judgment of the Civil Court of Rome in the 'Giudizio Universale' case

On 5 June 2021, the environmental NGO A Sud and others brought the first climate litigation against the Italian State before the Civil Court of Rome (CCR). The legal case can therefore be classified under the category of 'Government Framework Cases', namely those cases in which the defendant is typically the State - or, more generally, a state body or public authority - and whose main objective is to challenge the implementation or adequacy of the relevant climate policies adopted, calling for the pursuit of more ambitious targets[0].

The action challenged the inadequacy of Italy's climate mitigation efforts, alleging that the State's failure to take the measures necessary to pursue the temperature goals of the Paris Agreement contributed to the climate emergency and violated fundamental rights, including the right to a stable and safe climate. The claimants sought a declaration of State

[0] GERMANWATCH, *Climate Change Performance Index. Italy*, 2026.
[0] J. SETZER e C. HIGHAM, *Global trends in climate change litigation: 2022 snapshot*, Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science, London, 2022, p. 18.

liability and an order requiring Italy to limit national GHG emissions by 92% by 2030 compared with 1990 levels, or by such other percentage as the Court considered appropriate in light of the scientific evidence. The action relied primarily on the rules governing tort law under Articles 2043 and 2051 of the Italian Civil Code, read in conjunction with a broader body of constitutional, EU and international law. Among these, the claimants expressly invoke Article 2 of the Paris Agreement - which establishes the obligation to limit the increase in global average temperature to well below 1.5 °C - and other relevant articles. Furthermore, application refers to the European Convention on Human Rights (ECHR), with particular reference to Articles 2 and 8, which respectively govern the right to life and the right to family and private life[0].

In its judgment of 26 February 2024, however, the CCR declared the claims inadmissible for absolute lack of jurisdiction. Relying on the principle of separation of powers, the Court considered that decisions concerning the means and timeframes for addressing anthropogenic climate change necessarily entail discretionary socio-economic and cost-benefit assessments falling within the prerogatives of the legislative and executive branches.

Accordingly, it held that the interests invoked under Articles 2043 and 2051 of the Civil Code could not be regarded, in the circumstances of the case, as legally protected subjective positions capable of grounding the judicial relief sought. In the Court's view, the action would ultimately have required judicial scrutiny of legislative and governmental measures implementing Italy's climate policy choices and its international and European commitments, thereby encroaching upon a sphere constitutionally reserved to the political branches. The Court further found that no legally enforceable obligation could be identified within the Italian legal order requiring the State to achieve a specific level of GHG emissions reduction, as claimed by the applicants. In particular, it did not consider the international and European climate obligations invoked by the claimants capable of grounding an individual right to require the State to adopt a specific mitigation pathway.

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[0] M. FERMEGLIA, R. LUPORINI, *'Urgenda-Style' Strategic Climate Change Litigation in Italy: A Tale of Human Rights and Torts?*, in *Chinese Journal of Environmental Law*, 2023, p. 248 ss.

The Court also adopted a restrictive approach to the scientific evidence submitted by the claimants, questioning the procedural relevance of evidence originating from sources other than the Italian Institute for Environmental Protection and Research (ISPRA). The judgment was subsequently appealed, and the proceedings are currently pending before the Court of Appeal of Rome. The judgment therefore reflects a particularly narrow understanding of the judicial role in climate matters, largely framing the determination of the content and adequacy of State mitigation action as a matter of political discretion rather than as a question capable of being assessed against legally binding standards[0]. This approach is open to criticism insofar as the existence of discretion as to the choice of climate measures does not necessarily preclude judicial scrutiny of whether the State has remained within the legal boundaries governing the exercise of that discretion. Nor does the inherently global and scientifically complex nature of climate change, in itself, exclude the possibility of identifying legally relevant standards against which national mitigation efforts may be assessed.

These aspects of the judgment are particularly significant in light of subsequent developments in European, international and domestic climate jurisprudence, which have progressively clarified the relationship between political discretion, legally binding climate obligations, scientific evidence and judicial review. As discussed in the following sections, the European Court on Human Rights (ECtHR) judgment in KlimaSeniorinnen, the ISC's order in the ENI climate case, and the ICJ Advisory Opinion provide important elements for reassessing some of the premises underlying the CCR's reasoning.

4. The contribution of the European Court of Human Rights' climate jurisprudence following the landmark judgment in *Verein KlimaSeniorinnen Schweiz et al. v. Switzerland*

The Grand Chamber judgment in *Verein KlimaSeniorinnen Schweiz*

[0] On the judgment, see M. VINKEN, P. MAZZOTTI, *The First Italian Climate Judgement and the Separation of Powers A Critical Assessment in Light of the ECtHR's Climate Jurisprudence*, in *Verfassungsblog on matters Constitutional*, 2024.

and Others v. Switzerland, delivered by the ECtHR on 9 April 2024, marked a decisive development in the application of the European Convention on Human Rights (ECHR) to climate change. The case was brought by the association Verein KlimaSeniorinnen Schweiz and four elderly women, who argued that the inadequacy of Switzerland's mitigation policies exposed them, particularly through increasingly frequent and intense heatwaves, to climate-related risks affecting their life, health and living conditions.

While the individual applicants failed to satisfy the stringent victim-status requirements applicable in the climate context, the Court recognised the standing of the applicant association and examined its complaints under Articles 8 and 6(1) ECHR[0]. Before assessing Switzerland's conduct, the Grand Chamber clarified several principles concerning the application of the Convention to climate change. It acknowledged that the global, cumulative and polycentric nature of climate change distinguishes it from traditional environmental harm and requires an adapted approach to issues such as causation and individual harm. In doing so, the Court interpreted the Convention in light of both the evolving international climate framework, including the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, and the best available scientific evidence. In particular, it relied extensively on IPCC assessments, regarded as «cogent scientific evidence», to establish the relationship between anthropogenic GHG emissions, global warming and risks to human life, health and well-being. Climate science therefore informs not only the assessment of factual circumstances and causation, but also the determination of the scope of States' positive obligations under the Convention.

The Court also rejected the proposition that the global character of climate change allows an individual State to escape its responsibilities because its contribution to global emissions is limited or because effective mitigation depends on collective action. Each State is required to undertake its own share of mitigation efforts, irrespective of the conduct of others. Nor do positive obligations require proof that the alleged harm

[0] On the case, see A. HÖSLI, M. REHMANN, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: the European Court of Human Rights' Answer to Climate Change*, in Climate Law, 2024, p. 266 ss.

would certainly have been avoided had the authorities acted differently[0]. The relevant question is rather whether reasonable measures available to the State could have had a real prospect of mitigating the adverse effects or risks affecting Convention rights.

Against this background, the Grand Chamber held that Article 8 ECHR encompasses a right to effective protection by State authorities against serious adverse effects of climate change on individuals' life, health, well-being and quality of life. States are therefore required to adopt and effectively implement mitigation measures capable of protecting individuals against such effects and risks. While they retain a broad margin of appreciation as to the choice of the means employed, their margin is narrower as regards the climate objectives to be achieved and the establishment of an adequate domestic regulatory framework. The political nature of climate policy does not, therefore, exclude judicial scrutiny: courts may assess whether public authorities have exercised their discretion within the boundaries imposed by the Convention without substituting themselves for the political branches. This obligation is further specified through the parameters set out in paragraph 550 et seq. of the judgment. In assessing whether a State has remained within its margin of appreciation, the Court considers whether the competent authorities have given due regard to the need to: (i) establish a target timeline for achieving carbon neutrality and quantify, through a carbon budget or an equivalent method, the overall amount of GHG emissions permitted over the relevant period; (ii) establish intermediate reduction targets and pathways consistent with the overall mitigation objectives; (iii) provide evidence of progress towards those targets; (iv) update them with due diligence and on the basis of the best available evidence; and (v) act in good time and in an appropriate and consistent manner in developing and implementing the relevant regulatory framework[0].

Compliance is assessed as a whole, meaning that a shortcoming

[0] A. SAVARESI, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making climate change litigation history*, in *Review of European, Comparative & International Environmental Law*, 2025, p. 281.

[0] M. WEWERINKE-SINGH, C*limate Protection Obligations under the European Convention on Human Rights: The KlimaSeniorinnen Judgment: ECtHR 9 April 2024, No. 53600/20, Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, in *European Constitutional Law Review*, 2025, pp. 362-363.

concerning one element does not necessarily entail a violation of Article 8. These parameters are particularly significant because they translate the general positive obligation into a structured framework for judicial review, while leaving the choice of specific mitigation instruments primarily to national authorities. The Court further recognised a procedural dimension to these obligations. Relevant information concerning climate measures and their implementation must be made available to the public, while the decision-making process must provide appropriate safeguards for effective participation, particularly by those affected or potentially affected by climate-related risks. The adequacy of State climate action thus depends not only on the substantive content of mitigation measures, but also on the procedures through which they are developed and implemented[0]. Taken together, these shortcomings exceeded Switzerland's margin of appreciation and resulted in a violation of Article 8 ECHR[0].

Finally, the judgment is significant from the perspective of access to justice. While the individual applicants failed to establish victim status, the Court recognised the locus standi of Verein KlimaSeniorinnen Schweiz, acknowledging the particular role of associations in climate litigation and drawing, inter alia, on principles reflected in the Aarhus Convention. It also found a violation of Article 6(1) ECHR because the Swiss courts had failed to provide the association with effective access to judicial determination of its claims[0]. Taken as a whole, KlimaSeniorinnen defines a model of climate-related judicial review in which political discretion, scientific evidence and procedural guarantees perform

[0] This dimension was subsequently developed in *Greenpeace Nordic and Others v. Norway*, concerning petroleum exploration licences. The Court clarified that the procedural obligations arising under Article 8 require an adequate, timely and comprehensive assessment of the climate impacts associated with potentially high-emitting activities, conducted in good faith and on the basis of the best available science. P. GANESAN, *Leaving Out 'Leaving it in the Ground': The ECtHR's Greenpeace Nordic Judgment*, in *EJIL:Talk!,* 2025.

[0] M. COHEN, V. LANOVOY, C. MARTINI, A. ROCHA, M. A. TIGRE, E. XAVIER, *Reparation for Climate Change at the EctHR. A Missed Opportunity or the First of Many Decisions to Come?*, in M. Bönnemann, M. A. Tigre, *The Transformation of European Climate Litigation*, cit., pp. 187-189.

[0] A. HÖSLI, M. REHMANN, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, cit., pp. 282-283.

complementary functions. States retain considerable discretion as to the means of mitigation, but this discretion operates within a legally reviewable framework requiring timely, coherent and scientifically grounded climate action. The parameters identified in paragraph 550 et seq., together with the procedural requirements subsequently developed in Greenpeace Nordic, thus provide a structured benchmark for assessing compliance with the positive obligations arising under Article 8 ECHR, including in the context of domestic climate litigation.

5. The ruling delivered by the Joint Chambers of the Italian Supreme Court in the Order issued in *Greenpeace Italy et al. v. ENI S.p.A. et al*

Following the judgments in the GU and KlimaSeniorinnen cases, on 21 July 2025 the Joint Chambers of the Italian Supreme Court (ISC) delivered a landmark ruling in a climate lawsuit brought by Greenpeace Italy, ReCommon and twelve individuals against ENI S.p.A., the Ministry of Economy and Finance, and Cassa Depositi e Prestiti. The case reached the ISC following an application for a preliminary determination of jurisdiction after the defendants argued that the claims fell outside the competence of the ordinary courts. Pending before the CCR, the proceedings challenge the compatibility of ENI's industrial strategy with domestic, European and international climate obligations. The claimants seek, *inter alia*, an order requiring ENI to reduce by 45 per cent, by 2030 relative to 2020 levels, the emissions associated with its activities and products, while requiring its two public shareholders to exercise their corporate powers consistently with that objective[0]. While the case also raises legal issues specific to the obligations of a private corporation and its public shareholders acting under private law, the broader constitutional, European and international legal framework largely mirrors that invoked in the GU case[0]. The ruling addresses several issues likely to shape the

[0] On the case information, see *Greenpeace Italy et al. v. ENI S.p.A., Ministry of Economy and Finance and Cassa Depositi e Prestiti S.p.A.*, in Sabin Center for Climate Change Law, Climate Change Litigation Database (last visited 31 July 2026).

[0] A. PISANÒ, *The Italian Way to Climate Litigation Against Private Companies. The Giusta Causa and the (New) Intergenerational Perspective*, in *DICE*

future of climate litigation in Italy. First, the Court rejected the proposition that the political sensitivity of climate disputes, in itself, excludes judicial review. A lack of jurisdiction exists only where the legal system provides no rule capable of protecting the interest asserted, whereas courts exceed their role only by creating, rather than interpreting and applying, legal rules. Consequently, where a claim is grounded in existing law and alleges non-contractual liability arising from legislative, administrative or corporate conduct, the ordinary courts must determine whether the applicable legal framework imposes enforceable obligations upon the defendants[0]. The ISC therefore referred that assessment to the trial court, which must establish whether the constitutional, statutory, European and international provisions invoked by the claimants, together with any other relevant rules identified under the principle *iura novit curia*, are capable of grounding liability. More broadly, the ruling suggests that the justiciability of climate claims depends on the existence and interpretation of applicable legal obligations rather than on the identity of the defendant or the political implications of the dispute. In doing so, it reframes the relationship between the separation of powers, the discretion enjoyed by public authorities and private actors, and judicial review by placing the rule of law and legally binding climate obligations at the centre of the analysis, consistently with the approach adopted by the ECtHR in KlimaSeniorinnen. Secondly, the Court recognised climate science as an essential component of the legal assessment, acknowledging that climate change poses serious risks to life, health, well-being and other fundamental interests. Scientific evidence is therefore indispensable for evaluating causation, risk and harm[0]. Thirdly, the Court required the trial court to assess the interaction between domestic law, EU law, international climate law and human rights law when determining the existence of enforceable obligations. In doing so, it expressly relied on paragraph 550 of KlimaSeniorinnen, endorsing the ECtHR's due diligence framework for assessing States' positive obligations under Article 8 ECHR in the climate context. Rather than treating KlimaSeniorinnen as merely persuasive

Éditions, 2026, pp. 215-219.

[0] See Italian Supreme Court (Joint Civil Chambers), Order No. 20381 of 21 July 2025, pp. 18-19.

[0] *Ibid*, pp. 3, 10.

authority, the Court incorporated its reasoning into the interpretative framework governing the conduct of public authorities, confirming that domestic climate obligations must be interpreted in light of evolving European human rights jurisprudence. It also adopted an integrated reading of the ECHR and the Charter of Fundamental Rights, implicitly relying on Article 52(3) of the Charter, under which corresponding Charter rights must be interpreted consistently with the Convention while allowing more extensive protection under EU law. The climate dimension attributed to Article 8 ECHR may therefore also inform the interpretation of Article 7 of the Charter and, through the interaction of constitutional, European and domestic law, shape the assessment of climate-related obligations before the Italian courts[0]. Finally, the Court addressed the transnational dimension of the dispute. It held that Italian jurisdiction could be established under Regulation (EU) No 1215/2012 despite the cross-border nature of the alleged emissions. Since ENI is domiciled in Italy and the challenged emissions pathway was allegedly determined by strategic decisions adopted by its governing bodies in Italy, while the alleged interference with the claimants' rights materialised where they reside and experience the effects of climate change, these connecting factors were sufficient to establish the jurisdiction of the Italian courts[0]. By confirming the jurisdiction of the CCR while deliberately refraining from expressing any view on the merits, the ruling leaves the substantive legal questions unresolved but significantly reshapes the procedural landscape of Italian climate litigation. Read together with the developments analysed in the preceding sections, its principal contribution lies in relocating the debate from the threshold issue of justiciability to the more demanding inquiry into the content, enforceability and judicial application of climate obligations derived from domestic, European and international law.

6. The landmark Advisory Opinion of the International Court of Justice on States' obligations in respect of climate change

Finally, the Advisory Opinion delivered by the International Court of

[0] *Ibid*, p. 19.

[0] On the implications of the ruling, see G. VALENTINI, C. GENTILE, *A Step Forward in Italian Climate Litigation*, cit., 2025.

Justice (ICJ) on 23 July 2025 represents a further major development in the clarification of States' legal obligations in the context of climate change[0]. It forms part of a broader sequence of international advisory proceedings, following the 2024 Advisory Opinion of the International Tribunal for the Law of the Sea (ITLOS)[0] and the 2025 Advisory Opinion of the Inter-American Court of Human Rights (IACtHR) on the climate emergency and human rights[0]. Although grounded in different jurisdictional mandates and applicable legal frameworks, these opinions converge in rejecting a fragmented understanding of climate obligations and in emphasising the interaction between climate treaties, general international environmental law and international human rights law. The ICJ expressly reinforced this integrated approach by rejecting the argument that the UNFCCC and the Paris Agreement constitute a *lex specialis* excluding the application of other relevant rules of international law[0].

While the scope of the Opinion extends considerably beyond the issues arising in climate litigation against States, its findings are particularly relevant to the question of how far national authorities retain discretion in determining the ambition and implementation of domestic climate policy. This is particularly evident in relation to mitigation measures, in respect of which the Court has confirmed that the fact that NDCs are determined at national level does not confer on the Parties unlimited discretion in setting their own level of climate ambition. Indeed, their formulation and subsequent updates - which must always be progressive - are governed by legal obligations and must be carried out with due diligence. In particular, Parties must formulate NDCs capable, when considered collectively, of achieving the temperature goal of limiting global warming to 1.5° C. State

[0] M. A. TIGRE, M. BÖNNEMANN, *The ICJ's Advisory Opinion on Climate Change. An Introduction*, in *Verfassungsblog on Matters Constitutional*, 2025.
[0] D. DIMITRAKOS, *The ITLOS Advisory Opinion on Climate Change: A Brief Review*, in *American Society of International Law*, 2025.
[0] J. AUZ, *The Inter-American Court of Human Rights' Advisory Opinion on the Climate Emergency: A Global South Contribution to Climate Governance*, in *EJIL: Talk!*, 2025.
[0] C. E. FOSTER, *The 2025 International Court of Justice Advisory Opinion on Obligations of States in respect of Climate Change*, in *International and Comparative Law Quarterly*, 2025, p. 777 ss.

discretion therefore concerns primarily the choice of the measures through which mitigation is pursued, rather than the possibility of determining climate ambition independently of the objectives, progression requirements and scientific parameters embedded in the Paris Agreement. From this perspective, NDCs cannot be reduced to political statements of national preference: they constitute instruments through which treaty obligations are operationalised and against which State conduct may accordingly be assessed[0]. The legal obligations governing mitigation are further reinforced by the customary principle of prevention. The Court has, in fact, held that this concept is fully applicable to the climate system, as it is an integral part of the environment that requires protection in the interests of both present and future generations. According to the Court, the cumulative and global nature of climate change does not preclude this obligation; on the contrary, it considers that climate-related harm may arise from the combined effects of multiple activities undertaken by both state and non-state actors. Therefore, this cumulative dimension helps to define the scope of the duty of care required of each State, rather than rendering individual liability legally irrelevant. The duty of care, therefore, gives concrete expression to the obligation of prevention by requiring States to adopt appropriate legislative, regulatory and administrative measures capable of contributing to substantial and sustained reductions in greenhouse gas emissions, to acquire and assess relevant scientific and technological information, and to take into account the best available scientific knowledge, applicable international standards and relevant decisions adopted within the climate regime. In this context, scientific uncertainty cannot, in itself, justify delays or inaction, particularly where the risk of significant and potentially irreversible harm has been established. Due diligence is not limited to the direct conduct of public authorities either, as it also requires States to assess the climate risks and impacts associated with activities carried out within their jurisdiction or under their control and, where appropriate, to regulate private actors whose conduct may contribute to significant climate harm[0].

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[0] L. RAJAMANI, *The International Court of Justice on the mitigation obligations in the Paris Agreement*, in *Review of European, Comparative & International Environmental Law*, 2026, pp. 4-8.
[0] J. PEEL, *Situating the ICJ's advisory opinion in the wider ecosystem of*

The same logic informs the Court's approach to international cooperation: climate change is a global environmental problem that no State can tackle effectively on its own. At the same time, however, the Court makes it clear that the collective nature of the required response does not diminish the obligations incumbent upon individual States. This reasoning is particularly relevant to arguments based on the comparatively limited share of global emissions attributable to any single State: the global character of the problem does not, in itself, render national mitigation efforts legally irrelevant.

This approach, which the Court has adopted and which we might describe as systemic, is further reinforced by the Court's integration of international human rights law into the applicable legal framework, since climate change may undermine the effective enjoyment of a wide range of rights, including the rights to life, health, food, water and housing, whilst a clean, healthy and sustainable environment is a necessary condition for their effective protection. Climate treaties, international environmental law and human rights law thus operate as mutually reinforcing bodies of law in the interpretation and implementation of States' obligations.

In this regard, the Opinion reflects a broader development also visible in KlimaSeniorinnen, notwithstanding the distinct legal bases from which the two courts derive the relevant obligations. For systemic climate litigation, the significance of these findings lies less in the identification of any single obligation than in their combined effect on the scope of State discretion. The ICJ does not prescribe a particular domestic policy mix or establish a predetermined national emissions-reduction percentage. It nevertheless makes clear that national climate policy is developed within a legal framework shaped by treaty and customary obligations, whose implementation is informed by due diligence and the best available science. Political discretion therefore persists, but it operates within legally defined boundaries. This distinction adds an important international-law dimension to the issues raised in Giudizio Universale. The relevant question is not whether courts may substitute their preferred climate policy for that chosen by governments and legislatures, but whether the discretion exercised by national authorities remains within the

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international climate litigation, cit., pp. 5-7.

boundaries established by applicable climate, environmental and human rights obligations. Read together with KlimaSeniorinnen and subsequent developments in Italian climate litigation, the ICJ Advisory Opinion thus reinforces the distinction between State discretion in choosing the means of mitigation and the judicially reviewable question of whether climate action complies with the legal requirements governing its ambition, timing and implementation.

7. Conclusions: reassessing 'Giudizio Universale' case in a changing judicial landscape

The developments examined in this article significantly alter the legal context in which Giudizio Universale must now be assessed. In February 2024, the CCR largely placed the adequacy of Italy's mitigation efforts within the sphere of political discretion, considering that judicial scrutiny of measures adopted by the legislature and the executive would interfere with the principle of separation of powers. At the same time, it did not attach legal relevance to the scientific evidence submitted by the claimants, nor did it identify an enforceable legal obligation requiring the State to reduce national emissions in the terms sought. Since then, however, the ECtHR's judgment in KlimaSeniorinnen, the Joint Chambers' order in the ENI case and the ICJ Advisory Opinion have significantly reshaped the legal framework against which that conclusion must be assessed, clarifying the boundaries of State discretion in climate mitigation and the role of climate science and international climate and human rights obligations in defining those boundaries.

A first point of convergence concerns the relationship between political discretion and justiciability. KlimaSeniorinnen clarified that States retain a broad margin of appreciation as to the means by which climate objectives are pursued, while that margin is narrower with regard to the mitigation objectives required under Article 8 ECHR. The parameters identified in paragraph 550 et seq. further provide a framework for assessing whether national authorities have established and implemented a timely, coherent and scientifically grounded mitigation framework, without requiring courts to determine the specific policies to be adopted. The Joint Chambers subsequently developed a similar distinction from the perspective of domestic jurisdiction, holding that the political implications of a climate dispute do not, as such, deprive ordinary courts of jurisdiction where the claim is based on legal rules capable of protecting the interests asserted. The relevant question is therefore not whether climate policy involves discretionary choices, but whether those choices are constrained by legal obligations capable of judicial review. The ICJ Advisory Opinion reinforces this conclusion under international law. The Court placed State discretion within a framework of treaty and customary obligations concerning, inter alia, mitigation, the prevention of significant harm to the climate system and international cooperation. At the same time, the nationally determined character of NDCs does not entail unlimited discretion, since their preparation and updating are subject to due diligence obligations and must be consistent with the temperature goal of the Paris Agreement. This does not empower courts to prescribe a particular climate policy or a predetermined national emissions-reduction target but confirms the existence of legal standards against which State conduct may be assessed.

A second issue concerns the role of climate science. In GU, the CCR adopted a restrictive approach to the evidence submitted by the claimants, questioning the relevance of scientific material originating from sources other than ISPRA without engaging with that evidence on its merits. Subsequent jurisprudence points in a different direction. In KlimaSeniorinnen, the ECtHR placed IPCC assessments - described as «cogent scientific evidence» - at the centre of the interpretation of the positive obligations arising under Article 8 ECHR. The ISC similarly recognised the relevance of scientific evidence to the assessment of climate risk, harm and causation, while the ICJ relied on the best available science in determining the content of States' due diligence obligations. Climate science thus performs an essential function not only in establishing facts, but also in assessing the adequacy and timeliness of mitigation measures and in giving concrete content to legal obligations. A third point concerns the global and cumulative nature of climate change.

The multiplicity of States and private actors contributing to GHG emissions does not render the contribution of an individual State legally irrelevant. Indeed, in KlimaSeniorinnen, the ECtHR rejected the proposition that a State may escape its positive obligations because its emissions represent only a limited share of the global total, affirming that each State must undertake its own share of mitigation efforts. Similarly, the ICJ recognised that harm to the climate system may result from the cumulative effects of multiple activities and that this does not preclude the application of the customary duty of prevention. The global character of climate change therefore does not remove individual State conduct from legal assessment but requires causation and preventive obligations to be considered in light of the cumulative nature of GHG emissions and climate harm. These developments are accompanied by an increasing integration of climate obligations and human rights protection. In KlimaSeniorinnen, Article 8 ECHR was interpreted as imposing positive obligations to protect individuals against the serious adverse effects of climate change on their life, health, well-being and quality of life. The Joint Chambers expressly referred to paragraph 550 of that judgment and placed this interpretation within the legal framework relevant to climate claims before Italian courts, also emphasising the interaction between the ECHR, the EU Charter of Fundamental Rights and domestic law. The ICJ, in turn, confirmed that international human rights obligations form part of the legal framework applicable to climate change. This increasingly integrated reading of climate, environmental and human rights law is particularly relevant to GU, whose claims were themselves constructed through the interaction between domestic civil liability, constitutional rights, the ECHR and international climate obligations.

These subsequent developments do not predetermine the outcome of the pending appeal, nor do they necessarily validate the specific emissions-reduction target or remedies sought by the claimants. They do, however, provide substantial grounds for reconsidering the conclusion that the dispute is, by its very nature, beyond judicial review. The changing judicial landscape shifts the focus of GU: the question is not whether courts should determine Italy's climate policy, but which legal obligations bind the State, how their content is informed by climate science and the relevant European and international legal framework, and to what extent compliance with those obligations is amenable to judicial review. From this perspective, the pending appeal offers an opportunity to clarify the role of the Italian judiciary within an emerging multilevel framework of climate accountability, in which political discretion remains essential but operates within - rather than outside - the boundaries of law.

CLIMATE RIGHTS IN EUROPEAN LITIGATION.

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SINTESI: Movendo dal contenzioso climatico europeo, il presente saggio esamina se si possa, a ordinamento invariato, affermare l'esistenza di «diritti climatici». La fenomenologia delle azioni promosse contro l'Unione europea e i suoi Stati membri danno il destro all'indagine del 'noumeno' delle posizioni giuridiche connesse alla stabilità climatica.

Abstract: *Taking European climate litigation as its point of departure, this essay examines whether "climate rights" can properly be said to exist. The individual actions brought against the European Union and its Member States provide fertile ground for investigating the noumenon of the legal positions associated with climate stability.*

1. A premise.

Climate litigation spans the entire planet[0].

The increase in climate-altering emissions, a major driver of global warming, and the resulting cascading effects on both the environment and individual and collective well-being have prompted citizens worldwide to challenge State inaction before ordinary, administrative and constitutional courts.

Globally, the United States, India, Pakistan and South America have provided the principal fora for climate litigation; in Europe, the *People's*

[0] A. DE FRANCESCHI - W. BOYD (eds), *Sustainability, Human rights and Climate justice*, Brussels, 2026; A. GIORDANO, *Introduzione alla tutela del clima come bene comune*, Napoli, 2024.

Climate Case and *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* are of emblematic significance.

While the former proceedings, brought before the Court of Justice of the European Union, ended in a procedural ruling adverse to the applicants, the latter, adjudicated by the Strasbourg Court, involved a determination on the merits of the climate-related claims and resulted in their being upheld. Outcomes favourable to citizens can likewise be discerned across the kaleidoscope of proceedings instituted against individual European States.

The question underpinning these reflections is whether the phenomenon of climate litigation reveals the noumenon of *"climate rights"*, with the interests of future generations serving as their guiding star.

2. On European climate litigation. The *People's Climate Case*.

One action brought against the EU is of particular importance[0].

This is the *People's Climate Case*[0] in which thirty-seven appellants (farmers and tourism operators) challenged the legality of the legislation adopted by the EU to introduce measures to combat climate change in compliance with the Paris Agreement.

More specifically, the appellants requested annulment under Art. 263 TFEU of Art. 1 of Directive (EU) 2018/410 on the emissions trading system (ETS), the non-debt rule[0] in Regulation (EU) 2018/841 and the emission ceilings set in Regulation (EU) 2018/842 on the ground that their implementation would set a target for climate-altering emissions that would be 40-50% below 1990 levels (instead of the 50-60% imposed by the Charter of the Fundamental Rights of the European Union, the Treaty on the Functioning of the European Union, UNFCCC, the Paris Agree-

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[0] G. CONTALDI, *L'accesso alla tutela ambientale nel diritto dell'Unione europea*, in A. TANZI - L. CHIUSSI - G. FARNELLI - A. MENSI (ed), *Sostenibilità ambientale e sociale nel commercio internazionale. Tendenze e prospettive fra politica e diritto*, Bologna, 2022, p. 71; F. GALLARATI, *Caso Carvalho: la Corte di giustizia rimanda l'appuntamento con la giustizia climatica*, in *DPCE online*, No. 2/2021, p. 2603; I. HADJIYANNI, *Judicial Protection and the Environment in the EU Legal Order: Missing Pieces for a Complete Puzzle of Legal Remedies*, in *Comm. M. Law Rev.*, 2021, p. 777.

[0] *Armando Carvalho and Others v. European Parliament and Council of the European Union*, T-330/18, 23 May 2018.

[0] Under which Member States guarantee that their total emissions from land use, land use change and forestry (LULUCF) will remain balanced and will not exceed carbon dioxide absorption.

ment and other relevant international conventions) by 2030[0].

The appellants stated that they had been directly and individually affected by the challenged acts and their standing was consequently recognised under Art. 263.4 TFEU.

More specifically, in their opinion, the parties directly interested should have been identified as anyone whose human rights were endangered by the acts challenged on the grounds of reasonable and convincing evidence of a probable breach.

The appellants further maintained that the decision in *Plaumann*[0] on individual interest should have been reviewed since it could prevent the full exercise of rights within EU law, without prejudice to the particular and unique effects climate change had had on the rights of each appellant.

The General Court did not however accept the appellants' pleas and in an order of 8 May 2019[0] ruled the application inadmissible for lack of standing since the appellants had not satisfactorily demonstrated that they had any direct and individual interest in the challenged acts.

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[0] General Court, Second Chamber, 8 May 2019, *Armando Carvalho and Others v. European Parliament and Council of the European Union*, T-330/18, § 18: 'In the application, the applicants claim that the Court should: - declare that the legislative package regarding greenhouse gas emissions is unlawful in so far as it permits the emission between 2021 and 2030 of a quantity of greenhouse gases corresponding to 80% of 1990 levels in 2021, decreasing to 60% of 1990 levels in 2030; - annul the legislative package regarding greenhouse gas emissions in so far as it sets targets to reduce greenhouse gas emissions by 2030 by 40% compared to 1990 levels, in particular Article 1 of Directive 2018/410, Article 4(2) of Regulation 2018/842 and Annex I thereto, and Article 4 of Regulation 2018/841; - order the Council and the Parliament to adopt measures under the legislative package regarding greenhouse gas emissions requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to their 1990 levels, or by such higher level of reduction as the Court shall deem appropriate; - in the alternative, in the event that the decision to annul the contested acts is adopted too late to allow the relevant provisions to be amended before 2021, order that the contested provisions of the legislative package regarding greenhouse gas emissions are to remain in force until a date to be determined by the Court, by which time at the latest they should have been amended by higher-ranking rules of law'.

[0] Court of Justice, 15 July 1963, *Plaumann & Co. v Commission of the European Economic Community*, C-25/62, in *https://curia.europa.eu*, which ruled that, as is well known, individual concern exists only when the act affects that particular individual (and not the addressee) because of the specific qualities or particular circumstance that distinguish that person from the generality of individuals.

[0] General Court, Second Chamber, 8 May 2019, *Armando Carvalho and Others v. European Parliament and Council of the European Union*, T-330/18, op. cit.

In its grounds the General Court firstly rejected the allegation that the contested measures were 'regulatory act[s] not entailing implementing measures', stating that only acts adopted following a non-legislative procedure were regulatory, while the contested acts had all been adopted through ordinary legislative procedure in accordance with Article 192(1) TFEU[0].

That said, the claims would only have been admissible insofar as they concerned acts adopted with respect to the appellants or that concerned them directly or individually.

Nevertheless, the general nature of the acts meant there could be no talk of individual interest and the construction proposed by the appellants in their pleadings essentially frustrated Article 263(4) TFEU.

Nor could it be said that the *Plaumann* judicial trend, confirmed by this

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[0] *Ibidem*, §§ 37-41: 'In the first place, regarding the third scenario referred to in paragraph 36 above, according to which natural or legal persons, such as the applicants, may, under the fourth paragraph of Article 263 TFEU, bring an action against a regulatory act not entailing implementing measures if that act is of direct concern to them, it is necessary to examine whether the acts constituting the legislative package are regulatory acts. In that regard, first, it should be borne in mind that, according to the case-law, the meaning of 'regulatory act' for the purposes of the fourth paragraph of Article 263 TFEU must be understood as covering all acts of general application apart from legislative acts (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 60 and 61; order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 56; and judgment of 25 October 2011, *Microban International and Microban (Europe)* v *Commission*, T-262/10, EU:T:2011:623, paragraph 21). Second, the test for distinguishing between a legislative act and a regulatory act is based, according to the Treaty on the Functioning of the European Union, on the criterion of the procedure, legislative or not, that led to its adoption (order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 65). In the present case, it should be noted that, as is apparent from the recitals set out in the preamble to the contested acts constituting the legislative package, those acts were adopted on the basis of Article 192(1) TFEU. That Article states that the Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the European Economic and Social Committee and the Committee of the Regions, are to decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191 TFEU. That Article concerns the Union's policy on the environment. Therefore, it must be concluded that the three contested acts are legislative acts, not regulatory acts, for the purposes of the case-law cited in paragraph 39 above, which, moreover, is not contested by the applicants'.

decision[0], was contrary to the right to an effective remedy and to a fair trial under Article 47 CFR since EU law could still be challenged under Article 267 TFEU[0].

Following an appeal, the Court of Justice recently confirmed that the

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[0]*Ibidem*, § 45: 'According to settled case-law, natural or legal persons satisfy the condition of individual concern only if the contested act affects them by reason of certain attributes that are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the addressee (judgments of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 223; of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 72; of 27 February 2014, *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 57; and of 27 February 2014, *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraph 44)'.

[0] *Ibidem*, §§ 52-53: 'Next, as regards the applicants' argument that the interpretation of the concept of 'individual concern' referred to in the fourth paragraph of Article 263 TFEU is incompatible with the fundamental right to effective judicial protection inasmuch as it results in a directly applicable regulation being virtually immune to judicial review, it should be pointed out that the protection conferred by Article 47 of the Charter of Fundamental Rights does not require that an individual should have an unconditional entitlement to bring an action for annulment of such a legislative act of the Union directly before the Courts of the European Union (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 105). 53. Lastly, as is highlighted by the Parliament and the Council, the implementation of the legislative package presupposes that such implementation will be carried out by means of legislative or regulatory provisions by the Commission and the Member States, such as the allocation of allowances and the putting in place of measures to avoid exceeding the limits fixed by each Member State with regard to emissions. In that context, it should be borne in mind that Articles 263 and 277 TFEU, on the one hand, and Article 267 TFEU, on the other, have established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of the acts of the institutions, entrusting such review to the Courts of the European Union. Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in Article 263 TFEU, directly challenge acts of the Union such as those at issue in the present case, they are able, depending on the case, to plead the invalidity of such acts either indirectly, under Article 277 TFEU, before the Courts of the European Union, or before the national courts and to ask them, since they have no jurisdiction themselves to declare those acts invalid, to question the Court in that regard through questions referred for a preliminary ruling (see, to that effect, order of 29 April 2015, *von Storch and Others* v *ECB*, C-64/14 P, EU:C:2015:300, paragraph 50 and the case-law cited)'.

applicants had no standing[0]. The Court held that the applicants' construction would lead (contrary to Art. 263(4) TFEU and ECJ case law) to *locus standi* for all. All fundamental rights would be concerned in one way or another by measures of general application. The requirements of the fourth paragraph of Article 263 TFEU would become meaningless[0].

The protection conferred by Article 47 CFR did not give individuals unconditional entitlement to bring actions for annulment of EU legislation.

As the Court stated, although the fourth paragraph of Article 263 must be interpreted in line with the principle of effective protection, 'such an interpretation cannot have the effect of setting aside the conditions expressly laid down in that Treaty'[0].

For similar reasons, the compensation claim filed by the appellants at the same time as their claim for annulment could not be allowed because it had the same purpose as the claim for annulment. Since the appellants intended with the injunction to achieve the same purpose as the main claim (more severe mitigation measures) the compensation claim was also inadmissible[0].

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[0] Court of Justice, 25 March 2021, *Armando Carvalho and Others v. European Parliament and Council of the European Union*, C-565/19 P., in *https://curia.europa.eu*.

[0] *Ibidem*, § 48: 'As was recalled by the General Court in paragraph 48 of the order under appeal, the claim that the acts at issue infringe fundamental rights is not sufficient in itself to establish that the action brought by an individual is admissible, without running the risk of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless (see, to that effect, orders of 10 May 2001, *FNAB and Others* v *Council,* C-345/00 P, EU:C:2001:270, paragraph 40, and of 14 January 2021, *Sabo and Others* v *Parliament and Council*, C-297/20 P, EU:C:2021:24, paragraph 29 and the case-law cited)'.

[0] *Ibidem*, § 78: 'Although the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection, such an interpretation cannot have the effect of setting aside the conditions expressly laid down in that Treaty (see, to that effect, judgments of 25 July 2002, *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, EU:C:2002:462, paragraph 44, and of 1 April 2004, *Commission* v *Jégo-Quéré*, C-263/02 P, EU:C:2004:210, paragraph 36)'.

[0] *Ibidem*, §§ 101-106: 'As was recalled by the General Court in paragraphs 65 and 66 of the order under appeal, according to settled case-law, the action for damages under the second paragraph of Article 340 TFEU was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on its use dictated by its specific purpose, and hence a declaration of inadmissibility of the application for annulment does not automatically render the action for damages inadmissible (judgment of 5 Sep-

2.1. *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*.

The *pars destruens* of climate litigation brought against Europe finds a

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tember 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 49 and the case-law cited). 102. However, although a party may take action by means of a claim for compensation without being obliged by any provision of law to seek the annulment of the illegal measure which causes him damage, he may not in that way circumvent the inadmissibility of an application which concerns the same instance of illegality and which has the same financial end in view (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 50 and the case-law cited). 103. Thus, an action for damages must be declared inadmissible where it is actually aimed at securing withdrawal of an individual decision which has become final and it would, if upheld, have the effect of nullifying the legal effects of that decision. That is the case if the applicant seeks, by means of a claim for damages, to obtain the same result as he would have obtained had he been successful in an action for annulment which he failed to commence in due time (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 51 and the case-law cited). 104. In the present case, in paragraph 67 of the order under appeal, the General Court makes the following finding: 'In that regard, it should be pointed out that the claim seeking annulment of the legislative package and the injunction requested in connection with the action for damages are almost identical and concern the same alleged unlawfulness. In the action for annulment, the applicants have argued that the target set by the three contested acts, namely a 40% reduction in emissions, is manifestly inadequate, which is why that target should be annulled and reviewed. In the action for damages, they seek, instead of pecuniary damages for their alleged individual losses, compensation in the form of an injunction ordering the Union to adopt measures to put an end to its unlawful and harmful conduct. The applicants therefore request that the Parliament and the Council be ordered to adopt measures under the legislative package requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to 1990 levels.'. 105. That finding by the General Court cannot be challenged. The action, taken as a whole, shows that the claim for compensation, which is formulated as an injunction, is intended not to obtain damages for harm attributable to an unlawful act or an omission, but to amend the acts at issue. Thus, as the General Court found in paragraph 69 of the order under appeal, both by their claim for annulment and by their request for an injunction, the appellants seek to obtain the same result, namely the replacement of the acts at issue with new measures that are more severe than those currently laid down in terms of reducing greenhouse gas emissions'. More generally on compensation for harm caused by environmental violations, see the conclusions of Advocate General Juliane Kokott, *JP v Ministre de la Transition écologique*.

significant dialectical counterpoint in the case decided by the European Court of Human Rights in April 2024[0].

The case was brought by the Swiss Association of Elderly Women for the Climate and four citizens who, relying on Articles 2, 6, 8 and 13 of the ECHR, challenged what they claimed were omissions by the Swiss Confederation regarding climate change mitigation.

The Court ruled preliminarily on the admissibility of the action[0], finding that the association had standing to bring the case, given the importance of collective action for the protection of climate interests[0] and also

C-61/21.

[0] Reference is made to the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, decided by the European Court of Human Rights in its judgment of 9 April 2024, *Verein KlimaSeniorinnen Schweiz*, application No. 53600/20, cited above, which - as will be discussed in greater detail below - found a violation of Article 8 of the ECHR, but not of Article 2. In contrast to that judgment, see the contemporaneous judgments declaring inadmissibility: ECtHR, 9 April 2024, *Duarte*, application no. 39371/20, and ECtHR, 9 April 2024, *Carême*, application No. 7189/21.

[0] A different approach was taken with regard to the individual applicants, who were deemed not to have victim status, as they had not been directly and personally affected by the contested measures (ECHR, 9 April 2024, *Verein Klimaseniorinnen Schweiz*, application No. 53600/20, op. cit., § 487: 'In sum, the Court finds that in order to claim victim status under Article 34 of the Convention in the context of complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change, an applicant needs to show that he or she was personally and directly affected by the impugned failures. This would require the Court to establish, having regard to the principles concerning issues of proof set out in paragraphs above, the following circumstances concerning the applicant's situation: (a) the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and (b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm').

[0] ECHR, 9 april 2024, *Verein Klimaseniorinnen Schweiz*, application No. 53600/20, op. cit., § 489: 'As the Court already noted in *Gorraiz Lizarraga and Others* (cited above, § 38), in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively. This is especially true in the context of climate change, which is a global and complex phenomenon. It has multiple causes and its adverse effects are not the concern of any one particular individual, or group of individuals, but are rather "a

in light of Article 9 of the Aarhus Convention, which opens the doors to environmental justice for non-governmental organisations[0].

On the merits, the Strasbourg judges found a violation of Article 8 of the ECHR, as the State had failed to fulfil its primary duty to adopt and implement appropriate mitigation measures[0].

These conclusions stem from the reconstruction of the concept of the climate obligation, inferable from the causal link between climate change and the guarantee of human rights, and from the assessment of a series of parameters aimed at verifying the proper exercise of the discretion entrusted to States.

According to the Court, it should be ascertained whether the authorities have adopted measures that set out a timeline for achieving carbon neu-

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common concern of humankind" (see the Preamble to the UNFCCC). Moreover, in this context where intergenerational burden-sharing assumes particular importance (see paragraph above), collective action through associations or other interest groups may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard and through which they can seek to influence the relevant decision-making processes'.

[0] *Ibidem*, § 491: 'The Aarhus Convention also emphasises the importance of the role which non-governmental organisations play in the context of environmental protection. It envisages the need to ensure that non-governmental organisations have wide access to justice in matters concerning environmental protection (see, in particular, the Preamble and Article 9 of the Aarhus Convention). Article 2 § 5 of the Aarhus Convention explicitly incorporates within the category of "the interested public" non-governmental organisations whose statutory goals include the promotion of environmental protection, provided that they also meet "any requirements under national law". According to the Implementation Guide, whether a non-governmental organisation promotes environmental protection or not can be ascertained in a variety of ways, such as through its charter, by-laws or activities. In this context, "environmental protection" may concern any purpose consistent with the implied definition of environment found in Article 2 § 3. Moreover, it is specified that the reference to "meeting any requirements under national law" should not be read as leaving absolute discretion to States in defining these requirements, but rather in the context of the important role the Aarhus Convention assigns to non-governmental organisations'.

[0] *Ibidem*, § 545: '[…] the State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights, as noted in paragraphs above, and the fact that the object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied such as to guarantee rights that are practical and effective, not theoretical and illusory'.

trality and the remaining carbon budget; established targets and interim pathways for reducing climate-changing emissions; demonstrated compliance with reduction targets; kept these targets updated with due diligence and in accordance with the best available techniques; acted in a timely, appropriate and consistent manner during the development and implementation of the measures[0].

Switzerland's failure to comply has provided the opportunity to identify general criteria capable of fully assessing the consistency of a single state's actions with respect to international objectives.

Ultimately, the Swiss dispute opens up a crucial avenue of protection that is set to shape the future of climate justice.

3. Litigation against individual States.

Further confirmation of the favourable trend underpinning the judgment of the European Court of Human Rights may be found in the various strands of the multifaceted litigation brought before the courts of individual European States.

Among the various proceedings brought against governments, of particular significance are the action before the Dutch Supreme Court[0] that,

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[0] *Ibidem*, § 550: 'When assessing whether a State has remained within its margin of appreciation […], the Court will examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need to: (a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments; (b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies; (c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets […]; (d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and (e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures'.

[0] Hoge Raad der Nederlanden, 20 December 2019, No. 19/00135, see M. F. CAVALCANTI - M. J. TERSTEGGE, *The Urgenda case: the Dutch path towards a new climate constitutionalism*, in *DPCE Online*, 2020, p. 1371; G. GHINELLI, *Le condizioni dell'azione nel contenzioso climatico: c'è un giudice per il clima?*, op. cit., p. 1272; E. GUARNA ASSANTI, *Il ruolo innovativo del contenzioso climatico tra legittimazione ad agire e separazione dei poteri dello Stato. Riflessioni a partire dal caso Urgenda,* op. cit., pp. 72-78; O. SPIJKERS, *Pursuing climate ju-*

pursuant to articles 2 and 8 ECHR, declared that the Dutch government had an obligation to cut CO2 and other greenhouse gas emissions to 25% below 1990 levels by 2020; the Belgian case in which the Belgian government was found to have violated its climate obligations and in which reliance was placed on the Aarhus Convention for the question of standing and on articles 2 and 8 ECHR for the merits of the claims[0]; the Irish case brought by the Friends of the Irish Environment (an NGO) alleging that the National Mitigation Plan did not meet global environmental transition targets[0]; the French *Affaire du Siècle* that culminated with a decision by the Paris Administrative Court that found the State liable for the inadequacy of its policy for mitigating climate-altering emissions[0]; and the German action that declared the *Klimaschutzgesetz*[0] unconstitutional for failing to regulate mitigation measures for the period after 2030 despite the State's constitutional duty to ensure prompt long-term climate protection[0].

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stice through public interest litigation: the Urgenda case, in *Volkerrechtsblog*, 29 April 2020.

[0] Tribunal de première instance francophone de Bruxelles, 17 June 2021, *WZV Klimaatzaak v.The Belgian State*, 2015/4585/A.

[0] Supreme Court of Ireland, 31 July 2020, *Friends of the Irish Environment CLG v. The Government of Ireland & Ors*, Appeal No. 205/19, see L. BOLAND, *Supreme Court Finds Government Climate Plan Falls "Well Short"*, *thejournal.ie*, 31 July 2020, *https://www.thejournal.ie/supreme-court-climate-case-ireland-5164687-Jul2020/*.

[0] Paris Administrative Court, 3 February 2021, *Affaire du siècle*, No. 1904967, 1904968, 1904972, 1904976/4- 1, *http://paris.tribunal-administratif.fr*. On the judgment, see L. DEL CORONA, *Brevi considerazioni in tema di contenzioso climatico alla luce della recente sentenza del Tribunal administratif de Paris sull'"Affaire du siècle"*, in *La Rivista "Gruppo di Pisa"*, 2021, p. 327; G. VIVOLI, *L'insostenibile leggerezza degli obiettivi climatici: come gli impegni assunti dagli Stati vengono presi sul serio dai giudici*, op. cit., pp. 16-23.

[0] Federal Climate Protection Act.

[0] German Federal Constitutional Court, Beschluss des Ersten Senats vom 24 March 2021, 1 BvR 2656/18, pp. 1-270, *https://www.bundesverfassungsgericht.de*. See also G. VIVOLI, *L'insostenibile leggerezza degli obiettivi climatici: come gli impegni assunti dagli Stati vengono presi sul serio dai giudici*, op. cit., pp. 24-30. See also *Greenpeace v Spain* in which *Greenpeace España*, *Oxfam Intermón* and *Ecologistas en Acción* brought an action - recently rejected by the Administrative Litigation Division of the Spanish Supreme Court (24 July 2023, No. 1079/2023) against supposed government inertia in pursuing climate targets (it was alleged that the State had approved a PNIEC to cut greenhouse gas emissions by levels not consonant with the

4. Are there "climate rights"?

The phenomenology of climate litigation prompts inquiry into the noumenon of the legal nature of climate-related subjective legal positions.

Global warming is an established fact, as is climate litigation. It is equally undeniable that many of the proceedings brought in Europe have resulted in favourable judgments on the merits. The question that must be addressed is whether the justiciability of climate-related claims entails recognition of the legal interests asserted by present and future generations as fully enforceable individual rights.

That climate may constitute the subject matter of a right is a possible outcome of international conventions and declarations, as applied in numerous climate litigation cases.

It is directly mentioned as a (fundamental) right in the 1972 Stockholm Declaration, where principle 1 states that 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations'.

The Rio Declaration, although not mentioning climate as a fundamental right, states in principle 1 that human beings are entitled to a healthy and productive life in harmony with nature.

These are not isolated declarations and are not contradicted by subsequent international or EU law.

The 2015 Oslo Principles on Global Climate Change Obligations declare that States have an obligation to prevent global warming rising more than 2°C above pre-industrial levels, while the Paris Agreement sets 'obligations […] on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity'[0] and binding targets that establish the basis for potential State

European Climate Law). For non-EU European countries, see especially the decision of the Swiss Federal Court [BGer] on 5 May 2020 in *Verein KlimaSeniorinnen Schweiz et al. v. Federal Department of the Environment, Transport, Energy and Communications (DETEC)*; that of the English Court of Appeal, Civil Division on 25 January 2019 in *Plan B Earth and Others v. The Secretary of State for Business, Energy and Industrial Strategy*; that of the Supreme Court of Norway on 22 December 2020 in *Greenpeace Nordic Association and Nature and Youth v. Ministry of Petroleum and Energy*, HR-2020-2472-P, case no. 20-051052SIV-HRET.

[0] Preamble to the Agreement.

liability for failure to take action or for taking insufficient action to protect climate stability.

This trend is mirrored in EU law that follows the international framework in restricting Member States in deciding whether and when to take action and allowing them discretion only over the manner of action taken. Climate obligations[0] assume the existence of a subjective right to climate (including, according to one view[0], 'the most important ecosystemic function of regulating all interactions among living beings, including man'[0]).

This view, taken together with articles 2 and 8 ECHR[0] has become a major source of human rights-based climate litigation that is deliberately founded on the 'positive obligation that lies on the States (and other contracting parties to the Paris Agreement that are not nation states, i.e. the EU) to protect the human rights that are at risk of the persons in their jurisdictions by adopting measures that will make a proper contribution to

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[0] M. CARDUCCI, under *Cambiamento climatico (diritto costituzionale)*, op. cit., spec. pp. 58-59 (for a definition of the obligation, see p. 59 where it is described as: 'a positive duty to achieve a result (guarantee global benefits) and not just to use best efforts, with discretion as to the manner of achievement (identify early, prevent or keep to a minimum) and to whether to take action (no postponement allowed or ignoring of scientific knowledge, even if uncertain)').

[0] M. CARDUCCI, *La ricerca dei caratteri differenziali della "giustizia climatica"*, in *DPCE online*, No. 2/2020, pp. 1360-1361.

[0] *Ibidem*, p. 1361, which adds that climate is a regulatory matter underpinned by the law and over which the latter is powerless.

[0] As the *Urgenda* case has shown (Hoge Raad der Nederlanden, 20 December 2019, No. 19/00135) in the decision at 5.6.2: 'Pursuant to the findings above in paras. 5.2.1-5.3.4, no other conclusion can be drawn but that the State is required pursuant to Articles 2 and 8 ECHR to take measures to counter the genuine threat of dangerous climate change if this were merely a national problem. Given the findings above in paras. 4.2-4.7, after all, this constitutes a 'real and immediate risk' as referred to above in para. 5.2.2 and it entails the risk that the lives and welfare of Dutch residents could be seriously jeopardised. The same applies to, *inter alia*, the possible sharp rise in the sea level, which could render part of the Netherlands uninhabitable. The fact that this risk will only be able to materialise a few decades from now and that it will not impact specific persons or a specific group of persons but large parts of the population does not mean - contrary to the State's assertions - that Articles 2 and 8 ECHR offer no protection from this threat (see above in para. 5.3.1 and the conclusion of paras. 5.2.2 and 5.2.3). This is consistent with the precautionary principle (see para. 5.3.2, above). The mere existence of a sufficiently genuine possibility that this risk will materialise means that suitable measures must be taken'.

mitigating climate change as established in the Paris Agreement'[0].

Italian case law appears to adopt a broadly similar approach.

The Court of Cassation's view[0] is that the rights of property and to health create the basis for a subjective right in which to root the environment as an indivisible concept.

With the Supreme Court's original approach, the right to the environment became an offshoot of the right of ownership that made protection conditional on the relationship between the asset itself and any activities that might have negative impacts on its full enjoyment and invoking the civil-law ban on pollution (Arts. 844 and 890 Italian Civil Code)[0].

Property then gave way to the protection of health[0].

From an initial association of health protection with the proprietary aspects inherent in the relationship between the individual and the asset, there has been a shift towards the enshrinement of a fully-fledged subjective right to a healthy environment[0].

Article 32 of the Italian Constitution has formed the basis for the right to a healthy environment and for the 'conditions that are essential or simply conducive to human health, including in those places in which social communities operate and health is involved'[0].

This approach also finds a home in Court of Justice case law.

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[0] M. MONTINI, *Verso una giustizia climatica basata sulla tutela dei diritti umani*, in *Ordine internazionale e diritti umani*, 2020, p. 510. To this is added the need for proper recognition of standing to protect general climate stability interests and the causal link between the inability to enjoy one or more human rights and the negative impacts of climate change.

[0] Court of Civil Cassation, full bench, 9 April 1973, No. 999, in *Foro it.*, 1974, I, c. 843; Court of Civil Cassation, full bench, 9 March 1979, No. 1463, *ibid*, 1979, I, c. 939; Court of Civil Cassation, full bench, 6 October 1979, No. 5172, *ibid*, 1979, I, c. 2302. For a similar approach and literature, see F. GIAMPIETRO, *Diritto alla salubrità dell'ambiente. Inquinamenti e riforma sanitaria*, Milan, 1980; S. PATTI, *Diritto all'ambiente e tutela della persona*, in *Giur. it.*, 1980, c. 859; P. PERLINGIERI, *Il diritto alla salute quale diritto della personalità*, in *Rass. dir. civ.*, 1982, p. 1020; A. POSTIGLIONE, *Il diritto dell'ambiente*, Naples, 1982; M. COMPORTI, *Tutela dell'ambiente e tutela della salute*, in *Riv. giur. ambiente*, no. 2/1990, p. 191; M. GIGLIO, *Diritto alla salute ed all'ambiente salubre*, in *Nuova rass. legisl. dottr. giur.*, 1994, p. 1765.

[0] Court of Civil Cassation, full bench, 9 April 1973, No. 999, op. cit.

[0] Court of Civil Cassation, full bench, 9 March 1979, No. 1463, op. cit.; Court of Civil Cassation, full bench, 6 October 1979, No. 5172, op. cit.

[0] Court of Civil Cassation, full bench, 6 October 1979, No. 5172, op. cit.

[0] Court of Civil Cassation, full bench, 6 October 1979, No. 5172, op. cit.

One example of this is the *Cassis de Dijon* judgment[0], which includes among the 'mandatory requirements' that justify restrictions on the free movement of goods also the 'protection of public health' (and 'consumer protection').

This led the European Commission in its Communication on 3 October 1980[0] to supplement protection of public health with environmental protection, thus giving a wide interpretation of 'mandatory requirements' in line with the health/environment connection already made in Italian law[0].

The link between climate and the protection of the health (and life) of partners enabled the courts to make use of new environmental case law.

However, any attempt to make climate the basis for personal claims, creating '*locus standi* in actions brought to satisfy personal *interests* that are *protected by the law*'[0] would come up against significant opposition.

Rights carry 'total protection of an interest whose satisfaction is guaranteed by law, making it immune to external authority and interference'[0]. But human beings cannot demand to live in a healthy environment[0], in a particular climate or with any given level of climate stability.

As maintained[0], 'We only need to think of earthquakes, volcanic eruptions and tidal waves to agree that man does not dominate nature but is often its main victim and therefore certainly cannot claim any rights, at least in the legal sense'.

These latter considerations call for the scope of the inquiry to be broadened beyond the confines of fully vested subjective rights.

Of particular relevance is the legal position of the legitimate interest ('*interesse legittimo*'), which arises in connection with the exercise of

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[0] Court of Justice, 20 February 1979, *Cassis de Dijon*, C-120/78, in *https://curia.europa.eu*.

[0] European Commission, Communication on the consequences of the *Cassis de Dijon* judgment, in OJ, 3 October 1980, C 256.

[0] See also subsequent case law (Court of Justice, 7 February 1985, *Association de défense des brûleurs d'huiles usagées (ADBHU)*, C-240/83 and Court of Justice, 20 September 1988, *Commission of the European Communities v Kingdom of Denmark*, C-302/86, both in *https://curia.europa.eu*), which recognises that obstacles to the free movement of goods can be justified by the need to protect the environment.

[0] A. TORRENTE - P. SCHLESINGER, *Manuale di diritto privato*, Milan, 2021, p. 72.

[0] F. FRACCHIA, *Il principio dello sviluppo sostenibile*, in G. ROSSI (ed), *Diritto dell'ambiente*, op. cit., p. 184.

[0] *Ibidem*, p. 184.

[0] *Ibidem*, p. 184.

public powers[0].

Given that the achievement of climate stability would be predicated upon the mediation of public authorities, and as the legitimate interest[0] is the construct that engages with such authorities, only this latter subjective legal position could find legal recognition.

It would be hard to deny that (by definition sustainable) climate poli-

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[0] For the concept of legitimate interest, see A. AMORTH, *Figura giuridica e contenuto del diritto subiettivo affievolito*, in *Scritti in onore di S. Romano*, II, Padua, 1940, p. 201; A. M. SANDULLI, *Collegamenti e conseguenzialità tra diritti e interessi e relativa rilevanza ai fini delle competenze giurisdizionali*, in *Giust. civ.*, 1958, I, p. 211; E. CANNADA BARTOLI, under *Interesse (diritto amministrativo)*, in *Enc. dir.*, XXII, Milan, 1972; A. ROMANO, *Giurisdizione amministrativa e limiti della giurisdizione ordinaria*, Milan, 1975 (spec. pp. 67 ff. e 133 ff.); ID., *Diritto soggettivo, interesse legittimo e assetto costituzionale*, in *Foro it.*, 1980, V, c. 258; ID., *Interesse legittimo e ordinamento amministrativo*, in *Atti del Convegno celebrativo del 150° anniversario della istituzione del Consiglio di Stato*, Milan, 1983; ID., *Il cittadino e la pubblica amministrazione*, in *Il diritto amministrativo degli anni '80, Atti del XXX° Convegno di studi di scienza dell'amministrazione*, Milan, 1987; ID., *Risarcibilità dei danni da lesione di interessi legittimi ed opere pubbliche*, in *Risarcibilità dei danni da lesione di interessi legittimi, Atti del XLIII Convegno di Scienza dell'Amministrazione*, Varenna-Villa Monastero, 18-20 September 1997, Milan, 1998; E. FOLLIERI, *Risarcimento del danno per lesione di interessi legittimi*, Chieti, 1985; M. NIGRO, *Ma cos'è questo interesse legittimo? Interrogativi e nuovi spunti di riflessione*, in *Foro it.*, V, 1987, c. 469; F. G. SCOCA, *Contributo sulla figura dell'interesse legittimo*, Milan, 1990; ID., *Autorità e consenso*, in *Dir. amm.*, No. 3/2002, p. 431; ID., *L'interesse legittimo. Storia e teoria*, Turin, 2017; F. G. SCOCA - L. GIANI, *Spunti sulle nozioni di interesse legittimo e giudicato amministrativo*, in *Dir. proc. amm.*, No. 2/1997, p. 327; B. TONOLETTI, *L'accertamento amministrativo*, Padua, 2001; ID., *Le situazioni soggettive nel diritto amministrativo*, in *Quaderni del Seminario di Studi e Ricerche Parlamentari Silvano Tosi*, No. 20, Turin, 2010, p. 132; L. FERRARA, *Dal giudizio di ottemperanza al processo di esecuzione. La dissoluzione del concetto di interesse legittimo nel nuovo assetto della giurisdizione amministrativa*, Milan, 2003; F. VOLPE, *Norme di relazione, norme d'azione e sistema italiano di giustizia amministrativa*, Padua, 2004; M. TIBERII, *La tutela dell'interesse legittimo nella pluralità delle azioni*, Naples, 2013; L. GIANI, *Il "bene della vita" del privato tra potere amministrativo e spettanza. Brevi riflessioni a margine del volume di F. G. Scoca*, in VV.AA., *L'interesse legittimo. Colloqui con Franco Gaetano Scoca*, Turin, 2019, p. 383; R. CAROCCIA, *Risarcimento dell'interesse legittimo.* Chance*, tutela dell'affidamento e regole di validità e responsabilità*, Turin, 2022.

[0] F. G. SCOCA, *L'interesse legittimo. Storia e teoria*, op. cit.; see also VV.AA., *L'interesse legittimo. Colloqui con Franco Gaetano Scoca*, op. cit.

cies involve some compromise between environmental protection, the protection of financial interests and social interests[0].

The framework of rights, particularly those of a fundamental nature, would appear difficult to reconcile with the multifaceted and composite nature of sustainability.

As the newly amended Article 9 of the Italian Constitution would suggest, the climate, construed as a common heritage, would engage the interests of future generations, thereby imposing corresponding duties upon present ones.

Any 'claims' advanced by individuals or by largely undifferentiated groups to a specific climate would lack legal standing, as the latter requires comprehensive and integrated policy measures falling within the remit of public authorities[0].

All this would be implicit in the provisions of the Nice-Strasbourg Charter, which would appear to regard the environment (and the climate) not as a basis for actionable individual rights, but rather as a domain for protective policies consistent with the principle of sustainable development[0].

Furthermore, connections to early judicial precedents in environmental matters would also be evident.

Indeed while some judgments treated the environment as a right, others viewed it as a legitimate interest[0].

Here again environmental protection could be either direct or indirect, as was spotlighted when protection of the legitimate interests of the owners of assets located in places affected by administrative actions was concerned.

With regard to Italy, the relevant administrative case law here would

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[0] S. VALAGUZZA, *Liti strategiche: il contenzioso climatico salverà il pianeta?*, op. cit.: 'purely subjective environmentalist claims risk approaches that do not properly understand the three-fold nature of sustainability, which must always and in all cases mitigate environmental protection with financial and social interests to ensure the well-being of the population'.

[0] G. ROSSI, *Situazioni giuridiche soggettive, danni e tutele*, in ID. (ed), *Diritto dell'ambiente*, op. cit., p. 110, who points out that assets are protected not only through compensation but above all through organisation and procedures.

[0] See Art. 37 CFR, which states that 'A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development'.

[0] Council of State, div. V, 9 June 1970, No. 523; Id., 24 November 1978, No. 1174; Id., 18 April 1980, No. 420.

be the *'Legge Ponte'* (Law No. 765 of 6 August 1967).

Although the wording of Article 10 of this law appears to give 'anyone' the right to challenge unlawful building permits, the Italian Council of State ruled that the *proximity* criterion must be met (requiring the claimant to hold title to a property at least permanently connected with the area concerned[0]).

Diffuse interests are therefore protected by protecting qualified legitimate interests.

5. A first conclusion.

The rigidity of the approach adopted in the *People's Climate Case* appears to stem from the particular characteristics of the respondent - the European Union - and of the EU legal order, which has traditionally resisted any unduly broad expansion of standing.

By contrast, the case decided by the Strasbourg Court (*Verein Klima-Seniorinnen Schweiz and Others v. Switzerland*), together with the other proceedings brought against individual States, demonstrates that climate stability warrants full legal protection.

The question remains open, however, as to how the individual legal position associated with such climate stability should be characterised.

The fact that climate is a matter of public policy and requires the corresponding exercise of public powers - as many European litigation cases have pointed out - makes the thesis that reduces it to "rights" unsatisfactory.

On the other hand, since climate obligations are intrinsic to international law and climate is contiguous with other fundamental personal interests (as the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* case has demonstrated), we must venture beyond the legitimate interest framework.

Furthermore, the literature on the environment calls for a rethink of simplistic application of the subjective right/legitimate interest approach to climate stability.

There are concerns about whether the environment can be classified as a subjective right (or legitimate interest) in the proper sense[0].

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[0] Council of State, div. V, 9 June 1970, No. 523, op. cit.

[0] G. PERICU, under *Ambiente (tutela dell') nel diritto amministrativo*, in *Dig. pubbl.*, I, Turin, 1987, p. 193; M. CAFAGNO, *Diritto all'ambiente salubre e tutela giurisdizionale*, in *Quaderni regionali*, 1993, p. 753; B. CARAVITA, *Diritto all'ambiente e diritto allo sviluppo. Profili costituzionali*, in VV.AA., *Scritti in onore di Alberto Predieri*, I, Milan, 1996, p. 345; C. E. GALLO, *L'ambiente e le*

The term 'environmental rights' - meaning the right to 'the environmental balance of the biosphere or ecosystems concerned'[0] - would not imply the existence of subjective claims relating to the environment[0].

The intrinsic nature of the environment, being such as to render it insusceptible of appropriation, would preclude the identification of individual legal entitlements.

Failure to preclude the environment would lead to multiple simultaneous claims arising from its general accessibility[0].

A huge number of persons would share *locus standi*. They would include e.g. individuals with similar interests, environmental associations and local bodies, all of whom would be pursuing the same ends[0].

The environment's relevance to community life would cast doubt on whether it can be protected on the ground of personal status.

The interest to be protected is in all cases multi-faceted and varies depending on the aspect under consideration: 'Personal status that concerns authority gives rise to a legitimate interest that is the perfect equivalent of a right since both share the same essential interest, which is the relationship between one person and the other persons involved with regard to an asset'[0].

The evolving nature of the protected legal position and the broad array of remedies afforded for the protection of legitimate interests have diminished the significance of the dichotomy between subjective rights and legitimate interests, casting doubt upon its continued utility.

The observations made with respect to the environment as a protected asset - not least in light of the possibility to bring actions before the administrative courts for annulment, compensation, prevention, and environmental remediation[0] - hold equally true in relation to climate stability.

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situazioni giuridiche soggettive, in R. FERRARA - M. A. SANDULLI (ed), *Trattato di diritto dell'ambiente*, I, Milan, 2014, p. 399.

[0] B. CARAVITA, *Diritto pubblico dell'ambiente*, Bologna, 1990, p. 53.

[0] B. CARAVITA, *Diritto all'ambiente e diritto allo sviluppo. Profili costituzionali*, op. cit., p. 345.

[0] G. ROSSI, *Situazioni giuridiche soggettive, danni e tutele*, in ID. (ed), *Diritto dell'ambiente*, op. cit., p. 109.

[0] *Ibidem*, p. 109.

[0] *Ibidem*, p. 108, who also notes that 'If, as is now becoming increasingly clear, qualification of a personal status as either a subjective right or legitimate interest serves only to identify the competent court, this is not particularly important. It is indeed ever clearer that *locus standi* of a substantive nature (protected assets) is involved in both cases, the only difference being the personal status concerned'.

[0] *Ibidem*, p. 109: '… if we admit that the environment can give personal standing, the question of whether we are dealing mainly with subjective rights or le-

The difficulty in, and doubtful usefulness of, assigning climate to a personal status calls for a search for a different approach leading to a unitary legal conception of climate[0] as common heritage, in line with the 'general interest of the community'[0] that underlies it.

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gitimate interests becomes less important, particularly since the new law has given the administrative courts jurisdiction over compensation claims in addition to its existing jurisdiction over claims to have actions avoided or adopted, against non-compliance with protection through compensation, prevention and remediation of the environment (arts. 299-318 Environment Code)'.

[0] In line with the environment-related trend that has led to the shift from a pluralist approach (M. S. GIANNINI, *"Ambiente": saggio sui diversi suoi aspetti giuridici*, in *Riv. trim. dir. pubbl.*, 1973, p. 15, who maintains that the environment is divided into landscape, protection of the soil, the air and water, and urban planning). For a different view, see A. PREDIERI, under *Paesaggio*, in *Enc. dir.*, XXXI, Milan, 1981, p. 508, who writes that environmental protection breaks down into laws on health, territory and urban planning. More recently, see E. PICOZZA, *Le nozioni giuridiche di ambiente e disciplina generale*, in ID., *Nozioni fondamentali di diritto dell'ambiente*, op. cit., p. 12, for whom the environment is a three-fold concept of ecology, culture/landscape/nature and aspects regulated by territorial law in which the unified concept can nevertheless apply for procedural purposes i.e. in the main procedures for establishing environmental impact or granting/rejecting environmental permits) to an advisory approach (A. POSTIGLIONE, *Ambiente: suo significato giuridico unitario*, in *Riv. trim. dir. pubbl.*, 1985, p. 32; see also U. POTOTSCHNIG, *Vecchi e nuovi strumenti nella disciplina pubblica delle acque*, Milan, 1969, who tried to combine the different aspects of the environment (see e.g. Constitutional Court 30 December 1987, No. 641, op. cit., which refers to the environment as a 'unified immaterial asset'). More recently, see Constitutional Court 20 December 2002, No. 536, in *www.giurcost.org*, which refers to the environment as a 'constitutionally protected asset'; Constitutional Court, 7 November 2007, No. 367, *ibid*, which calls it a 'complex and indivisible asset' and Constitutional Court, 14 November 2007, No. 378, op. cit., that states that 'when considering the environment as a 'subject' over which the State and the Regions share legal jurisdiction, we must not forget that this is a material and complex asset whose regulation also involves the governance and protection of the qualities and balances of its individual components'. For a different view, see M. MAGRI, *Il 2021 è stato l'anno della "giustizia climatica"?*, in *Rivista Giuridica AmbienteDiritto.it*, No. 4/2021, p. 4, who holds that climate 'does not have the positive law support required for classification as an 'indivisible asset'.

[0] In similar terms and on the environment as commons whose damage would harm State revenue, see Court of Auditors, div. I, 20 September 1975, No. 108, in *Foro it.*, 1977, III, c. 349. See also, for the far from weak analogy between environment and climate, the definition of the environment as a set of economically significant interests that are available to, and used by, the community and over which the

Indeed, climate belongs to all and everyone.

It cannot be precluded since everyone holds a simultaneous right to enjoy it, but at the same time there is rivalry for its consumption since it can be exhausted. It is not subject to ownership since it belongs to the entire community without distinction. It expresses a functional interest in the development of the individual.

Like the environment, climate is *res communis omnium* and because it can be exhausted[0] its protection is the right and duty of the individual and of the community.

Governors protect the climate.

International conventions and declarations have made the concept of shared but different responsibilities their own and include specific duties to protect the atmosphere with clear deadlines.

Despite the need that had already arisen by the 1972 Stockholm Declaration to differentiate responsibilities[0] correctly, they cannot but be

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State or territorial body has a duty of protection given in Court of Auditors, div. I, 8 October 1979, No. 61, in *Foro amm.*, 1979, III, p. 593. On damage to the environment, see Court of Auditors, div. I, 15 May 1973, No. 39, in *Foro amm.*, I, p. 247, which defines this as 'upsetting those assets (protection of fauna and flora, of the countryside and of nature, which belong to the community in general and possibly not just to the nation) that belong to the community that is the State'. For literature in favour of the reconstruction referred to in Court of Auditors case law, see P. MADDALENA, *Responsabilità amministrativa, danno pubblico e tutela dell'ambiente*, Rimini, 1985; ID., *Il danno ambientale tra giudice civile e giudice contabile*, in *Riv. crit. dir. priv.*, 1987, p. 445; ID., *Il danno pubblico ambientale*, Rimini, 1990. For the most recent developments in the literature and ordinary court judgments on the matter, see E. LENER, *Il danno ambientale*, in A. CANALE - D. CENTRONE - F. FRENI - M. SMIROLDO (ed), *La Corte dei conti. Responsabilità, contabilità, controllo*, Milan, 2019, p. 393. Also relevant to this examination is the concept of a 'pre-eminent community interest in the gradual reduction of the carbon dioxide present in the atmosphere' in Council of State, full bench, 3 September 2019, No. 9, in *www.giustizia-amministrativa.it*.

[0] With regard to the environment, see P. MADDALENA, *Ambiente, bene comune*, in A. LEONE - P. MADDALENA - T. MONTANARI - S. SETTIS (ed), *Costituzione incompiuta. Arte, paesaggio, ambiente*, Turin, 2013, p. 115, which refers to Decree 1.8.2.1 (that states that natural law commons include the air, running water, the sea and therefore the sea shore - '*Et quidem naturali iure communia sunt omnium haec: aer et aqua profluens et mare et per hoc litora maris. Nemo igitur ad litus maris accedere prohibetur, dum tamen villis et monumentis et aedificiis abstineat, quia non sunt iuris gentium, sicut et mare*').

[0] See principle 23 of the Stockholm Declaration, 'Without prejudice to such criteria as may be agreed upon by the international community, or to standards which

common to all since integrated international cooperation alone can protect the intrinsic value of climate against global climate crisis.

The duty to protect fleshes out that common responsibility.

Common law exemplifies this.

The doctrine of public trust made public authorities the trustees of natural resources with a duty to protect them for present and future generations[0].

The need to protect (current and future) beneficiaries underpinning the extension of protection duties to include the atmosphere[0] has opened up significant possibilities for the protection of climate commons.

There are echoes of this approach in civil law too.

It is no chance that the *Giudizio Universale* climate case[0] before the Court of Rome alleged the liability of the Italian State on the ground *inter alia* of Art. 2051 Civil Code ('Persons are each liable for damage caused by things they hold in custody unless they can prove *force majeure*'[0]).

The climate with its constant flow of energy and matter is 'dynamic'[0] and the State is its 'custodian'[0] since it 'is functionally competent to control and eliminate any increase in emissions and to influence all human behaviour within its boundaries and therefore within the context of Italy's climate'[0].

State custody is both 'qualified by the specific status of the person to which it is imputed' and also 'specified by the UNFCC'.

The simultaneous existence of a thing to be protected, effective and dynamic power over it (i.e. power to control and remove dangers that have arisen) and a causal link between the protected thing and danger to assets of primary value create State liability for violation of its duty of custody (i.e. not abandoning climate protection but protecting climate as a 'set of

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will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries'.

[0] J. SAX, *The Public Trust Literature in Natural Resource Law: Effective Judicial Intervention*, in *Mich. L. Rev.*, 1970, p. 557.

[0] M. C. WOOD, *Nature's Trust: Environmental Law for a New Ecological Age*, Cambridge, 2014.

[0] Court of Rome, civ. div. II, 26 February 2024, Case No. 39415/2021 (*"Giudizio Universale"*), in *www.ambientediritto.it*.

[0] *"Giudizio Universale"* claim, p. 86, in *https://giudiziouniversale.eu/la-causa-legale/*.

[0] *Ibidem*, p. 86.

[0] *Ibidem*, p. 87.

[0] *Ibidem*, p. 87.

assets that must be handed down to future generations'[0]).

The same direction has been taken by countries whose laws evoke not rights to the environment but the rights of the environment itself or of nature, the latter being considered the owner of rights over which the State (or more generally the individual) is guardian. Although it is not possible to provide a completely uniform account due to the significant differences dividing the various legal systems, the ecocentric approaches[0] of such countries (e.g. Colombia[0] and New Zealand[0]) place value on the environment and climate as assets that must be preserved.

Like the authorities, citizens have equally onerous duties.

The Stockholm Declaration, after recalling the man's solemn responsibility to protect and improve the environment for future generations (principle 1), states that 'Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development'[0].

The Declaration goes on to state the cornerstone of soft environment law that 'The non-renewable resources of the earth must be employed in

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[0] *Ibidem*, p. 88.

[0] On ecocentrism promoting the environment as a value *per se* and its difference from anthropocentrism, which protects the environment when it serves the interests of individuals, see J. LUTHER, *Antropocentrismo ed ecocentrismo nel diritto dell'ambiente in Germania e in Italia*, in *Pol. dir.*, No. 4/1989, p. 673. See also P. CURRY, *Ecological Ethics: An Introduction*, Cambridge, 2011; V. DE LUCIA, *Beyond Anthropocentrism and Ecocentrism: A Biopolitical Reading of Environmental Law, in Journal of Human Rights and the Environment*, No. 8/2017, p. 181 ff.; H. WASHINGTON - B. TAYLOR - H. KOPNINA - P. CRYER - J.J. PICCOLO, *Why Ecocentrism Is The Key Pathway To Sustainability*, in *The Ecological Citizen*, 2017, p. 35 ff.; R. ABATE, *An Anthropogenic Problem That Requires an Ecocentric Solution*, in *Climate Change and the Voiceless: Protecting Future Generations, Wildlife, and Natural Resources*, Cambridge, 2019, p. 1 ff.

[0] Whose supreme court has defined the Amazon forest as a *'legal entity'* (Corte Suprema de Justicia, 5 April 2018, *Generaciones Futuras v. Minambiente*. No. 1001-22-03-000-2018-00319-01, § 14).

[0] Te Awa Tupua (Whanganui River Claims Settlement) Act of 2017, which recognised the Whanganui River as a legal person with rights and obligations: 'Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person… [and] is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements'.

[0] Principle 4 of the Stockholm Declaration.

such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind'[0].

The requirement for 'rational planning' in resource management[0] was, and is, directed without distinction at those community members who, like governments, must administer them in full understanding of the fact that they can be exhausted[0].

European and global climate litigation is a proving ground for climate action.

Its universal character, its inherent tendency to protect everyone collectively and individually, and its potentially beneficial 'spillover effects' on persons other than the litigants themselves, considered against the natural scarcity of the climate as a resource, all reinforce the understanding of the climate as a "common good"[0] that we must all safeguard with care and respect.

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[0] Principle 5 of the Stockholm Declaration.

[0] Principles 13, 14 and 15 of the Stockholm Declaration that although formally addressed to States, necessarily affect individuals.

[0] For the basis for this, see H. JONAS, *Il principio di responsabilità*, Turin, 1990 (first edition, Frankfurt, 1979). On intergenerational solidarity, see F. FRACCHIA, *Lo sviluppo sostenibile. La voce flebile dell'altro tra protezione dell'ambiente e tutela della specie umana*, op. cit. and R. BIFULCO, *Diritto e generazioni future. Problemi giuridici della responsabilità intergenerazionale*, Milan, 2008.

[0] A. GIORDANO, *Introduzione alla tutela del clima come bene comune*, cit.

ENVIRONMENTAL ISSUES IN UKRAINE: CONSEQUENCES OF WAR

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Abstract. This article examines the environmental consequences of the war in Ukraine and their impacts on the environment, climate, biodiversity, and the prospects for sustainable post-war recovery. The study aims to identify the main forms of environmental degradation caused by the military aggression of the Russian Federation and to highlight the key challenges requiring long-term restoration measures. The research is based on the analysis of official statistical data, international analytical reports, state information resources, and documented evidence of war-related environmental damage. The paper analyses greenhouse gas emissions resulting from military activities, the destruction of critical infrastructure, large-scale landscape fires, and reconstruction efforts. The findings show that cumulative war-related greenhouse gas emissions have reached a level comparable to the annual emissions of several European countries, demonstrating the significant contribution of armed conflict to climate change. Particular attention is given to landmine contamination, soil degradation, the reduction of safe agricultural land, and the impacts of the war on Ukraine's protected areas and biodiversity. The study also examines documented environmental crimes and emphasizes their importance for environmental damage assessment and international accountability. It is concluded that Ukraine's post-war recovery should combine infrastructure reconstruction with ecosystem restoration, humanitarian demining, biodiversity conservation, and the integration of sustainable development and climate justice principles into environmental policy. The findings may support the development of environmental recovery strategies and improve approaches to assessing war-related environmental damage.

Keywords: war-related environmental damage, environmental war crimes, greenhouse gas emissions, landmine contamination, biodiversity conservation, climate justice, Ukraine.

Riassunto. L'articolo analizza le conseguenze ambientali della guerra in Ucraina e i loro effetti sull'ambiente, sul clima, sulla biodiversità e sulle prospettive di una ricostruzione sostenibile nel periodo postbellico. L'obiettivo dello studio è individuare le principali forme di degrado ambientale causate dall'aggressione militare della Federazione Russa e mettere in evidenza le principali sfide che richiedono interventi di ripristino a lungo termine. La ricerca si basa sull'analisi di dati statistici ufficiali, rapporti analitici internazionali, risorse informative istituzionali e documentazione relativa ai danni ambientali causati dalla guerra. Il contributo esamina le emissioni di gas a effetto serra derivanti dalle operazioni militari, dalla distruzione delle infrastrutture critiche, dagli incendi di vasta scala e dalle attività di ricostruzione. I risultati dimostrano che le emissioni cumulative associate alla guerra hanno raggiunto un livello paragonabile alle emissioni annuali di diversi Paesi europei, evidenziando il significativo contributo dei conflitti armati ai cambiamenti climatici. Particolare attenzione è dedicata alla contaminazione del territorio da mine terrestri, al degrado del suolo, alla riduzione delle superfici agricole sicure e agli effetti della guerra sulle aree protette e sulla conservazione della biodiversità in Ucraina. Lo studio esamina inoltre i crimini ambientali documentati, evidenziandone l'importanza ai fini della valutazione dei danni ambientali e della responsabilità internazionale. Si conclude che la ricostruzione postbellica dell'Ucraina dovrebbe coniugare il ripristino delle infrastrutture con il recupero degli ecosistemi, lo sminamento umanitario, la conservazione della biodiversità e l'integrazione dei principi dello sviluppo sostenibile e della giustizia climatica nelle politiche ambientali. I risultati dello studio possono contribuire allo sviluppo di strategie per il recupero ambientale e al miglioramento degli approcci alla valutazione dei danni ambientali causati dalla guerra.

Parole chiave: danni ambientali causati dalla guerra, crimini ambientali di guerra, emissioni di gas a effetto serra, contaminazione da mine terrestri, conservazione della biodiversità, giustizia climatica, Ucraina.

1. Introduction

The full-scale war in Ukraine has become not only a humanitarian and security crisis but also one of the most significant environmental challenges in Europe in recent decades. Military operations have caused widespread damage to natural ecosystems, air quality, water resources, soils, forests, and biodiversity. Unlike many other environmental disasters, the consequences of armed conflict are long-lasting and affect both ecological processes and socio-economic development. In addition to the direct destruction of ecosystems, the war has intensified greenhouse gas emissions, increased the risk of industrial pollution, and created large-scale contamination by landmines and explosive remnants of war.

Environmental degradation caused by the war extends far beyond the areas of active hostilities. Damage to protected areas, disruption of ecosystem services, pollution of rivers and soils, and the destruction of critical infrastructure have created complex environmental challenges that will require decades of recovery. These impacts also have transboundary implications, affecting regional climate policy, biodiversity conservation, and international environmental security.

Although the environmental consequences of armed conflicts have increasingly attracted international scholarly and policy attention, comprehensive assessments of war-related environmental damage remain limited due to the complexity of documenting ongoing hostilities and the multidimensional nature of ecological impacts. In the case of Ukraine, environmental degradation encompasses climate change, land contamination, biodiversity loss, damage to protected areas, and large-scale industrial pollution, all of which require an integrated analytical approach. Understanding these interconnected impacts is essential for developing evidence-based environmental policies, supporting international accountability mechanisms, and ensuring that post-war reconstruction is guided by the principles of sustainable development and climate justice.

Against this background, the assessment and documentation of environmental damage are essential for understanding the scale of ecological losses, supporting international accountability, and developing effective strategies for sustainable recovery. Therefore, the purpose of this study is to analyse the major environmental consequences of the war in Ukraine, focusing on climate impacts, land contamination, biodiversity loss, environmental crimes, and the destruction of natural ecosystems.

2. Climate Impact of the War

Russia's full-scale invasion of Ukraine has resulted not only in the largest humanitarian and security crisis in Europe in recent decades but also in unprecedented environmental consequences. One of the most significant manifestations of this impact is the substantial increase in greenhouse gas (GHG) emissions directly associated with military operations, the destruction of infrastructure, large-scale wildfires, and subsequent reconstruction activities.

According to expert estimates [1, p. 3], GHG emissions generated during the fourth year of the full-scale war alone amounted to approximately 75 million tonnes of CO_2-equivalent. Since 24 February 2022, cumulative war-related emissions have reached 311.4 million tonnes of CO_2-

equivalent (Figure 1).

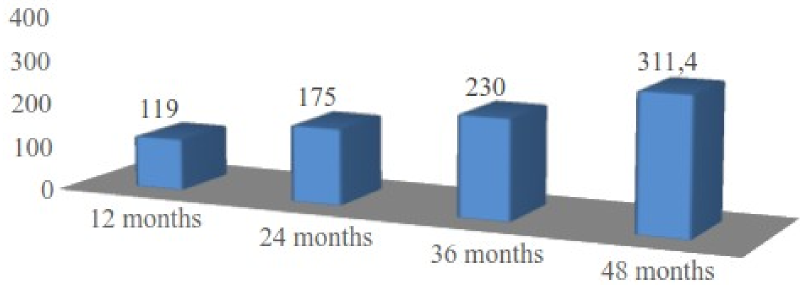

Figure 1. *Cumulative Greenhouse Gas Emissions Caused by the War in Ukraine* **(24 February 2022-23 February 2026), MtCO$_2$-eq** *Source: Compiled by the author based on [1, p. 3].*

For comparison, annual GHG emissions in 2024 amounted to 371.2 million tonnes of CO_2-equivalent in Italy, 378.1 million tonnes of CO_2-equivalent in France, and 348.0 million tonnes of CO_2-equivalent in Poland [2]. These figures indicate that the cumulative climate footprint of the war in Ukraine is already comparable to the annual greenhouse gas emissions of major European Union economies. This highlights the global climate consequences of the conflict and its implications for international climate mitigation efforts.

Emissions increased across virtually all impact categories (Table 1). Direct military activities remained the dominant source of greenhouse gas emissions, while reconstruction activities and landscape fires represented the second and third largest contributors, respectively. The results suggest that both the immediate effects of military operations and the indirect consequences of infrastructure damage and ecosystem degradation play a significant role in shaping the overall climate footprint of the war.

Table 1. Greenhouse Gas Emissions After Four Years of the War

Impact category	**Emissions after 48 months (MtCO$_2$-eq)**	**Share of total emissions (%)**
Warfare	114.1	37
Landscape fires	70.3	23
Energy infrastructure	18.6	6
Refugees	5.3	2
Civil aviation	29.8	9
Reconstruction	73.3	23

Total	311.4	100

Source: Compiled by the author based on [1, p. 4].

Landscape fires became one of the fastest-growing sources of greenhouse gas emissions during the fourth year of the war. Their increasing contribution can be attributed to the combined effects of military activities and adverse meteorological conditions, including prolonged droughts and elevated air temperatures. Under these conditions, fires ignited by shelling and explosions frequently developed into large-scale wildfires. Fire suppression efforts were further hindered by ongoing hostilities and the presence of mine-contaminated areas, resulting in prolonged burning periods and higher greenhouse gas emissions. These findings illustrate the interaction between armed conflict and climate change, whereby military activities increase wildfire occurrence, while climate-related extreme weather conditions intensify fire severity and spatial extent.

Greenhouse gas emissions associated with reconstruction activities also increased substantially. A significant share of these emissions resulted from the restoration of Ukraine's energy infrastructure following extensive damage caused by missile and drone attacks during the winter of 2025-2026. Reconstruction requires the production of carbon-intensive construction materials, their transportation, and the operation of heavy machinery, all of which contribute to additional greenhouse gas emissions.

Beyond direct military operations and reconstruction, the war generated greenhouse gas emissions through multiple indirect pathways, including fuel combustion by military vehicles, the destruction of industrial facilities, fossil fuel leakage, and changes in civil aviation and maritime transport routes. Collectively, these findings demonstrate that armed conflicts constitute a substantial, yet frequently underestimated, source of anthropogenic greenhouse gas emissions. Their inclusion in climate accounting frameworks is essential for a comprehensive assessment of conflict-related environmental impacts.

The growing recognition of the climate impacts of armed conflicts has stimulated the development of international mechanisms for environmental accountability. During COP30 [3], Ukraine announced its intention to seek compensation from the Russian Federation for climate-related damage resulting from military aggression. The planned submission under the "Environmental Damage" category of the Register of Damage for

Ukraine represents an important step toward integrating environmental losses into international compensation mechanisms. Based on a social cost of carbon of USD 185 per tonne of CO_2-equivalent, the estimated climate-related damage exceeds USD 57 billion [1, p. 3]. The evidence demonstrates the substantial economic costs of conflict-induced greenhouse gas emissions and underscores the importance of integrating climate considerations into post-war recovery strategies and international environmental governance.

3. Landmine Contamination and Soil Degradation

While greenhouse gas emissions are among the most significant climate-related consequences of the war, they represent only one dimension of its environmental impact. Another critical challenge is the widespread contamination of land by landmines and other explosive remnants of war, which poses long-term risks to ecosystems, agricultural production, and sustainable land management. As shown in Figure 2, potentially mine-contaminated areas cover a substantial part of Ukraine's territory, creating long-term environmental, economic, and humanitarian challenges.

Landmine contamination has profound environmental consequences that extend well beyond the immediate threat to human life. The presence of explosive remnants of war restricts access to forests, agricultural land, wetlands, and protected areas, limiting ecosystem management and delaying environmental restoration. In addition, explosions and the long-term presence of munitions contribute to soil degradation through physical disruption, contamination by heavy metals and explosive residues, and the destruction of soil biological processes. These impacts reduce soil fertility, alter microbial communities, and impair the capacity of ecosystems to recover naturally.

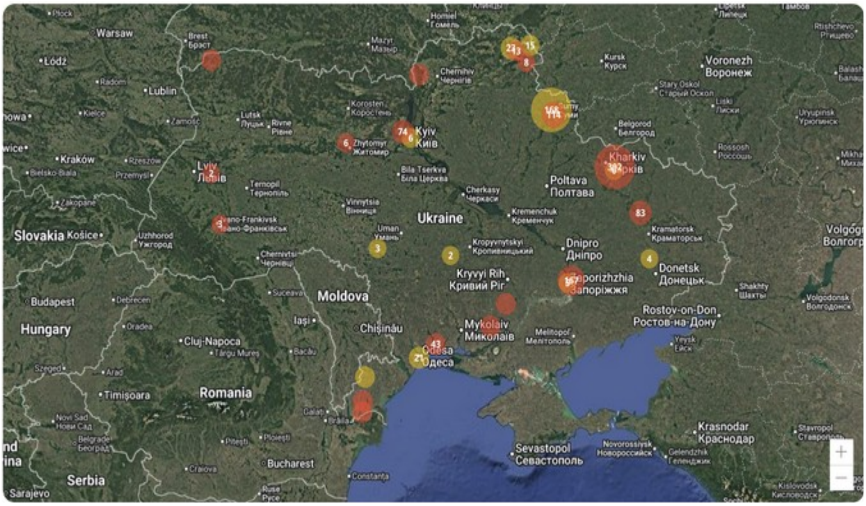

Figure 2. Map of Potentially Mine-Contaminated Areas in Ukraine *Source: State Emergency Service of Ukraine (SESU), Interactive Mine Action Map [4].*

The agricultural sector has been among the most severely affected. According to recent estimates, more than 5 million hectares of agricultural land remain unsafe or unsuitable for cultivation due to landmine contamination and unexploded ordnance. Moreover, approximately 139,300 km² of Ukraine's territory is considered potentially hazardous as a result of mine contamination and military activities, making Ukraine one of the most heavily mine-contaminated countries in the world. Although more than 49,000 km² of land have been cleared since February 2022 and over 21,000 km² were returned to productive agricultural use in 2025, vast areas of land remain unsafe for cultivation [5]. In areas directly affected by shelling and explosions, soil contamination by heavy metals, fuel residues, and explosive compounds poses long-term risks to agricultural productivity and ecosystem recovery.

The loss of productive farmland not only threatens national food security but also reduces agricultural exports and undermines rural economic development. Furthermore, abandoned farmland is more susceptible to vegetation encroachment and uncontrolled wildfires, creating additional environmental and climate-related risks. The persistence of landmine contamination therefore represents not only a humanitarian and security challenge but also a major obstacle to environmental restoration, sustainable agriculture, and Ukraine's long-term green recovery.

4. Impacts of the War on Protected Areas and Biodiversity

Ukraine is recognized as one of Europe's biodiversity hotspots due to its diverse natural ecosystems, including forests, steppe landscapes, wetlands, mountain ecosystems, river valleys, and the coastal zones of the Black and Azov Seas. These ecosystems provide habitat for thousands of plant and animal species, many of which are endemic, endangered, or protected under international conservation agreements. Ukraine also plays an important role in maintaining ecological connectivity across Europe through the Emerald Network, Ramsar wetlands, UNESCO Biosphere Reserves, and other internationally significant protected areas.

The full-scale invasion has substantially increased pressures on these ecosystems. Military operations, occupation, defensive fortifications, artillery shelling, explosions, fires, pollution, and landmine contamination have caused extensive degradation of protected areas and natural habitats. Beyond the immediate physical destruction of ecosystems, these disturbances have altered ecological processes, fragmented habitats, disrupted species migration routes, and reduced the resilience of natural ecosystems.

According to official statistics [6], approximately 20% of Ukraine's protected areas have been affected by military activities or remain under temporary occupation. In addition, approximately 2.9 million hectares of Emerald Network sites are currently at risk, together with 16 Ramsar wetlands recognized as wetlands of international importance. Furthermore, 18 protected areas, including 8 strict nature reserves and 10 national nature parks, remain located within temporarily occupied territories, where environmental monitoring, conservation management, and scientific research cannot currently be carried out [7].

Figure 3 illustrates the spatial distribution of Ukraine's protected areas, including those affected by military activities and those located within temporarily occupied territories. Together, these findings underscore the unprecedented scale of the environmental pressures facing Ukraine's protected areas and biodiversity.

The continued occupation of these protected areas creates long-term challenges for biodiversity conservation. The absence of environmental management increases the risk of illegal logging, poaching, uncontrolled fires, habitat degradation, and the spread of invasive species. Simultaneously, military activities disturb breeding sites, alter migration corridors, and increase mortality among wildlife populations. Sensitive ecosystems such as wetlands and coastal habitats are particularly vulnerable because even relatively small disturbances may result in long-lasting ecological changes.

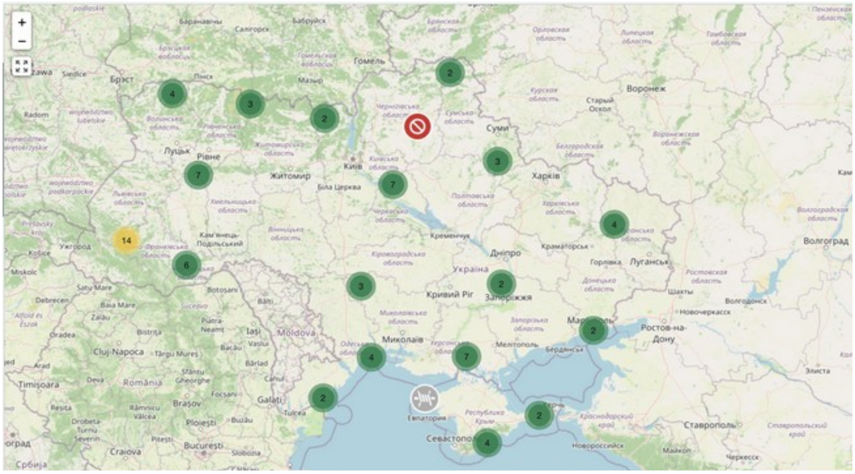

Figure 3. Ukraine's Protected Areas and Areas Affected by Military Activities and Temporary Occupation *Source: WOW Nature. Interactive Map of the Nature Reserve Fund of Ukraine [7].*

The impacts of the war extend well beyond the boundaries of individual protected areas. Habitat fragmentation reduces ecological connectivity between ecosystems, limiting the movement of species and decreasing ecosystem resilience to future environmental pressures, including climate change. Consequently, biodiversity loss caused by armed conflict should be considered not only a national environmental issue but also a regional European conservation challenge.

The deterioration of protected areas also affects the ecosystem services they provide, including carbon sequestration, water purification, soil conservation, flood regulation, and climate regulation. The degradation of these natural functions may significantly hinder Ukraine's post-war ecological recovery and reduce the capacity of ecosystems to contribute to long-term sustainable development.

Given the scale of environmental damage, the conservation and restoration of protected areas should become one of the highest priorities of Ukraine's post-war recovery. Achieving this goal will require comprehensive environmental monitoring, habitat restoration, ecological connectivity planning, mine clearance, and long-term international cooperation to safeguard biodiversity and strengthen ecosystem resilience.

5. Environmental War Crimes and Documented Environmental Damage

Since the beginning of the full-scale invasion, the systematic documentation of environmental damage has become an essential tool for assessing the overall environmental consequences of the war. The collection and analysis of verified environmental incidents provide important evidence for evaluating ecological losses, supporting environmental monitoring, and establishing legal accountability for violations of international environmental and humanitarian law. According to the SaveEcoBot Environmental Crimes Database, as of 14 July 2026, 961 war-related environmental crimes had been officially documented in Ukraine (Figure 4).

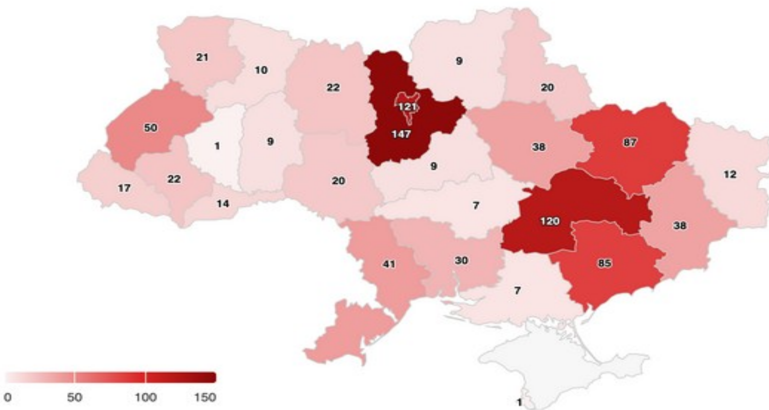

Figure 4. Spatial Distribution of Recorded Environmental Crimes in Ukraine (as of 14 July 2026) *Source: SaveEcoBot. Environmental Crimes Database [8].*

The spatial distribution of documented cases indicates that environmental damage has affected virtually the entire country, with the highest concentration observed in regions experiencing prolonged military operations, intensive shelling, or temporary occupation. Nevertheless, environmental incidents have also been recorded in regions located far from the active front line, reflecting the nationwide scale of the environmental impacts of the war.

The documented cases encompass a broad range of environmental impacts. As illustrated in Figure 5, the largest proportion **(**45.2%**)** falls within the category of other environmental offences, reflecting the diversity of environmental violations associated with military activities. Industrial accidents account for 21.6% of all recorded incidents, followed by damage to green areas (13.8%), contamination of water resources (8.5%)**,** soil contamination (5.4%), military waste (2.9%), and incidents involving radiation facilities (2.5%). This distribution demonstrates that the environmental consequences of war extend across multiple environmental components, including terrestrial ecosystems, water resources, industrial infrastructure, and potentially hazardous facilities.

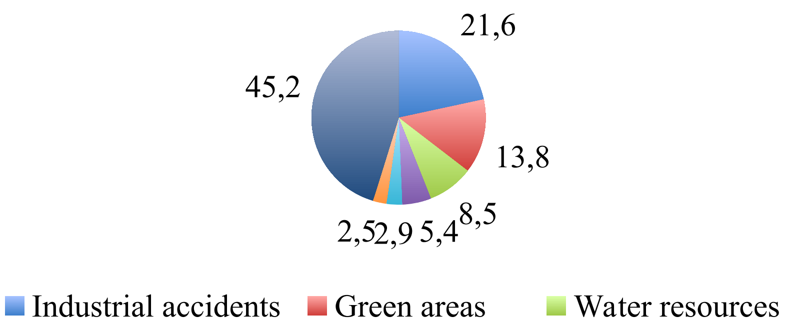

Figure 5. Distribution of Recorded Environmental Crimes by Category (as of 14 July 2026) *Source: SaveEcoBot. Environmental Crimes Database [8].*

Industrial accidents represent one of the most environmentally significant categories of recorded incidents. Damage to industrial enterprises, oil depots, chemical storage facilities, and energy infrastructure can result in the release of hazardous substances into the atmosphere, surface waters, groundwater, and soils. Such incidents frequently generate secondary environmental effects, including air pollution, toxic contamination, and long-term degradation of ecosystem functions.

The substantial proportion of cases related to green areas and soil contamination reflects the extensive impacts of military operations on terrestrial ecosystems. Shelling, explosions, military fortifications, heavy vehicle movement, and wildfires contribute to vegetation loss, habitat destruction, soil degradation, and reduced ecosystem resilience. These impacts are further compounded by landmine contamination, which significantly limits ecological restoration and sustainable land use.

The documented environmental crimes demonstrate that environmental damage should not be regarded as an incidental consequence of armed conflict. Instead, the available evidence indicates a widespread and systematic pattern of environmental degradation affecting multiple ecosystem components throughout Ukraine. The long-term implications extend beyond immediate ecological losses, influencing biodiversity conservation, ecosystem services, public health, food security, and the country's capacity for sustainable post-war recovery.

Continued documentation of environmental crimes therefore serves not only as an important tool for environmental monitoring but also as a critical foundation for international legal proceedings, environmental damage assessment, and the development of effective strategies for ecological restoration and climate-resilient reconstruction.

6. Conclusions

The findings of this study demonstrate that the environmental consequences of the war in Ukraine extend far beyond the immediate areas of military operations and represent one of the most significant environmental crises in Europe in recent decades. Armed conflict has caused large-scale greenhouse gas emissions, extensive landmine contamination, soil degradation, damage to protected areas, biodiversity loss, and widespread environmental pollution, creating long-term risks for ecosystems, public health, food security, and sustainable development.

The analysis confirms that the environmental impacts of the war are multidimensional and closely interconnected. Military activities not only destroy natural ecosystems directly but also intensify climate change, reduce ecosystem resilience, disrupt ecological connectivity, and limit the provision of essential ecosystem services. At the same time, landmine contamination and environmental pollution significantly delay ecological restoration and complicate the safe return of affected territories to productive use.

The documented environmental crimes further demonstrate that environmental degradation is not an isolated by-product of armed conflict but a widespread and systematic consequence of military aggression. Continued documentation of environmental damage is therefore essential for environmental monitoring, scientific assessment, international legal accountability, and the development of effective post-war recovery strategies.

Ukraine's post-war recovery should therefore integrate infrastructure reconstruction with ecosystem restoration, humanitarian demining, biodiversity conservation, climate change mitigation, and the principles of sustainable development and climate justice. Strengthening international cooperation, improving environmental monitoring systems, and incorporating environmental damage into international accountability and compensation mechanisms will be essential for building long-term ecological resilience and ensuring a sustainable green recovery.

Future research should focus on developing integrated methodologies for assessing cumulative environmental damage and evaluating the effectiveness of long-term ecological restoration policies in post-war Ukraine.

At the same time, the Ukrainian experience provides a unique empirical basis for advancing international legal approaches to documenting environmental damage, establishing environmental accountability, and developing compensation mechanisms for environmental harm caused by armed conflicts.

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CLIMATE JUSTICE AND THE ADMINISTRATIVE COURT

The appropriateness of the result as a parameter for reviewing climate inaction

Loredana Giani

The recurring question of whether national laws match the climate commitments assumed at the international level is, this essay contends, badly framed. The real question is which court, and with what categories, can render that alignment effective. Climate litigation differs structurally from everything administrative law has addressed: it does not seek the annulment of an unlawful act, but the censure of a failure to act, or of an inadequate one, in the face of systemic risk - the point of greatest tension between administrative discretion and the limits of judicial review. The thesis is twofold. Negatively, the administrative court cannot decide by how much to reduce emissions. Positively - and this is decisive - it can verify whether the measures adopted are suitable in relation to a binding objective. This structure of judgment is shared, in the same lexicon of appropriateness, by the ICJ advisory opinion of 23 July 2025, the Strasbourg Court in KlimaSeniorinnen, and the Italian Council of State in the Lake Vico case. Domestically, the objective is made determinate not by the aggregate EU target but by the effort-sharing regime; and appropriateness, positivised as the result principle (Article 1 of Legislative Decree no. 36/2023), is a parameter the administrative court already possesses. The essay closes by addressing standing and the comparative advantage of administrative review.

1. The question

I should like to begin with a question that appears to be addressed to the legislature, but which in fact concerns us. We ask ourselves incessantly whether national laws are equal to the climate commitments assumed at the international level. But it is a badly framed question. The real question is: *which court*, and with what categories, can render that alignment effective.

Climate litigation has a structural peculiarity that sets it apart from everything administrative law has dealt with so far. It does not seek the annulment of an unlawful measure. It seeks the censure of a *failure to act* or of an inadequate *action*; it seeks the censure of the failure to adopt, or the insufficient adoption of the measures necessary to confront a systemic risk. It is the point of greatest tension between administrative discretion - which the detractors of judicial control reallocate, in my view inappropriately, as will be explained, within the boundaries of the political act - and the limits of judicial review.

The thesis advanced here is twofold. The first proposition is negative: the administrative court cannot decide *by how much* to reduce emissions. That would be active administration, which is precluded to the court. The second is positive, and it is the decisive one: the court can verify whether the measures adopted are *suitable* in relation to an objective that the legal order has already assumed as binding. And it is on this front that the discourse appears most problematic, because what is required is a verification of the functionality of the action to the result - not a judgment on political merits - yet this control inevitably collides with a traditional vision of the administrative process and with the limits of a rigid external review associated with it.

I shall try to show that this is not an ingenious doctrinal construction, but a structure of judgment that international law has adopted in its own words, that the Strasbourg Court employs with the same lexicon, and that the Italian administrative court has already applied in a concrete case - and which it could apply precisely by drawing on the cues coming from the international fora, mindful of the questions that surround the effectiveness of the decisions taken in those fora.

2. The New Zealand lesson: a warning reversed

I start from a distant case, because a theoretical construction is tested against the objections that can be raised against it, and it is best to choose the one framed in its strongest version.

In August 2019, Michael John Smith, an elder of Ngāpuhi and Ngāti Kahu and spokesperson for climate change of the Iwi Chairs Forum, filed a claim before the High Court against seven [0].

The action is built on three claims: *public nuisance*, which sanctions the substantial and unreasonable interference with rights belonging to the community; *negligence*, for breach of a duty of care; and a novel wrong, a *proposed climate system damage tort*, founded on the duty to cease contributing materially to damage to the climate system. The *petitum*[0] comprises injunctions to reduce emissions in accordance with the minima indicated by the IPCC, with linear annual reductions subject to the court's supervision. All of this within a regulatory framework - that of New Zealand - which merely provides, in the face of polluting emissions, for compensatory obligations.

There is an element that deserves attention, because it concerns us more than it might seem. Smith pleads that *tikanga* Māori, which is a customary source, ought to inform the scope and content of the *causes of action*[0]. In other words, the action is founded on the assumption that the protected situation is to be defined in the light of a standing that has its roots in customary law and, in particular, in the privileged relationship it constructs between inhabitants and habitat. Thus, not as a direct source of obligation for the defendants, but as a criterion for filling in indeterminate legal categories: damage, protected interest, standing. He acts in the capacity of *kaitiaki*, to whom *tikanga* assigns the duty of guardianship of the environment, and he acts on the basis of the point that the deterioration of the land and the sea is a loss for the person, even in the absence of any pecu-

[0]*Smith v Fonterra Co-operative Group Ltd*, filed before the High Court of New Zealand in August 2019. The proceedings, across their three instances, are reconstructed by M.J. Smith, spokesperson for climate change of the Iwi Chairs Forum, in his capacity as kaitiaki.

[0]The alleged *proposed climate system damage tort* is framed as a free-standing wrong, distinct from public nuisance and negligence, and centred on the duty to refrain from contributing materially to damage to the global climate system.

[0]On the significance of *tikanga* Māori as an interpretative criterion for indeterminate legal categories - and not as a direct source of obligation for the defendants - see *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5, §§ 100 ff.

niary prejudice.

From this, understandably, it followed that - translated into our categories - the heart of the controversy became rooted precisely in standing. I shall return to this, because it is the point on which, here too, everything is decided.

The affair is intricate, since it comprises three instances of adjudication - not, of course, aligned in terms of outcomes - and an *in extremis* intervention by the legislature, aimed at eliminating any possibility of action.

In 2020 the High Court (which, despite its name, is the court of first instance) dismissed the first two claims and allowed the third to survive[0].

In 2021 the Court of Appeal[0] dismissed them all, and the reasoning is worth reporting because it is the sharpest formulation of the non-justiciability argument: the magnitude of the climate crisis, says the court, cannot be addressed in an *appropriate or adequate*[0] way by *tort* claims pursued through the courts, this being a matter that calls for a sophisticated regulatory response at the national level, supported by international coordination.

On this point the lexicon is significant. The appellate court denies justiciability because it considers the judicial instrument *inappropriate* in relation to the result. It is the very same predicate that the International Court of Justice would employ, a year later, to ground the state obligation - with the sign reversed.

On 7 February 2024, the Supreme Court[0], in a unanimous decision of its five judges, overturned the Court of Appeal's decision and remitted the matter to first instance. The court ruled only on admissibility, not on the merits of the questions raised. But one passage is particularly relevant for the discourse I should like to develop here, since the defendant companies had objected that Parliament had constructed a complete system of emissions governance - the *Climate Change Response Act*[0], the emission bud-

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[0] *Smith v Fonterra Co-operative Group Ltd* [2020] NZHC 419 (High Court, which in the New Zealand system is the court of first instance).
[0] *Smith v Fonterra Co-operative Group Ltd* [2021] NZCA 552.
[0] Court of Appeal of New Zealand, *Smith v Fonterra Co-operative Group Ltd* [2021] NZCA 552, where the non-justiciability argument is framed in the terms referred to in the text.
[0] *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5.
[0] Supreme Court of New Zealand, *Smith v Fonterra Co-operative Group Ltd*

gets, the emissions trading scheme - and that those who operate within that system, complying with its obligations, cannot be exposed to liability claims. The court rejected the objection - which had, indeed, been framed through the instrument of the *strike out application*, the application by which the court is asked to dispose of the case in limine, for manifest lack of legal foundation, without any inquiry into the merits - holding that the existence of a regulatory framework does not, in itself, extinguish protection, and doing so precisely by reflecting on the expected "result" of the general regime (the theoretical reference being to the Paris Agreement), which is not confined to providing for compensatory measures but aims at the reduction of pollution[0].

At that point the legislature intervened, with a law that literally extinguishes the proceedings by introducing provisions with retroactive effect and even identifying that specific litigation by its docket number, immunising future developments of the *common law*[0] and excluding any indemnity.

And here lies the point of relevance for our present reflections. Notwithstanding the legislature's markedly unusual intervention, and even while suppressing the civil litigation, *judicial review* and liability for *breach of statutory duty* and *misfeasance in public office* were *expressly left intact*. It eliminated the compensatory action against the undertakings and preserved the review of the exercise of public power.

It is a confirmation - indirect, and perhaps unintentional - that locates the irreducible core of climate justice not in the reparation of damage but

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[2024] NZSC 5, 7 February 2024, cited above. The court ruled solely on admissibility (strike out), remitting the merits to the court of first instance.

[0] The strike out application is the procedural device by which the defendant seeks the dismissal in limine of the claim for manifest lack of legal foundation; the Supreme Court held that the existence of the regulatory framework did not, in itself, amount to a ground for dismissal *in limine*.

[0] *Climate Change Response (Tort Liability) Amendment Bill*, New Zealand government Bill no. 330 of 2026, introduced by the Minister of Justice Paul Goldsmith, amending the Climate Change Response Act 2002 and creating a statutory bar preventing the courts from holding individuals, companies or the Crown liable in tort for climate damage from greenhouse-gas emissions; the enactment, with retroactive effect, extinguished the specific litigation but preserved, as noted in the text, judicial review, liability for breach of statutory duty and misfeasance in public office.

in the correct exercise of power by the legislature and administrations, valorising, albeit not avowedly, the control over the adequacy of the action of the public authorities.

3. The advisory opinion of the International Court of Justice: two decisive words

To grasp the reach of this position, and then to carry it over into the Italian experience, it is necessary to recall some of the decisions of the international courts. On 23 July 2025, the Court[0] rendered its advisory opinion on the obligations of states in respect of climate change. It cannot be summarised in full here; two formulae, however, deserve to be isolated, because therein lies the whole argument[0].

The first. The Court devotes a self-standing heading to *appropriate measures*, placing them as the *first* element[0] of the *due diligence* owed by states. Not "measures", not "reasonable measures", but *appropriate* measures.

The second, and this is in the operative part. To measure compliance the court employs the formula "*capable of achieving*" - measures literally suitable to attain. And at § 242 it specifies that the content of the Nationally Determined Contributions must be such as to provide an *adequate* contribution to the objective[0].

Let us pause for a moment on the meaning. International law, in order to measure the fulfilment of a state obligation, does not ask whether the state has chosen the *best* measure. It asks whether the chosen measure is *suitable to the appropriate result* - that is, appropriate for *achieving* those obligations that the state has assumed at the international or supranational

[0] I.C.J., *Obligations of States in Respect of Climate Change*, advisory opinion of 23 July 2025.

[0]I.C.J. (International Court of Justice), *Obligations of States in Respect of Climate Change*, advisory opinion of 23 July 2025. On the non-binding nature of the opinion and its interpretative function, see below, § 4.

[0]I.C.J., opinion cited, §§ 281-282, which devote a self-standing heading to *appropriate measures*, characterised as the first element of the due diligence owed by states.

[0]I.C.J., opinion cited, § 242, and the formula *capable of achieving* used in the operative part. The benchmark is not the choice of the best measure, but the suitability of the chosen measure to the required result.

level. And this is precisely the structure of the judgment that administrative law ought to employ in order to measure the functionality of the action to its end, without confining itself to the sole parameter of formal legality.

3.1. Strasbourg: the same word, with greater precision

The next step can be traced by looking to the Strasbourg case law.

On 9 April 2024 the Grand Chamber decided the *KlimaSeniorinnen* case[0] and found a violation of Articles 8 and 6 § 1 of the Convention. The passage that interests us is § 543, where the court splits the margin of discretion into two segments and assigns a different breadth to each: a *reduced* margin as to the ends[0], a *wider* one as to the means[0]. The court, in effect, brings out that each state has a wide latitude of choice as to the means, but not to the choice of the ends, because these are determined externally. It is not the abolition of discretion but its functionalisation - the very same operation that, a year later, the Hague Court would perform on the content of the NDCs.

On this premise the court sets out, at § 550, the parameters against which it verifies whether the state has remained within the margin provided for by the norm. Quantifying the residual carbon budget or adopting an equivalent method; setting intermediate targets and pathways; providing information on compliance; updating them with due diligence on the basis of the best available data - these are all elements whose determination is left to the public power, provided it acts in a "timely, *appropriate*[0] and consistent" manner in the elaboration and implementation of the measures. The formula recurs three times in the judgment: at § 548 as a

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[0] ECtHR, Grand Chamber, 9 April 2024, app. no. 53600/20.

[0]*KlimaSeniorinnen*, cited above, § 543: a reduced margin of appreciation as to the setting of the objectives, a wider one as to the choice of the means to attain them.

[0]ECtHR, Grand Chamber, 9 April 2024, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, app. no. 53600/20. Unless otherwise indicated, citations are from the official translation prepared by the Ministry of Justice.

[0]*KlimaSeniorinnen*, cited above, § 550, which enumerates the operative parameters (quantification of the remaining carbon budget or an equivalent method; intermediate targets and pathways; information on compliance; periodic updating in accordance with the best available data).

principle, at § 550 as an operative parameter, at § 573 as the *ratio decidendi* of the finding of violation[0]. It is not a rhetorical hendiadys: it is the criterion by which the court measures the overstepping of the margin.

Two observations are, in my view, relevant for these reflections.

The first concerns *what* was found. The violation consists, by the express statement of § 573, in "certain serious gaps, in particular the failure by the authorities themselves to quantify the national limits on emissions", to which is added the failure to attain past objectives. Translated into our lexicon: a *want of investigation* and an *inconsistency* between declared objectives and concrete action[0]. Thus, the object of review is not the political choice in itself, but its cognitive basis and its implementation - figures long familiar to administrative law.

The second observation concerns the addressees, and it deserves particular weight. Section 550 binds the national authorities, and the text specifies: "be they legislative, executive *or judicial*"[0]. The proviso is not incidental. The court is itself an addressee of the positive obligation. It follows that a declining of jurisdiction is not a position of neutrality with respect to the obligation but a modality of its possible breach. And it is no coincidence that the judgment devotes a self-standing treatment to procedural guarantees, specifying that they are relevant "even in cases where questions of general policy are at stake".

The coincidence with the category proposed here is therefore not analogical. It is textual, and it is rendered in the same terms by the official Italian translation.

4. What the opinion does not say

I must, however, be rigorous, because the thesis is weakened if it proves too much.

The opinion is advisory - hence not binding - and it cannot, on its own,

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[0]The formula "timely, appropriate and consistent" recurs in *KlimaSeniorinnen*, cited above, § 548 (as a principle), § 550 (as an operative parameter) and § 573 (as the *ratio decidendi* of the finding of violation).

[0]*KlimaSeniorinnen*, cited above, § 573.

[0]*KlimaSeniorinnen*, cited above, § 550, which identifies among the addressees of the positive obligation the national authorities "be they legislative, executive or judicial".

ground an internal parameter of legality. But, indeed, the parameter is not the opinion. The opinion is relevant for the arguments it develops. The parameter is the obligations it *reconstructs*, and which, in the domestic legal order, derive from binding EU sources. The opinion performs an interpretative function since it contributes to determining the content of obligations established elsewhere, reducing that margin of generality that has so far weakened claims founded on the Paris Agreement alone.

And here a clarification is needed which I consider decisive. The European objective is framed in *aggregate* terms, and as such it would not suffice to ground a determinate duty to act on the part of the Member State. It is the effort-sharing regime - which assigns to Italy a quantified reduction by 2030 in the non-ETS sectors, with a binding annual trajectory - that effects the passage from the common objective to the determinate national obligation[0].

That is the required result. And the power is functionalised to it.

A second clarification concerns the standard. The *due diligence* described at §§ 280-286 is not a rigid obligation of result; it does not require the state to guarantee that the temperature will not rise. It is a standard of *appropriateness*, whose content depends on the circumstances and solidifies as a function of the available scientific evidence. And it is exactly the notion of appropriateness as functional suitability, measurable according to criteria of logic and of science[0].

Section 281 also indicates the *object* of the assessment, and it is worth dwelling on, because it is surprisingly familiar: the term of reference is the national system - legislation, administrative procedures, *enforcement*[0], oversight - considered in its aptitude to function efficiently in view of the

[0] Reg. (EU) 2018/842 (Effort Sharing Regulation), as amended by Reg. (EU) 2023/857, which assigns to Italy a 43.7% reduction by 2030 in the non-ETS sectors, with a binding annual trajectory; upstream, Reg. (EU) 2021/1119 (European Climate Law) sets the objective of climate neutrality by 2050 and the intermediate milestone for 2030.

[0] I.C.J., opinion cited, §§ 280-286, on the due-diligence standard as a standard of appropriateness, whose content intensifies as a function of the best available scientific evidence.

[0] I.C.J., opinion cited, § 281, which takes as its reference point the national system as a whole - legislation, administrative procedures, enforcement, oversight - assessed in its capacity to function towards the objective.

objective. Not a single act: the administrative organisation and action, appraised as a whole. The canon, for us, has a precise name, and it is good performance.

5. The Italian landfall and the question of the court

If we look at the Italian experience, the judgments of greatest resonance are the so-called "Giudizio universale" and the "Giusta causa". The first Italian climate judgment against the state, the "Giudizio universale" (brought in 2021 by the ecological association ASud to have the state declared responsible for climate inaction and to have it ordered to reduce greenhouse-gas emissions by 92% by 2030 in order to comply with the Paris Agreement), closed, at first instance, with a declaration of an absolute lack of jurisdiction: the implementation of climate commitments would belong to political direction[0].

But that judgment left a door open precisely on the administrative front. The shortcomings of central administrative action - and specifically the inadequacy of the PNIEC - pertain, says the court, to the general administrative jurisdiction of legitimacy. The indication, offered by subtraction, identifies in the administrative court the proper forum for reviewing the omission of the public authorities.

On the absolute lack of jurisdiction - which is the principal objection to these reflections of mine - it cannot escape notice that the qualification of an act as political produces the most radical effect our legal order knows: no court may take cognisance of it. But the distinguishing criterion is constant, and the case law repeats it: whereas the political act is *free in the choice of its end*, the act of high administration is directed at the realisation of an end *already identified*[0]. And the Constitutional Court has added that,

[0] Court of Rome, Second Section, 26 February 2024, no. 3552 ("*Giudizio universale*"), which declared an absolute lack of jurisdiction, tracing the implementation of climate commitments back to political direction. The judgment is currently on appeal before the Court of Appeal of Rome.

[0] On the distinguishing criterion between a political act (free in its end) and an act of high administration (bound to an end already identified), see, in the case law, the settled elaboration referred to by scholarship; for the approach followed here, reference is made to L. GIANI, *Funzione amministrativa e obbligo di correttezza*, Naples, 2005.

where the legislature predetermines standards of legality, politics must abide by them[0].

And in this specific case, if we take up the scheme of the Hague Court, the implementation of climate commitments is not free in its end, because the end is fixed by the Paris Agreement, received and made precise by European legislation and by the effort-sharing regime. Nor does it help to observe that the choice of measures remains politically inflected, since the political motive does not transform into a political act that which is not political.

From this there follows a conclusion that must be framed with precision. The precondition of an absolute lack of jurisdiction does not, in my view, occur - not because the court may substitute itself for political direction, but because a political direction *free in its end*, in this matter, does not exist.

The second, the so-called "Giusta Causa", moves instead on civil-law terrain. Brought by Greenpeace, ReCommon and 12 citizens against ENI and its public shareholders, it seeks reparation in specific form of climate damage and an injunction against emitting conduct. The difference from the "Giudizio universale" is structural, and it explains the outcome on jurisdiction. The Ministry of the Economy and Cassa Depositi e Prestiti are not sued as public powers exercising authority, but as controlling shareholders of the investee company, for conduct *iure privatorum*. It is precisely this qualification that allowed the Joint Divisions to affirm the jurisdiction of the ordinary courts, ruling out that the action entails an interference in the sphere of the legislature or the executive.

The two affairs, read together, thus trace a boundary line: where the exercise of public power is contested, an absolute lack of jurisdiction opens up - surmountable, as I shall explain, only on the administrative front; where someone acts against the private conduct of the company and of its shareholders, the civil compensatory route remains. It is on that first front - that of the inertia of the public authorities in the face of an obligation of result - that the case from which it is best to set out is to be found[0].

[0] To the effect that the legislative predetermination of standards of legality binds even the exercise of politically inflected power, see Constitutional Court, judgment no. 105 of 2024.

[0] Court of Cassation, Joint Divisions, order of 21 July 2025, no. 20381, rendered

6. Lake Vico: the model already exists

At this point it might be objected that so far we have been anchored to a theoretical edifice; but if we look at the case law of the administrative court we find, in my view, examples (few in number) that are quite significant.

The emblematic case is the one concerning Lake Vico. Seized by the associations ClientEarth and LIPU on account of the inertia of Lazio Region regarding the degradation of the habitats of Lake Vico, the Council of State (Fourth Section, 30 April 2024, no. 3945) upheld the claim against silence and ordered the region to act within 180 days. For the purposes of these reflections, it is interesting to look at *how* it got there, because every step is significant[0].

The duty to act was not found in a domestic norm imposing a determinate act but was drawn from Article 6(2) of the Habitats Directive, which requires the adoption of the "appropriate measures" to prevent the deterioration of protected sites. The obligation comes from a supranational source that fixes a result.

Moreover - and this is the decisive passage - the administration objected that it had acted. The panel examined the measures and observed that they pertained to paragraph 1: conservation measures, ordinary manage-

on a preventive regulation of jurisdiction in the proceedings *Greenpeace Italia, ReCommon and Others* v ENI s.p.a., Ministry of the Economy and Finance and Cassa Depositi e Prestiti ("La Giusta Causa"), pending before the Court of Rome. The Joint Divisions affirmed the jurisdiction of the ordinary courts, clarifying that the court's task consists in verifying whether the international and constitutional sources invoked impose a duty to intervene upon the defendants, apt to ground their non-contractual liability, without this entailing interference in the sphere of the legislature or the executive.

[0] Council of State, Fourth Section, 30 April 2024, no. 3945, on appeal from TAR Lazio, Second Section, no. 1925/2023. The judgment, rendered in proceedings against silence-inaction under Article 117 of the Code of Administrative Procedure and not in enforcement proceedings, upholds the claim and declares the obligation of the Lazio Region (and, as far as it is competent, of the managing body) to adopt, within 180 days, the "appropriate measures" to prevent the deterioration of the habitats of SIC/ZSC IT6010024, under Article 6(2) of Directive 92/43/EEC (Habitats), as transposed by Article 4(1) of Presidential Decree no. 357 of 1997.

ment of the site, and not to paragraph 2, which requires proactive measures "such as to reverse effectively the current trend". The omission did not, therefore, consist in not having acted at all: it consisted in having acted *with instruments unsuitable to achieving the required result*[0].

It is, then, a review - as we would say using the traditional language - of the substantive legitimacy of the choice; and, on closer inspection, it is a review in which the court went on to verify the appropriateness of the result, through the traditional canons of excess of power (and it is significant that the judgment invokes precisely the want of investigation and of reasoning and the misrepresentation of the premises - the most classic symptomatic figures of our armoury). It was not called that, but that is what it is. And the structure is identical to that of the international test: not the best choice, but the suitability of the means to the end - that *capability of achieving* of which the Hague Court speaks[0].

The court did not decide which measures to adopt. It found that those adopted were not capable of attaining the result that a binding norm imposed.

7. The result principle: the category is positivised

It remains to be shown that the Italian administrative court already has the category at its disposal and need not import it. In truth the category has

[0] Council of State, no. 3945/2024, cited above, points 11.1-11.4, on the distinction between conservation measures under Article 6(1) (ordinary management of the site) and "appropriate measures" under Article 6(2) (proactive, apt to reverse the trend of deterioration). At point 11.4 the panel makes clear that the "appropriate" character of the measures, to be understood as effective and adequate, "reduces the discretionary margin" of the administration, confining its autonomy "to the identification of the means to be employed", and that adequacy is to be measured "in concrete terms, ex post, in terms of the effective reduction of the phenomena indicative of deterioration". The reservation in favour of technical-discretionary assessments (point 11.5) - read restrictively by M. MATTALIA, *Contenzioso climatico e condizioni dell'azione avanti al giudice amministrativo*, Turin, 2025, pp. 316-317 - does not withdraw the suitability of the result from review, but circumscribes the administration's autonomy to the mere choice of the technical means, the result remaining subject to ex post verification.

[0] Council of State, no. 3945/2024, cited above, where the defects pleaded and reviewed are traced back to excess of power for want of investigation and of reasoning and for misrepresentation of the premises.

always found a constitutional basis in Article 97 of the Constitution, which governs the principle of good performance; and, indeed, to speak of result, of the administration of result, means to shift the centre of gravity of the judgment from the conformity of the act to the formal rule towards its ability to attain the end for which the power was conferred. It is not a new idea, since good performance does not merely require that the action be lawful; it requires that it be effective, efficient and economical - functional to the attainment of the objective (which is the answer to the administrative problem) - that is, that it serve the result. What has long been lacking is not the foundation of the category, but the court's willingness to make it an effective parameter of its own review. The real problem, indeed, is the conditioning exercised by the traditional categories tied to a formal, external dimension of review, in deference to a rigid interpretation of the principle of separation. But to review whether a power is correctly exercised does not mean to exercise that power; it means only to exercise a different power, safeguarding the unity of the legal order.

Now, with Article 1 of the Public Contracts Code (Legislative Decree no. 36 of 31 March 2023) the legislature has positivised the result principle, elevating it to a priority criterion for the exercise of discretionary power and for the identification of the rule of the concrete case. The Constitutional Court has confirmed its rooting in good performance (judgments no. 132 of 2024 and no. 77 of 2025)[0]. And the Council of State has drawn from it the consequence that interests us, observing that if the result con-

[0] On the rooting of the result principle in the standard of good performance, see Constitutional Court, judgment no. 132 of 2024, which characterises the result, together with the correlated principle of trust (Articles 1 and 2 of Legislative Decree no. 36 of 2023), as a principle governing administrative action and situates its emergence within the broader process of consolidation of the "administration of result", linking its regime to the function - instrumental to good performance under Article 97 of the Constitution - of administrative responsibility (points 6.2 and 6.4 of the Reasons in law); and, in express terms, Constitutional Court, judgment no. 77 of 2025, point 6, according to which the result principle laid down in Article 1 of the Public Contracts Code "constitutes a direct implementation of the standard of good performance under Article 97 of the Constitution, in that it orients the action of contracting authorities so as to achieve the result of the award of the contract and of its performance with the utmost timeliness and the best possible ratio between quality and price, in compliance with the principles of legality, transparency and competition".

tributes to making up the normative paradigm of the measure, the perimeter of review *expands*, with a corresponding reduction of the area of merits[0].

And it is precisely the invocation of the result principle that is the channel through which the principles affirmed by the international courts can find access into our system. International law calls for *appropriate* measures, *capable of attaining* the objective. Convention law calls for *timely, appropriate and consistent* action. Italian administrative law has at its disposal the result principle and its measure - appropriateness - understood as functional suitability assessable according to criteria of logic and of science.

Three legal orders, and a structure of judgment which, if read through the lens of appropriateness, reveals numerous affinities.

It will be objected that there is an asymmetry of timing: the international test operates *ex post*, on state conduct across a span of time; administrative review judges *ex ante*, against the circumstances existing at the moment of the decision. The objection captures a real difference but does not undermine the correspondence, for a simple reason: in neither of the cases is the object of the judgment the political act in which the choice of the means for attaining a given result is decided. It is the functional aptitude of the chosen means, which is appraised at the moment of the choice, on the basis of the knowledge then available. If the defect is consummated when the options are still open, the judgment that ascertains it is, by definition, referred to that moment. And that is precisely the perspective of the administrative court.

8. Who may bring proceedings: differentiation by way of the norm

At this point it is necessary to dwell on the point of greatest criticality, concerning the identification of the subjects with standing to invoke the application of the parameter. If the answer were "anyone", I would have

[0] To the effect of the broadening of the scope of review, with a corresponding reduction of the area of merits, where the result contributes to making up the normative paradigm of the measure, see, among others, Council of State, Fifth Section, no. 1924/2024; Sixth Section, no. 4996/2024; Second Section, no. 3959/2025.

constructed an *actio popularis* and the entire thesis would in fact be hollowed out.

The problem is real, and it arises from the fact that the apparatus built by the case law for diffuse interests presupposes a *spatial* relationship with the asset. *Vicinitas* identifies the differentiated position through proximity to the site, membership of a territorially defined community, localised exposure to the prejudice[0].

The climate does not admit this operation. It is a global and indivisible good, the damage is not localisable, the source is diffuse and cumulative, and proximity discriminates between no one. Those who reside next to the plant and those who live a thousand kilometres away suffer the same alteration of the climate system. Applied to the climate, the spatial criterion produces the stark alternative between *actio popularis* and denial of protection.

The differentiation must therefore be sought elsewhere, and not on the terrain of the interest in the observance of the norm: that interest, by definition, belongs to anyone, and whoever relied on it would construct a popular action. It must be sought in the *subjective position* of the one who acts, which in climate litigation presents itself under two distinct and parallel titles.

The first is that of the exposed citizen, and here it is necessary to distinguish two planes that the popular-action objection tends to conflate. On the substantive plane, the abstract interest in the legality of administrative action - that is, in the observance of the norm of result - belongs to anyone affected by the exercise of the power, and in this nothing distinguishes the exposed citizen from the others. But when we pass from the plane of the ownership of the interest to that of its *justiciability*, the selection of who may bring it before the court can no longer rely on that same undifferentiated interest - on pain, precisely, of a popular action - and must be anchored to a different parameter, which in the present case, in my view, may be identified in qualified exposure to the effects, understood not as fear of a future damage, but as a condition of risk already in

[0] On *vicinitas* as a criterion of differentiation founded on spatial proximity to the asset, see, generally, the case law on diffuse interests and standing; on its unserviceability with respect to a global and indivisible good such as the climate, see the observations in the text.

being and scientifically documentable. It is the case of someone who, by age, health conditions or territorial location with respect to the impacts, belongs to a category that the epidemiological evidence places within a band of differentiated health prejudice.

Reconstructed in this way, the position of the applicant can satisfy the requirements of a concrete and present interest. Concrete, because anchored to a condition of risk that is its own and documented, not to a generic aspiration to the stability of the climate; present, because what harms the applicant is not the terminal damage - which might not occur, or occur for other causes - but the present aggravation of that risk: every fraction of warming not avoided today, by effect of the unsuitability of the planning instrument, increases the applicant's exposure in a scientifically appreciable and non-linear measure. It is the scheme that the Strasbourg Court adopted in *KlimaSeniorinnen*, where victim status is constructed upon qualified exposure and particular vulnerability, documented on the scientific plane, and not upon geographical proximity to the source[0].

It remains the case that the scientific datum of exposure qualifies the applicant's standing; it does not alter the object of the judgment, since what is asserted is not a right to health, but the non-observance of the norm of result; exposure opens the door of the process, within which we can continue to argue about the suitability of the instrument. Nor does it help to object that the individual's health risk depends on a multiplicity of factors and not on the national instrument alone. As the Hague Court has clarified, the diffuse and cumulative nature of the conduct does not preclude the obligation of prevention; and, in the same direction, the Strasbourg Court, in *Greenpeace Nordic*, stated that it does not require proof of *but for* causation for the purposes of attributing responsibility for the adverse effects of climate change[0]. What matters is not to isolate the contribution of the single instrument to the prejudice of the single appli-

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[0] *KlimaSeniorinnen*, cited above, §§ 487-488, on victim status constructed upon qualified exposure to risk and particular vulnerability, and not upon geographical proximity to the source.

[0] ECtHR, Greenpeace Nordic and Others v Norway, § 294, which, extending the logic of R (Finch) v Surrey County Council [2024] UKSC 20, holds that it does not require proof of *but for* causation for the attribution of liability for the adverse effects of climate change (with reference to *KlimaSeniorinnen*, cited above, §§ 425 and 444).

cant, but to ascertain that that instrument concurs, in a scientifically appreciable measure, in aggravating an exposure already in being. On the procedural plane, moreover, the applicant is not burdened with full proof. According to the principle of party disposition with an acquisitive method proper to the judgment of legitimacy (Articles 63 and 64 of the Code of Administrative Procedure), the burden of proof is attenuated to that of a prima facie showing, it being for the party to circumscribe the *thema probandum* by a sufficiently circumstantiated allegation of the scientific datum of exposure, and for the court to deepen the inquiry, where necessary, by way of verification or technical consultancy under Article 63(4) of the Code of Administrative Procedure. Which is consistent with what *Duarte Agostinho* remits to the domestic legal order, entrusting to the national court the ascertainment of the individual facts on which standing is rooted.

The second title is that of the representative body. Here the differentiation does not rest on a personal vulnerability, which the body does not have, but on an institutional qualification: the recognition - statutory and, since the reform of Articles 9 and 41 of the Constitution, now also constitutional - of the body as the organised bearer of a collective interest that the legal order raises to the level of the juridically relevant[0].

It is the route, consolidated in our case law, of the standing of representative bodies, and it is the one that has in fact held up: the applicant associations in the Lake Vico case, and the very associational application admitted at Strasbourg while the individual applications were filtered out. In the body's case to the interest is concrete and present: concrete because referred to the collective sphere of which it is the institutional bearer, and not to an indistinct aspiration; present because it is the current unsuitability of the planning instrument to impinge, today, on that sphere.

The two titles do not cancel each other out, because they operate on different and non-competing subjective positions. The citizen asserts their own qualified exposure; the body does not borrow that vulnerability but acts by virtue of a title of its own, of a representative nature, which the

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[0] Constitutional Law of 11 February 2022, no. 1, reforming Articles 9 and 41 of the Constitution; Constitutional Court, judgment no. 105 of 2024, on the duty of public authorities to act for the effective protection of the environment, including in the interest of future generations.

Constitution also entrusts to organised social formations. They are two keys that open the same door from different sides.

There remains, distinct from both titles, the argument on the object of the judgment, which must, however, be relocated to its proper function. It does not ground standing - that is provided for by the two titles just seen - but it guarantees that, once the applicant is admitted, the *content* of the judgment does not degenerate into a review of political choices: the *petitum* remains anchored to the act, or to the inertia, and to its non-conformity with the parameter, not to a claim to a stable climate. Two filters, then, and two functions: the quality of the applicant governs access, the object of the judgment governs its content. And it is the same content-limit that operates in every judgment of legitimacy on acts with general effects.

9. Why the administrative court, and not another

I conclude on the comparative advantage, without setting the two routes in opposition: they are complementary forms of protection.

The compensatory action presupposes a causal nexus between the conduct of the single emitter and the individual damage, in a context in which the damage is diffuse and cumulative. It is no coincidence that the Hague Court itself, while denying that the diffuse nature of the conduct precludes the obligation of prevention, subordinates reparation to a sufficiently direct and certain nexus.

The review of appropriateness does not ask for a damage to be quantified nor for an ultimate responsible party to be identified. It asks whether the administration, faced with an obligation of result, has adopted adequate measures. It is a review of legitimacy over the exercise of the function, not a judgment of responsibility over the fact.

And then there is the reason I consider decisive. The review of appropriateness operates in *conformative* form: it does not wait for the damage to be produced in order to repair it, but verifies the adequacy of the action, imposing, where necessary, the re-exercise of the power in a sense conforming to the objective. In a matter in which reparation by equivalent is structurally inadequate - because the damaged asset is not monetisable and the prejudice, once produced, is to a large extent irreversible - the conformative vocation is not a technical detail. It is the point.

To this is added an armoury that the civil court does not possess, and which it is worth enumerating because it is our least conspicuous and most solid advantage.

First of all, the action against silence-inaction, which allows a reaction to inertia in the face of a duty to act. It is the form of protection natively designed for the *failure to act*[0], and Lake Vico shows that it works even when the obligation comes from a directive. Then the enforcement proceedings, which permit the assessment of the adequacy [0]*in concrete terms* of the executive measures, with substitutive powers. It is the instrument that answers the most insidious objection - the one according to which an order to act would remain a dead letter. Finally, the review of excess of power in its symptomatic figures, which allows the reasonableness and consistency of the choices to be scrutinised without substituting for them: want of investigation, misrepresentation of the facts, contradiction between declared objectives and adopted measures.

These last figures are readily recognisable: they are precisely those that the Strasbourg Court employed - without calling them that - to find the Swiss violation: failure to quantify, inconsistency between objectives and action. We do not need to import categories. We already have them, and they are more refined.

10. Conclusion

The 2025 opinion does not hand the national court a new power. It performs a finer operation: it renders determinate the content of pre-existing obligations and, in so doing, converts the climate objective from a political choice into a *parameter of legality*. In doing so it shifts the line that separates the unreviewable merits from the functionality of the action to the result.

The Italian administrative court, precisely because it has at its disposal

[0]Article 117 of the Code of Administrative Procedure, on the action against silence-inaction; Article 31(3) of the Code of Administrative Procedure on the limits of merits review. On the instrumental nature of the action, see Council of State, Plenary Assembly, 9 June 2016, no. 11.

[0] Article 34(1)(e) and Articles 112 ff. of the Code of Administrative Procedure, on enforcement proceedings and the substitutive powers of the court, which allow the concrete verification of the adequacy of the enforcing measures.

the category of result and its measure, is - among the possible courts - the one best equipped to take up this prompting without overstepping any limits. Not in order to decide the climate in the place of politics: rather, to verify that politics, once the obligation has been assumed, acts in a manner adequate to honour it.

I return for a moment to New Zealand. There, an attempt was made to withdraw the climate question from the court by a law that identifies, by docket number, the proceedings to be extinguished. But that very law left standing the review of the exercise of public power.

Those who wished to close the door left open precisely the one that interests us. It is on this ridge - between discretion and review - that administrative law, with its historically elaborated and now positivised categories, has something of its own, and something serious, to say.

COMUNIDADES ENERGÉTICAS Y TRANSICIÓN ENERGÉTICA JUSTA: BREVE ANÁLISIS DEL MARCO NORMATIVO, LAS MEDIDAS DE IMPULSO Y EL IMPACTO SOCIAL [0].

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Sumario: 1. El marco normativo de las comunidades energéticas. **1.1.** El marco normativo europeo. **1.2.** El marco normativo español. **- 2.** Las comunidades energéticas: concepto y modalidades. **- 3.** Medidas para la implantación efectiva de las comunidades energéticas en España: especial referencia a las medidas de agilización y simplificación administrativa. **- 4.** El impacto social de las comunidades energéticas.

La presente ponencia tiene por objeto examinar uno de los más novedosos instrumentos de la política energética y climática europea, las comunidades energéticas, llamadas a asumir un relevante papel en la construcción de una transición energética justa. Evidentemente, no se pretende realizar un análisis exhaustivo[0], sino, más modestamente, ofrecer una visión de conjunto de estas entidades, desde una perspectiva esencialmente iusadministrativista y centrada en el ordenamiento jurídico español.

Con este propósito, estructuraré mi intervención en tres partes. En pri-

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[0] El presente trabajo recoge la ponencia presentada en la *Final Conference of the CJLL Project Climate justice perspectives in the age of global conflict*, celebrada en el *Law Department* de la *University of Palermo*, Palermo (Italia), el 24 de julio de 2026.

[0] Sobre esta materia existe una abundante bibliografía; entre otros, pueden consultarse E. Cocciolos-Galera Rodrígo (Dirs.), *El nuevo modelo energético descentralizado y de proximidad: las Comunidades Energéticas*, Tirant Lo Blanch, Valencia, 2025; A. Galán Galán-I. Santa Brígida (Dirs.), *Comunidades energéticas locales*, Fundación Democracia y Gobierno Local, Madrid, 2024; I. Gallego Córcoles, *Comunidades de energías y transición energética*, Aranzadi, Cizur, 2022; P. Navarro Rodríguez, *Comunidades Energéticas en España. Análisis y propuestas para un desarrollo regulatorio completo*, Tirant Lo Blanch, Valencia, 2024.

mer lugar, se expondrá brevemente el marco regulador de esta figura en el Derecho de la Unión Europea y su incorporación al ordenamiento español, con especial atención a su delimitación conceptual. A continuación, daremos cuenta de algunas de las actuaciones desarrolladas por el Estado español para favorecer la efectiva implantación de las comunidades energéticas; en particular, se examinará la incorporación al ordenamiento español de dos de las principales medidas de simplificación y agilización administrativa previstas en el Derecho de la Unión. Finalmente, concluiremos con una breve referencia al potencial transformador de estas entidades desde la perspectiva social.

1. El marco normativo de las comunidades energéticas.

1.1. El marco normativo europeo.

Como es sabido, la política energética europea se articula en torno a tres grandes objetivos: alcanzar la descarbonización del sistema energético, garantizar la seguridad del suministro y mantener la competitividad, asegurando el acceso a una energía segura, sostenible y a precios asequibles. Para alcanzarlos, uno de sus pilares ha sido lo que podríamos denominar el "empoderamiento del consumidor": este deja de concebirse como un mero sujeto pasivo en los mercados energéticos para convertirse en un actor que participa activamente en dichos mercados, contribuyendo así a la consecución de los objetivos de transición energética.

Pues bien, con el fin de impulsar el papel de la ciudadanía como motor de la transición energética, y teniendo presente el desarrollo de las cooperativas ciudadanas de energía renovable que habían surgido en la década de los setenta en varios puntos de Europa, el artículo 22 de la Directiva (UE) 2018/2001, relativa al fomento del uso de energías procedente de fuentes renovables[0], y el artículo 16 de la Directiva (UE) 2019/944 sobre normas comunes para el mercado interior de la electricidad de 2019[0], in-

[0] Directiva (UE) 2018/2001 del Parlamento Europeo y del Consejo, de 11 de diciembre de 2018, relativa al fomento del uso de energía procedente de fuentes renovables (DOUE L de 328 de 21-12-2018).
[0] Directiva (UE) 2019/944 del Parlamento Europeo y del Consejo, de 5 de junio de 2019, sobre normas comunes para el mercado interior de la electricidad y por la que se modifica la Directiva 2012/27/UE (DOUE L 158 de 14-6-2019).

troducen, respectivamente, dos nuevos actores en el mercado energético: las comunidades de energías renovables y las comunidades ciudadanas de energía, entidades destinadas a canalizar la participación activa de la ciudadanía, las pymes y las entidades locales en la transición energética.

Como veremos, la importancia de estas entidades trasciende el ámbito estrictamente energético. Las comunidades energéticas representan una nueva forma de entender la transición energética, al situar a las personas y a las comunidades locales en el centro del sistema. De ahí que las citadas Directivas no se limiten al reconocimiento jurídico de estas entidades, obligando a los Estados miembros a establecer un marco regulatorio que favorezca realmente su desarrollo, exigencia que se ha visto reforzada posteriormente por la Directiva (UE) 2023/2413, por la que se modifican, entre otras, la Directiva (UE) 2018/2001[0].

Evidentemente, la plena operatividad de estos nuevos actores en el sector energético español va a depender, en buena medida, de la adecuada transposición de esas Directivas al Derecho interno, cuestión que pasamos a analizar a continuación.

1.2. El marco normativo español.

Antes de analizar el régimen jurídico de las comunidades energéticas en el ordenamiento español, conviene señalar que estas ocupan un lugar destacado en los principales documentos estratégicos e instrumentos de planificación energética y climática aprobados por el Gobierno. En ellos se identifica a estas entidades como un actor estratégico para la consecución de los objetivos de descarbonización y democratización del sistema energético y, en consecuencia, se diseñan las líneas de actuación y medidas a adoptar para favorecer su desarrollo.

Así, el Plan Nacional Integrado de Energía y Clima (en adelante, PNIEC)[0] apuesta por el incremento de la diversidad de actores en el sector

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[0] Directiva (UE) 2023/2413 del Parlamento Europeo y del Consejo, de 18 de octubre de 2023, por la que se modifican la Directiva (UE) 2018/2001, el Reglamento (UE) 2018/1999 y la Directiva 98/70/CE en lo que respecta a la promoción de la energía procedente de fuentes renovables y se deroga la Directiva (UE) 2015/652 del Consejo (DOUE L 2413 de 31-10-2023).

[0] El PNIEC cuenta con una versión inicial (2021-2030), aprobada en 2020, disponible en:

energético y el desarrollo de proyectos participativos tanto en la generación de energía renovable como en el conjunto del sistema energético, siendo una de sus medidas específicas el fomento de las comunidades energéticas

En la versión inicial del PNIEC 2021-2030, las comunidades energéticas todavía no contaban con un desarrollo normativo específico en el ordenamiento español. Por ello, el primero de los "mecanismo de actuación" previstos en el mismo para fomentar las *"*comunidades energéticas locales"*,* donde se incluían las dos figuras previstas en la normativa comunitaria -comunidad de energías renovables y comunidad ciudadana de energía-, consistía precisamente en establecer un marco normativo apropiado para definir estas entidades jurídicas y favorecer su desarrollo, en particular para cumplir con lo dispuesto en el artículo 22 de la Directiva 2018/2001 y en el artículo 16 de la Directiva 2019/944

Además, se incluían otras medidas como la eliminación de barreras administrativas mediante el establecimiento de una ventanilla única que oriente al solicitante, y la simplificación de trámites administrativos; el impulso de proyectos piloto o de demostración, promover la formación y capacitación de los distintos agentes y estudiar la creación de una oficina de apoyo en el Instituto para la Diversificación y Ahorro de la Energía (en adelante, IDAE), adscrito al Ministerio para la Transición Ecológica y el Reto Demográfico (en adelante, MITECO), que ofreciera asistencia técnica y facilitara la financiación.

Posteriormente, tras la incorporación de las comunidades energéticas al ordenamiento jurídico español mediante la transposición parcial de las citadas Directivas europeas, en la actualización del PNIEC 2023-2030, las actuaciones para el fomento de las comunidades energéticas pasan a estructurarse en torno a la hoja de ruta prevista en el Plan de Recuperación, Transformación y Resiliencia (en adelante, PRTR)[0]. El eje «Transición

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https://www.miteco.gob.es/content/dam/miteco/images/es/pnieccompleto_tcm30-508410.pdf, y una actualización (2023-2030), aprobada en 2024 para adaptarse al incremento de los objetivos climáticos de la UE, reflejado en la Ley Europea del Clima, el paquete «Objetivo 55» y «*REPowerEU*», disponible en: https://www.miteco.gob.es/content/dam/miteco/es/energia/files-1/pniec-2023-2030/PNIEC_2024_240924.pdf.

[0] El PRTR fue aprobado por el Gobierno de España el 27 de abril de 2021, con el doble objetivo de, por un lado, impulsar la recuperación económica tras la crisis

ecológica» del PRTR prevé, dentro de su componente 7 «Despliegue e integración de energías renovables», una reforma específica, la reforma 3 que tiene por objeto el «Desarrollo de las comunidades energéticas», mediante un enfoque estructurado en tres fases:

- Las dos primeras fases, «Aprende y Planifica», pretenden activar procesos participativos, informativos y divulgativos, así como la constitución legal de estas figuras.

- La tercera, «Implementa», es la fase de desarrollo de proyectos de comunidades energéticas, articulada esencialmente a través de programas de ayudas.

Pues bien, la primera medida de actuación prevista en el PNIEC inicial, el desarrollo de un marco normativo apropiado para definir estas entidades jurídicas y favorecer su desarrollo, no puede considerarse plenamente cumplida.

La transposición de las Directivas 2018/2001 y 2019/944 se ha llevado a cabo a través de la reforma de la Ley 24/2013, de 26 de diciembre, del Sector Eléctrico (en adelante, LSE)[0], mediante sendos Reales Decretos-leyes.

En concreto, el Real Decreto-ley 23/2020[0] modifica el artículo 6 de la LSE para incluir entre los sujetos que desarrollan "actividades destinadas al suministro de energía eléctrica"[0] a las "comunidades de energías renovables", definiéndolas como «entidades jurídicas basadas en la participación abierta y voluntaria, autónomas y efectivamente controladas por socios o miembros que están situados en las proximidades de los proyectos de energías renovables que sean propiedad de dichas entidades jurídicas y

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de la COVID-19 y, por otro, promover un proceso de transformación y modernización de la economía española, siendo el principal instrumento para la canalización de los fondos del mecanismo *Next Generation EU*. Disponible en: https://portal.mineco.gob.es/recursosarticulo/mineco/ministerio/ficheros/plan_de_recuperacion.pdf.

[0] BOE núm. 310, de 27/12/2013.

[0] Real Decreto-ley 23/2020, de 23 de junio, por el que se aprueban medidas en materia de energía y en otros ámbitos para la reactivación económica (BOE núm. 175, de 24/06/2020).

[0] A saber, generación, transporte, distribución, servicios de recarga energética, comercialización e intercambios intracomunitarios e internacionales, así como la gestión económica y técnica del sistema eléctrico, de conformidad con lo dispuesto en el art. 1.2 LSE.

que estas hayan desarrollado, cuyos socios o miembros sean personas físicas, pymes o autoridades locales, incluidos los municipios y cuya finalidad primordial sea proporcionar beneficios medioambientales, económicos o sociales a sus socios o miembros o a las zonas locales donde operan, en lugar de ganancias financieras» [letra j), apartado 1 del artículo 6].

El citado precepto deja claro que las comunidades de energías renovables pueden articularse en torno a instalaciones vinculadas a cualquier vector energético, siempre y cuando este sea de origen renovable. Sin embargo, la regulación resulta insuficiente, pues únicamente enuncia determinados elementos caracterizadores de la figura sin concretar el alcance de conceptos como "participación abierta y voluntaria", el "control efectivo por parte de los miembros" o el requisito de "proximidad". Además, la reforma no dio pleno cumplimiento a la Directiva 2018/2001, ya que no incorporó los derechos que deben garantizarse a las comunidades de energías renovables ni definió el marco facilitador para su desarrollo, tal y como exige su artículo 22.

Tres años después, el Real Decreto-ley 5/2023[0] modifica nuevamente el artículo 6 de la LSE para incorporar como nuevo sujeto del sector eléctrico a las "comunidades ciudadanas de energía", a las que define como «entidades jurídicas basadas en la participación voluntaria y abierta, cuyo control efectivo lo ejercen socios o miembros que sean personas físicas, autoridades locales, incluidos los municipios, o pequeñas empresas, y cuyo objetivo principal consiste en ofrecer beneficios medioambientales, económicos o sociales a sus miembros, socios o a la localidad en la que desarrolla su actividad, más que generar una rentabilidad financiera» [letra k), apartado 1 del artículo 6].

Al igual que en el caso de las comunidades de energías renovables, el precepto solo enuncia determinados elementos caracterizadores de las

[0] Real Decreto-ley 5/2023, de 28 de junio, por el que se adoptan y prorrogan determinadas medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania, de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad; de transposición de Directivas de la Unión Europea en materia de modificaciones estructurales de sociedades mercantiles y conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores; y de ejecución y cumplimiento del Derecho de la Unión Europea (BOE núm. 154, de 29/06/2023).

comunidades ciudadanas de energía, sin concretar el alcance de los correspondientes conceptos.

Con todo, la reforma de 2023 fue de mayor calado, pues no se limitó a incorporar las comunidades ciudadanas de energía como un nuevo sujeto del sector eléctrico y a definirlas legalmente, sino que avanzó en la transposición de las Directivas 2018/2001 y 2019/944 mediante la introducción en la LSE de dos nuevos preceptos.

El artículo 12 *bis* de la LSE regula el régimen jurídico de las comunidades de energías renovables, a las que se reconoce los derechos propios de los sujetos del sector eléctrico y se garantiza la participación de los consumidores finales en estas entidades sin restricciones injustificadas. Asimismo, reconoce su derecho a producir, consumir, almacenar, vender y compartir energía renovable, así como a acceder a los mercados energéticos en condiciones no discriminatorias.

Junto a este reconocimiento de derechos, el precepto establece un mandato dirigido a las Administraciones públicas para favorecer el desarrollo de las comunidades de energías renovables, mediante la eliminación de barreras injustificadas, la simplificación y proporcionalidad de los procedimientos administrativos, la facilitación del acceso a la financiación y la información, y la garantía de un trato equitativo respecto al resto de participantes del mercado.

En términos similares, pero con una regulación aún más abierta, el artículo 12 *ter* de la LSE prevé el establecimiento de un marco jurídico favorable para las comunidades ciudadanas de energía. El precepto garantiza principios como la participación abierta y voluntaria, la protección de los derechos de sus miembros como consumidores, el acceso no discriminatorio a los mercados eléctricos y un tratamiento administrativo proporcionado y transparente. No obstante, remite a un posterior desarrollo reglamentario la determinación de los requisitos de acceso a la actividad, así como de los derechos y obligaciones tanto de estas entidades como de sus miembros.

Como puede apreciarse, la transposición de las Directivas 2018/2001 y 2019/944 al ordenamiento jurídico español ha sido únicamente parcial: las reformas de la Ley del Sector Eléctrico, que constituye legislación básica estatal, aplicable en todo el territorio nacional[0], se han limitado a definir las comunidades de energías renovables y las comunidades ciudadanas de energía, y a establecer un primer marco jurídico para su reconocimiento, sin embargo, numerosos aspectos esenciales de su régimen permanecen sin concretar.

La ausencia del desarrollo reglamentario previsto por la propia Ley del Sector Eléctrico[0] impide precisar elementos fundamentales de estas entidades, como el alcance de la participación abierta y voluntaria, el concepto de control efectivo por parte de los socios o miembros, o el requisito de proximidad entre los socios y los proyectos que caracteriza a las comunidades de energías renovables. En definitiva, la regulación vigente dista aún de configurar un marco normativo integral para las comunidades energéticas en España, que dote de seguridad jurídica y certeza a los potenciales promotores, socios e inversores.

Algunas de las lagunas del marco regulatorio sustantivo relativas a la

[0] Disposición final segunda, apartado 1 de la LSE. En un Estado descentralizado territorialmente como el español, el análisis del régimen jurídico de las comunidades energéticas no puede limitarse a la normativa estatal. Aunque excede con mucho de la finalidad de la presente contribución, no podemos dejar de señalar que las comunidades autónomas, en el ejercicio de sus competencias, especialmente en materia de energía, medio ambiente e industria, también tienen un papel relevante en el desarrollo y promoción de las comunidades energéticas. Sin embargo, hasta la fecha, solo algunas comunidades han aprobado disposiciones de carácter sustantivo (p. ej., País Vasco, Aragón, Navarra y Cataluña), articulándose la actuación de la mayoría de ellas a través de instrumentos de planificación y programación en materia energética y climática, convocatorias de ayudas e incentivos y la creación de oficinas, ventanillas u otros órganos de apoyo destinados a facilitar la constitución y acompañamiento de estas entidades.

[0] En abril de 2023, antes, pues, de la reforma de la LSE llevada a cabo por el Real Decreto-ley 5/2023, el MITECO presentó un proyecto de Real Decreto por el que se desarrollan las figuras de las comunidades de energías renovables y las comunidades ciudadanas de energía, con el objetivo de incorporar al ordenamiento jurídico español las previsiones de las Directivas 2018/2001 y 2019/944. El texto del proyecto puede consultarse en: https://www.miteco.gob.es/content/dam/miteco/es/energia/files-1/_layouts/15/Proyecto%20de%20Real%20Decreto-61313.pdf. Sin embargo, pese a haber sido sometido al trámite de audiencia e información pública, el proyecto no llegó a aprobarse debido a la finalización anticipada de la legislatura y la convocatoria de elecciones generales en julio de 2023.

propia configuración de las comunidades energéticas han encontrado una respuesta parcial a través de las medidas de fomento administrativo. En particular, las órdenes reguladoras del «Programa CE Implementa», aprobado en el marco del PRTR[0]- han desempeñado una función que trasciende el mero incentivo económico, al definir algunos de los elementos caracterizadores de estas entidades, como los conceptos de participación abierta, participación voluntaria o control efectivo.

2. Las comunidades energéticas: concepto y modalidades.

A partir de este marco normativo, y pese a sus carencias, podemos delimitar el concepto general de comunidad energética y establecer las diferencias entre sus dos modalidades previstas tanto por el Derecho de la Unión Europea como, consecuentemente, por el ordenamiento jurídico español[0].

En sentido amplio, las comunidades energéticas son entidades jurídicas basadas en la participación abierta y voluntaria, autónomas y efectivamente controladas por sus socios o miembros, que deben ser personas físicas, pequeñas y medianas empresas o entidades locales, que desarrollan proyectos de energías renovables o actividades relacionadas con el sector energético, propiedad de la entidad, y cuya finalidad primordial es generar beneficios medioambientales, económicos o sociales para sus socios o miembros o para las zonas locales donde operan, antes que obtener rentabilidad financiera.

[0] Véanse artículo 2 de la Orden TED/1446/2021, de 22 de diciembre, por la que se aprueban las bases reguladoras para la concesión de ayudas del programa de incentivos a proyectos piloto singulares de comunidades energéticas (Programa CE Implementa), en el marco del Plan de Recuperación, Transformación y Resiliencia (BOE núm. 308, de 24/12/2021) y artículo 2 de la Orden TED/764/2024, de 22 de julio, por la que se aprueban las bases reguladoras para la concesión de ayudas del nuevo programa de incentivos a proyectos piloto singulares de comunidades energéticas (Programa CE implementa), en el marco del Plan de Recuperación, Transformación y Resiliencia, financiado por la Unión Europea-*Next Generation* EU (BOE núm. 179, de 25/06/2024).

[0] No obstante, no puede obviarse que las carencias del vigente marco normativo dejan sin resolver no pocas cuestiones relativas a la propia configuración jurídica de estas entidades, como, por ejemplo, la forma jurídica que pueden adoptar, cuyo análisis no podemos abordar aquí.

Sobre esta categoría general, el Derecho de la Unión Europea distingue dos modalidades: las comunidades de energías renovables y las comunidades ciudadanas de energía. Al margen de sus diferencias, ambas figuras comparten una serie de elementos comunes:

- Se configuran como entidades jurídicas cuyos socios o miembros deben ser personas físicas, pequeñas y medianas empresas y entidades locales, incluidos los municipios;
- Se basan en la participación abierta y voluntaria, de modo que cualquier persona que reúna los requisitos de membresía puede integrarse en la comunidad sin estar sometida a condiciones injustificadas o discriminatorias. Igualmente, los miembros tienen derecho a abandonar la comunidad y retirar su inversión, dentro de unos límites temporales razonables que garanticen la estabilidad financiera de la entidad;
- Son entidades autónomas, cuyos miembros ejercen un control efectivo sobre la toma de decisiones y el funcionamiento de la comunidad;
- Su finalidad primordial no es la obtención de beneficios financieros, sino la generación de beneficios medioambientales, económicos o sociales para sus miembros o para la zona en la que desarrollan su actividad.

Las comunidades de energías renovables se articulan necesariamente en torno a proyectos basados en fuentes de energía renovable de los que son titulares y que ellas mismas desarrollan. Además, se caracterizan por la existencia de un requisito de proximidad entre los socios o miembros y los proyectos energéticos. Pueden estar integradas por personas físicas, pequeñas y medianas empresas y entidades locales, incluidos los municipios.

Las comunidades ciudadanas de energía, por el contrario, tienen un ámbito de actuación más amplio, pues pueden desarrollar cualquier actividad comprendida en el sector eléctrico -como la generación, el almacenamiento, la distribución, el suministro o la prestación de servicios energéticos-, sin que exista la exigencia de que la energía tenga origen renovable ni el requisito de proximidad propio de las comunidades de energías renovables. En este caso, quedan excluidas las medianas empresas como posibles miembros.

En resumen, la principal diferencia entre ambas figuras radica en su ámbito material de actuación: las comunidades de energías renovables circunscriben su actuación a proyectos de energías renovables de proximidad, mientras que las comunidades ciudadanas de energía pueden desarrollar, con carácter general, cualquier actividad propia del sector eléctrico, aunque limitan la participación empresarial a las pequeñas empresas.

3. Medidas para la implantación efectiva de las comunidades energéticas en España: especial referencia a las medidas de agilización y simplificación administrativa.

Una vez analizado el marco normativo, conviene examinar cómo se está impulsando realmente la implantación de las comunidades energéticas en España.

Como hemos visto, la inexistencia de un marco normativo integral es, sin duda, el primer obstáculo para el desarrollo de las comunidades energéticas, pero no el único. Estas entidades también encuentran dificultades de financiación, derivadas de la necesidad de movilizar recursos económicos de ciudadanos, pequeñas y medianas empresas o entidades locales antes de que el proyecto genere rendimientos. El desconocimiento y la consiguiente falta de interés por parte de sus potenciales miembros para implicarse en este tipo de proyectos, junto a la escasa experiencia y formación de estos son igualmente factores a tener en cuenta. A ello se suman, una vez constituida la entidad, los retos asociados a la gobernanza democrática, como la participación efectiva de los miembros, la toma de decisiones y la creación y mantenimiento de redes de colaboración con el entorno local. Pero, sobre todo, desde una perspectiva iusadministrativista, entre todas esas dificultades hemos de destacar la elevada complejidad administrativa a la que se enfrentan estas entidades para llevar a cabo sus proyectos.

Dada la amplitud de la materia, expondremos solo algunas de las actuaciones desarrolladas en el ámbito estatal, sin que esto suponga desconocer la importante labor que también vienen desempeñando las comunidades autónomas y las entidades locales en el impulso de las comunidades energéticas, sobre todo, mediante la convocatoria de ayudas e incentivos.

Las actuaciones desarrolladas por la Administración General del Estado se han articulado principalmente a través del Plan de Recuperación, Transformación y Resiliencia y del Plan Nacional Integrado de Energía y Clima.

En materia de financiación, destaca el ya citado «Programa CE Implementa», gestionado por el IDAE con fondos *Next Generation EU*. Desde 2022, a través de sus seis convocatorias se han destinado más de 108 millones de euros para financiar 262 comunidades energéticas distribuidas por todo el territorio nacional, que agrupan a más de 111.000 ciudadanos, pequeñas y medianas empresas y entidades locales[0].

Para promover el conocimiento de estas iniciativas, el «Programa CE Oficinas», aprobado igualmente en el marco del PRTR y gestionado por el IDAE con fondos *Next Generation EU*, ha impulsado en su única convocatoria la creación de 74 "Oficinas de Transformación Comunitaria", distribuidas por todo el territorio nacional y con una dotación de 18,4 millones de euros. Estas Oficinas presentan una triple función: ofrecer información y sensibilizar sobre este tipo de iniciativas, servir de acompañamiento en el proceso de creación de comunidades energéticas y en los correspondientes trámites administrativos y prestar asesoramiento técnico y jurídico. Aunque el «Programa CE Oficinas» finalizó en 2025, actualmente se está preparando una nueva convocatoria[0].

Sin embargo, la experiencia demuestra que las ayudas económicas, siendo necesarias, no bastan por sí solas. Uno de los principales obstáculos para el desarrollo de las comunidades energéticas sigue siendo la complejidad y duración de los procedimientos autorizatorios para las instalaciones de producción de energía eléctrica. Si estos procedimientos ya resultan complejos para cualquier promotor, en el caso de las comunidades energéticas la dificultad es aún mayor debido a su propia naturaleza, pues, con frecuencia, carecen de personal especializado y de los medios técnicos, económicos y administrativos necesarios para afrontar las cargas y demoras que caracterizan la tramitación actual.

[0] Fuente: MINISTERIO PARA LA TRANSICIÓN ECOLÓGICA Y EL RETO DEMOGRÁFICO (MITECO), «El MITECO ha impulsado la creación de 262 comunidades energéticas», mayo de 2026, disponible en: https://www.miteco.gob.es/es/prensa/ultimas-noticias/2026/mayo/el-miteco-ha-impulsado-la-creacion-de-262-comunidades-energetica.html.
[0] Fuente: PLAN DE RECUPERACIÓN, TRANSFORMACIÓN Y RESILIENCIA, «Conoce el Programa 'CE Oficinas' para impulsar la creación de comunidades energéticas», 29 de noviembre de 2023, última actualización de 8 de mayo de 2026, disponible en: https://planderecuperacion.gob.es/noticias/conoce-programa-CE-Oficinas-para-impulsar-creacion-comunidades-energeticas-perte-erha-prtr.

Precisamente, la Directiva 2018/2001 obliga a los Estados miembros a adoptar importantes medidas para simplificar y agilizar los procedimientos de concesión de autorizaciones para las instalaciones de producción de energía renovable, medidas que se han visto ampliadas y reforzadas por la posterior Directiva 2023/2413[0].

Dado el tiempo disponible, me limitaré a examinar brevemente si el ordenamiento español ha incorporado efectivamente dos de las principales medidas de simplificación y agilización administrativa previstas en las citadas Directivas[0] y si lo ha hecho favoreciendo el desarrollo y consolidación de las comunidades energéticas. Además, el análisis se circunscribirá al marco normativo estatal, constituido fundamentalmente por la Ley del Sector Eléctrico y el Real Decreto 1955/2000, de 1 de diciembre, por el que se regulan las actividades de transporte, distribución, comercialización, suministro y los procedimientos de autorización de instalaciones de energía eléctrica[0]. No obstante, ha de advertirse que en el ordenamiento jurídico español, la regulación de los procedimientos administrativos corresponde a la Administración competente por razón de la materia, por lo que también será preciso atender a las previsiones que, en el ámbito de sus competencias, hayan adoptado las comunidades autónomas e, incluso, las entidades locales.

La primera medida consiste en establecer un procedimiento único e integrado que permita concentrar en una misma tramitación la totalidad de las autorizaciones, permisos y evaluaciones necesarias para la construcción y puesta en funcionamiento de instalaciones renovables. La finalidad perseguida por el legislador europeo es evitar que los promotores deban enfrentarse a procedimientos paralelos ante diferentes autoridades admi-

[0] Artículo 16 de la Directiva 2018/2001, en la nueva redacción dada por la Directiva 2023/2413, así como artículos 16 *bis*, 16 *ter*, 16 *quater* y 16 *quinquies*, introducidos por esta última.

[0] Las Directivas contienen otras medidas de simplificación y agilización administrativa, como la fijación de plazos máximos para resolver los procedimientos de autorización o la introducción de supuestos de aprobación tácita. Sobre la transposición de las citadas Directivas, véase J. M. PERNAS ALONSO, «La transposición de la directiva europea 2018/2001, de 11 de diciembre de 2018, relativa al fomento del uso de energías renovables y sus efectos para la tramitación administrativa de dichas instalaciones», in *Revista de Derecho Público*, n.º 181/182, 2025, pp. 147-170.

[0] BOE núm. 310, de 27/12/2000.

nistrativas, reduciendo así los costes, la incertidumbre y los retrasos asociados a la fragmentación competencial.

Esta exigencia no ha sido incorporada al ordenamiento español. Aunque la Ley del Sector Eléctrico y el Real Decreto 1955/2000 regulan un procedimiento para obtener las autorizaciones energéticas -autorización administrativa previa, autorización de construcción y autorización de explotación-, ese procedimiento no integra el resto de autorizaciones necesarias para ejecutar un proyecto renovable. Nuestro sistema continúa obligando al promotor a obtener autorizaciones energéticas, ambientales, urbanísticas, territoriales y de acceso a la red mediante procedimientos distintos y, con frecuencia, gestionadas por Administraciones diferentes. Esta fragmentación se debe, en buena medida, a la distribución constitucional de competencias entre el Estado, las comunidades autónomas y las entidades locales, al verse afectadas las competencias autonómicas y locales en materia de medio ambiente, ordenación del territorio y urbanismo.

Ciertamente, en los últimos años se han aprobado diversas medidas orientadas a agilizar y simplificar la tramitación administrativa de los proyectos renovables -como la reducción de determinados plazos, la simplificación de trámites o la creación de procedimientos específicos para determinadas instalaciones-, pero estas actuaciones no han supuesto una transformación del modelo autorizatorio español hacia un procedimiento único e integrado que englobe todos los permisos necesarios para la ejecución de un proyecto energético renovable en el sentido exigido por la normativa europea.

Esta situación afecta a cualquier proyecto renovable, pero resulta especialmente gravosa para las comunidades energéticas. Aunque estas entidades pueden beneficiarse de las medidas generales de simplificación previstas para los proyectos renovables, no disponen de un cauce procedimental específico asociado a su constitución o reconocimiento como entidad, que concentre la totalidad de actuaciones administrativas necesarias para su puesta en funcionamiento. Su actividad queda determinada por los proyectos concretos que desarrollen, de modo que una comunidad energética que promueve una instalación de generación renovable, un proyecto de autoconsumo colectivo, una infraestructura de almacenamiento o una conexión a red queda sometida a los procedimientos autorizatorios aplicables a cada una de esas actividades, al igual que el resto de los operadores. Y dada la naturaleza de estas entidades, la existencia de procedimientos fragmentados y la necesidad de relacionarse con múltiples Administraciones pueden constituir una barrera proporcionalmente mayor para su desarrollo.

La segunda medida prevista por las Directivas que vamos a considerar aquí es la creación o designación de uno o varios puntos de contacto que actúen como "ventanilla única" durante todo el procedimiento de autorización de instalaciones de energías renovables, especialmente para aquellos proyectos promovidos por ciudadanos, pequeñas empresas o comunidades energéticas. No se trata únicamente de un punto de información. Las Directivas configura la "ventanilla única" como un verdadero interlocutor del promotor, que acompañe y oriente al solicitante, coordine la actuación de las distintas autoridades competentes, vele por el cumplimiento de los plazos y permita que toda la documentación pueda presentarse ante una única instancia administrativa. La finalidad vuelve a ser clara: evitar que el promotor tenga que relacionarse sucesivamente con múltiples Administraciones y organismos.

Tampoco esta previsión ha sido plenamente incorporada al ordenamiento español[0].

Aunque España sí ha desarrollado determinados mecanismos que responden parcialmente a una lógica de ventanilla única en ámbitos concretos, la normativa estatal reguladora de las autorizaciones de instalaciones eléctricas -la Ley del Sector Eléctrico y el Real Decreto 1955/2000- no establece una ventanilla única en los términos exigidos por la normativa europea. Estas normas regulan los procedimientos correspondientes a las autorizaciones energéticas, pero mantienen la necesidad de obtener, cuando proceda, otros permisos o autorizaciones de diferentes ámbitos materiales, como los ambientales, urbanísticos, territoriales o de conexión a red, cuya tramitación corresponde a Administraciones u organismos distintos.

[0] Las Oficinas de Transformación Comunitaria creadas en el marco del «Programa CE Oficinas» no constituyen la "ventanilla única" exigida por las Directivas. La función de estas Oficinas se limita al asesoramiento, acompañamiento y difusión, sin asumir la gestión o centralización de los procedimientos administrativos. Además, se trata de una figura de carácter temporal, vinculada a una convocatoria de ayudas para su constitución que finalizó en 2025, aunque actualmente se esté preparando una nueva convocatoria.

El modelo español continúa descansando sobre una distribución de competencias entre distintos órganos y Administraciones, sin un verdadero mecanismo de coordinación administrativa que simplifique la posición del solicitante: no existe una Administración que asuma la dirección integral del procedimiento, ni una autoridad encargada de coordinar todas las actuaciones administrativas necesarias para la autorización del proyecto, tampoco se prevé que toda la documentación pueda presentarse ante una única instancia administrativa que centralice la tramitación.

Y, nuevamente, esta carencia afecta especialmente a las comunidades energéticas, integradas por ciudadanos, pequeñas empresas y entidades locales que, en muchas ocasiones, carecen de experiencia en la gestión de procedimientos administrativos complejos. Para ellas, la inexistencia de un interlocutor único supone una dificultad añadida que puede retrasar considerablemente la puesta en marcha de sus proyectos e, incluso, desincentivar su creación[0].

Los plazos de transposición de ambas Directivas ya han finalizado[0], por lo que nos encontramos ante un incumplimiento de las obligaciones impuestas por el Derecho de la Unión. Las comunidades energéticas necesitan incentivos económicos, pero también un marco administrativo más sencillo, coordinado y accesible. Mientras esas barreras administrativas persistan, seguirá siendo difícil que estas entidades desplieguen todo su potencial que, como hemos manifestado desde un principio, va más allá del ámbito estrictamente energético.

4. El impacto social de las comunidades energéticas.

Hasta aquí hemos puesto el foco en algunas de las cuestiones que suscita la aún incipiente regulación de las comunidades energéticas en el

[0] Para un análisis detallado de esta medida y su incorporación al ordenamiento español, véase J. M. PERNAS ALONSO, «Las comunidades energéticas locales ante el fomento administrativo: la convocatoria de ayudas públicas y otras vías de promoción», in A. GALÁN GALÁN-I. SANTA BRÍGIDA (Dirs.), *Comunidades energéticas locales*, Fundación Democracia y Gobierno Local, Madrid, 2024, pp. 212 y ss.

[0] El plazo de transposición de la Directiva 2018/2001 concluyó el 30 de junio de 2021 y el de la Directiva 2023/2413, el 21 de mayo de 2025, aunque la mayoría de las medidas relativas a los procedimientos de concesión de autorizaciones debían incorporarse antes del 1 de julio de 2024.

Derecho español. Sin embargo, además de una figura jurídica novedosa y un nuevo actor en el mercado energético, las comunidades energéticas poseen también un importante potencial de transformación social, inseparable de su propia configuración jurídica. Por ello, me gustaría concluir con unas breves reflexiones sobre esa dimensión social, imprescindible para comprender plenamente el alcance de estas entidades.

Pues bien, el impacto social de las comunidades energéticas se proyecta en cuatro grandes ámbitos[0].

En primer lugar, las comunidades energéticas contribuyen a la democratización del sistema energético, ya que suponen un cambio radical en la forma tradicional de entender la relación de la ciudadanía con la energía. Frente a un modelo en el que los consumidores ocupan principalmente una posición pasiva como receptores de un servicio, estas figuras permiten que ciudadanos, pequeñas y medianas empresas y entidades locales participen activamente en la producción, gestión y aprovechamiento de los recursos energéticos de su entorno. La energía deja así de ser únicamente una cuestión técnica o económica para convertirse también en un ámbito de participación ciudadana.

Como sabemos, la participación abierta y voluntaria constituye uno de los elementos definitorios de las comunidades energéticas, permitiendo la incorporación de diferentes actores locales -ciudadanía, pequeñas empresas, y entidades públicas- en torno a un proyecto común. Esta participación no se limita a la financiación del proyecto, sino que implica intervenir en su gobernanza y en la toma de decisiones sobre su funcionamiento.

De este modo, las comunidades energéticas favorecen la aparición de nuevas formas de organización colectiva y fortalecen la capacidad de los territorios para tomar decisiones sobre sus propios recursos energéticos. En este sentido, suponen una nueva forma de gobernanza energética basada en la participación, la cooperación y la gestión colectiva.

Su funcionalidad como instrumentos de cohesión e inclusión social,

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[0] Véase B. VALERO-R. ALCANTARILLA-C. MARCUELLO-M. Díaz FONCEA, *Las comunidades energéticas como herramienta de transformación social*, ECODES, Zaragoza, 2024, disponible en: https://www.energiacomun.org/ficheros/publicaciones/comunidades-energeticas_transformacion-social_ecodes2024_2.pdf [último acceso 30 de julio de 2026].

contribuyendo a una transición energética más justa e inclusiva, constituye otro de los aspectos esenciales de la capacidad transformadora de las comunidades energéticas. Se trata también de una dimensión consustancial a su propia configuración jurídica, en la medida en que, como ya hemos visto, las comunidades energéticas facilitan el acceso colectivo a los beneficios de las energías renovables y permiten compartir los beneficios económicos y sociales asociados a la producción y consumo de estas energías dentro de la comunidad, principalmente, reducción del consumo energético y precios de suministro más asequibles.

A este respecto ha de mencionarse expresamente el potencial de las comunidades energéticas como instrumentos para contribuir a la lucha contra la pobreza energética[0]. Así se recoge en la nueva la Estrategia Nacional contra la Pobreza Energética 2026-2030[0], que incluye entre las medidas destinadas a abordar las causas profundas de la pobreza energética el fomento de la participación de consumidores vulnerables en comunidades energéticas, promoviendo proyectos colectivos de generación/consumo compartido, autoconsumo o acceso local a energías renovables, especialmente en zonas vulnerables o zonas rurales. Estas iniciativas se consideran esenciales para promover la equidad energética, ya que, al facilitar el acceso de los consumidores vulnerables a estos proyectos, se garantiza que sus necesidades y capacidades sean consideradas, promoviendo un modelo colaborativo que fortalezca su autonomía energética y contribuya a la reducción de la pobreza energética en sus entornos.

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[0] La Directiva 2018/2001, en su considerando 67, insta a los Estados miembros a aprovechar este potencial de las comunidades de energías renovables, prestando especial atención a la participación de aquellos hogares que, de otro modo, podrían quedar excluidos de estas iniciativas, incluidos los consumidores vulnerables y los arrendatarios.

[0] MINISTERIO PARA LA TRANSICIÓN ECOLÓGICA Y EL RETO DEMOGRÁFICO, *Estrategia Nacional contra la Pobreza Energética 2026-2030*, Ministerio para la Transición Ecológica y el Reto Demográfico, Madrid, 2026, disponible en: https://www.miteco.gob.es/content/dam/miteco/es/energia/files-1/bono-social/enpe-2026-2030/ENPE%202026-2030.pdf. Sobre el papel de las comunidades energéticas en la lucha contra la pobreza energética, véase P. NAVARRO RODRÍGUEZ, «Las Comunidades Energéticas como instrumentos jurídicos de la lucha contra la pobreza energética en España», in *Revista de Derecho Urbanístico y Medio Ambiente*, n.º 385, 2026, pp. 137-192.

Ahora bien, este impacto social de las comunidades energéticas requiere de mecanismos que garanticen la participación efectiva de los colectivos vulnerables y eviten que las comunidades solo sean accesibles para aquellos grupos sociales con más información o recursos, reproduciendo así las desigualdades existentes. Por ello, el diseño de modelos inclusivos constituye uno de los principales retos para que las comunidades energéticas cumplan realmente esta función transformadora.

Las comunidades energéticas pueden jugar también un papel clave en el desarrollo económico y social de los territorios, pues, frente a modelos centralizados de producción energética, estas iniciativas favorecen un modelo más distribuido, en el que parte del valor generado permanece en el propio territorio. En especial, pueden contribuir al desarrollo de las zonas rurales mediante la movilización de los recursos del entorno, el fortalecimiento de la cooperación entre actores locales y la dinamización de la economía local, convirtiéndose de este modo en importantes herramientas para afrontar algunos de los problemas asociados al reto demográfico.

Por último, las comunidades energéticas representan una nueva forma de organización basada en los principios de la economía social como la primacía de las personas frente al capital, la gestión democrática, la cooperación y la búsqueda de beneficios colectivos. Desde esta perspectiva, las comunidades energéticas combinan innovación energética y organización social, permitiendo avanzar hacia una transición energética que no se limita a la sustitución de unas fuentes de energía por otras, sino que entraña además una transformación de la forma en que se organiza y gobierna el sistema energético.

En definitiva, las comunidades energéticas son una figura clave en el proceso de transición energética, no solo por su contribución al desarrollo de un modelo basado en las energías renovables, el autoconsumo colectivo y la reducción de la dependencia de los combustibles fósiles. Constituyen, además y, ante todo, una potente herramienta de participación ciudadana, democratización energética y cohesión territorial. Su verdadero valor transformador reside en situar a las personas y a las comunidades locales en el centro de la transición energética, contribuyendo a construir un modelo energético no solo más sostenible, sino también más participativo e inclusivo.

Ahora bien, para que ese potencial pueda desplegarse plenamente, resulta imprescindible que los poderes públicos asuman un compromiso decidido con estas iniciativas, culminando el desarrollo del marco normativo exigido por el Derecho de la Unión Europea y adoptando medidas eficaces de simplificación y agilización administrativa, apoyo y financiación. Solo así las comunidades energéticas podrán convertirse en uno de los verdaderos motores de una transición energética justa.

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CONCLUSION

GUIDO CORSO

1. The papers presented at the conference may be divided into two groups. Some deal with policies enacted to fight global warming; others address climate litigation, a specific tool aimed at achieving the same end.

In the first group, we find Monica Di Pierri's paper, which contains a detailed report on the Santa Marta Conference, held in Bolivia this year. Although no legally binding obligations arose from it, the summit was important because participants shifted the focus of climate action from merely reducing emissions to planning a transition away from coal, oil and gas. While traditional approaches emphasize mitigation tools, compensation mechanisms, and technologies to reduce emissions, the supply-side climate policy promoted by the summit stresses the importance of prohibitions, limitations on production, caution in issuing new licences, the withdrawal of State aid, and the planned closure of assets that are losing value. In 2024, more than half of global CO2 emissions were produced by just 32 firms. According to the Reykjavik Declaration (16-17 May 2023), there is a "triple planetary crisis of pollution, climate change and loss of biodiversity". However, climate change and biodiversity loss are distinct objects of public policy and therefore require different responses. This is the warning that Giulia Torta gives us in her paper. Different public authorities often enact and manage different policies. Nevertheless, there is a link between such policies. While the influence of climate change on biodiversity is well known and extensively studied, less attention has been devoted to the opposite direction of influence. Yet forests, peatlands, wetlands, coastal habitats and oceans hold carbon stocks that absorb a substantial share of anthropogenic emissions. Where ecosystems are degraded, their capacity to act as carbon sinks may be reduced or lost. Ecosystem degradation reduces their capacity to absorb carbon and may also release previously stored carbon.

There is no necessary harmony between the two aims or between the two policies.

As Thamanna Chandan points out on the basis of Indian jurisprudence, climate conflicts often set one green priority (e.g., renewable energy) against another (e.g., biodiversity), leaving courts without a universally ideal solution.

The paper presented by Maria del Pilar Castro Lopez is devoted to renewable energy. EU Directives 2018/2001 and 2019/944 on the promotion of energy from renewable sources have laid the foundations in Spain for a new institution, the "comunidades energéticas local", in which citizens are the main actors, thanks to effective administrative simplification.

Environmental policies are the theme of Iryna Petryk's paper - specifically, the policies that should and must be enacted once the war started by Russia against Ukraine is over. Her moving presentation reveals a very troubling state of affairs. Cumulative war-related greenhouse gas emissions have reached a level comparable to the annual emissions of several European countries. The impact of armed conflict on climate change is considerable. Special attention must be given to landmine contamination, soil degradation, the reduction of safe agricultural land, and the impact of the war on Ukraine's protected areas and biodiversity. Post-war recovery should combine infrastructure reconstruction with ecosystem restoration, demining, and biodiversity conservation.

2. Another group of papers addresses the theme of climate change litigation and raises several questions that can be summarized as follows. Can a judicial remedy be provided to people seeking protection against climate change? If so, which court is entitled to hear the case? Since climate change crosses State borders, in which State should we look for the competent court? What kind of lawsuit must be filed or, more precisely, what relief can be sought from the court? Who has standing (locus standi, legitimization) to bring this kind of lawsuit? Which natural or legal person should be summoned as respondent? Can the State or its government be sued as a respondent?

Two different answers have been given to the first question - whether judicial protection against climate change is available.

According to the Tribunal of Rome - in the "giudizio universale" case described by Alessia Tisci, who was one of 200 claimants through her association - the claim is inadmissible because it concerns matters falling within the discretion of the political and executive branches and is therefore beyond the scope of judicial review. It is not for a national court to evaluate the adequacy or inadequacy of the Italian government's mitigation policies in the light of its obligations under domestic, European and international law (T. Roma, 26 February 2024, n. 3552).

The opposite answer was given to a similar question by the European Court of Human Rights (Verein Klimaseniorinnen Schwyz and others v. Switzerland, 9 April 2024). The case, which was extensively discussed by Loredana Giani, arose from the initiative of an association of elderly women, together with a group of women belonging to the same association. According to the Court, the Swiss Confederation enjoys a margin of discretion that is divided into two aspects: a narrower margin as to the ends and a wider one as to the means. The ends are imposed by external sources; national and international judicial intervention is not an alternative to democratic processes, but complementary to them. While judges cannot act in place of Parliament or the Cabinet, they have a duty to recognize the association as a victim of global warming that has not been adequately addressed by public institutions, in violation of Article 8 of the ECHR (the right to respect for private and family life).

Loredana Giani cites another case decided by the New Zealand courts. The plaintiffs were successful at first instance, but their claim was dismissed by the Court of Appeal. The magnitude of the climate crisis, the Court stated, cannot be adequately addressed by tort claims pursued through the courts, since the matter calls for a sophisticated regulatory response at the national level, supported by international coordination. The judgment was reversed by the Supreme Court, so the case is again pending before the court of first instance.

The question of whether climate change suits may be heard by the courts was recently addressed by the Italian Corte di Cassazione. In a case discussed by Alessia Tisci, the Italian Supreme Court stated that a claim against ENI s.p.a. - the large oil company that is partly owned by the Italian government - may be heard by a civil court when plaintiffs complain of damage to their health caused by climatic events to which ENI allegedly contributed. ENI, in fact, extracts and sells oil as the holding company of a number of companies operating in several other States.

In deciding only the question of jurisdiction, without entering into the merits of the claim (as happens when the Supreme Court is asked only to determine whether jurisdiction exists through a "regolamento preventivo di giurisdizione" under Article 41 of the Code of Civil Procedure), the Corte di Cassazione stated that it is for the civil court to assess the alleged damage or reject the claim (Cass. United Sections ord. 21 July 2025, n. 20381).

3. Who has locus standi in climate change litigation?

The ECHR recognized the victim status of the Klimaseniorinnen association, but denied standing to the natural persons acting as plaintiffs or, more precisely, rejected their claims for lack of proof of the damage suffered.

The Italian Corte di Cassazione, by contrast, granted standing to private individuals bringing an action against ENI s.p.a. It has been observed that there is no conflict between the conclusions reached by the Tribunale di Roma (the so-called "giudizio universale") and the Corte di Cassazione. The former court denied that the Italian State could be sued for environmental damage. The Corte di Cassazione reached the opposite conclusion, but in the case before it the respondent was not the State but a private corporation - even though a large proportion of its shares belongs to the Ministry of Economy.

4. Which court has jurisdiction within the judicial system? Climate litigation has involved civil courts competent to decide liability actions (including the Corte di Cassazione when ruling on jurisdiction), the ECHR once domestic remedies have been unsuccessfully exhausted, administrative courts (see the case of Lake Vico, discussed by Loredana Giani), and constitutional courts (Bundesverfassungsgericht, 24 March 2021, Neubauer et al. v. Deutschland).

What measures can a court take in order to satisfy the plaintiffs' claims?

In deciding the Seniorinnen case, the ECHR issued a declaratory judgment: the measures taken by Switzerland were not adequate to combat the negative effects of climate change and were in violation of Article 8 of the European Convention on Human Rights. By denying the individual women locus standi and recognizing it only for the association, the Court upheld a form of collective action - an action for the protection, through compensation, of homogeneous individual rights, which is provided for by

Article 840-bis of the Italian Code of Civil Procedure.

The Administrative Tribunal of Paris adopted a different approach. Applying the Lois de Vigilance, the Tribunal set a deadline by which the administration had to take measures to reduce greenhouse gas emissions (3 February 2021, Notre Affaire à Tous and others c. France).

In Germany, the Bundesverfassungsgericht was asked to rule on the constitutionality of environmental legislation: a direct challenge to the legislature (24 March 2021, Neubauer et al. v. Deutschland).

In the Seniorinnen case, the ECHR recognized a right to effective protection by State authorities against negative effects on life and health - a right considered to fall within Article 8 of the European Convention. Does such a right exist? What is its nature? This is the subject of an interesting paper by Andrea Giordano, in which the juridical approach is particularly relevant.

5. Climate change can be considered from different points of view.

Allison Matulli looks at the phenomenon from the perspective of a teenager. This girl sees wildfires destroying forests, floods washing away homes, and heat waves making summers hotter every year; she feels that her future is at stake. Her most effective tools are her words. Matulli addresses the question of freedom of speech and its power in fighting climate change and environmental destruction.

In conclusion, I think that the role of climate litigation as a tool for reducing greenhouse gas emissions cannot be overestimated. This is the view expressed by Judge Eicke in his dissent in the Klimaseniorinnen case before the ECHR. He recalls that the contracting parties to the European Convention on Human Rights have refused to respond positively to the repeated appeals by the Parliamentary Assembly of the Council of Europe for the adoption of an additional protocol to the Convention - a protocol that would establish the right to a clean and healthy environment and give the Court jurisdiction to ensure observance of such a right.

In a previous case (Hatton and others v. the United Kingdom, no. 36022/97, 2003), "The Court reiterate[ed] the fundamentally subsidiary role of the Convention. The National Authorities have direct democratic legitimation and are […] in principle better placed than an international court to evaluate local needs and conditions […]. In matters of general policy, in which opinions within a democratic society may reasonably differ widely, the role of the domestic policy maker should be given special weight."

"Proceedings before the Court are much more likely to distract the Contracting Parties and slow down the necessary process and, even if a judgement is obtained, any delay and/or failure in the implementation of any judgement is only likely to undermine the need for urgent action and, potentially, the rule of law".

This concluding remark by Judge Eicke deserves, in my opinion, serious consideration.

CLIMATE JUSTICE PERSPECTIVES IN THE AGE OF GLOBAL CONFLICT

(a cura di Nicola Gullo)

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