# The European Approach to Human Rights-Based Climate Litigation in Global Context

## Difference, Deference, Consolidation

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The parenthetical framing of "European" in the title of this panel – "(European) Human Rights and the Climate Crisis" – captures a central premise of the present analysis: human rights-based climate protection does not emanate from a single, coherent legal regime, but from a plurality of intersecting normative orders. Regional human rights systems and UN treaty bodies have begun to elaborate climate-related obligations, and the ICJ's Advisory Opinion of July this year has added further clarification regarding states' duties in this respect. Nevertheless, these institutions engage with climate mitigation in markedly different ways.

Against this background, this contribution examines how these divergent approaches unfold, with particular attention to the specific contours of the European approach. It also considers how the International Court of Justice, through the restrained posture adopted in its Advisory Opinion of July this year, has created the conditions for these interpretive trajectories to continue evolving. By refraining from prescribing a single authoritative framework, the Court has left room for regional and domestic bodies to refine their respective approaches in light of their institutional mandates. This enables a jurisprudential dialogue in which diverse legal orders may further develop their climate-related human rights doctrines in mutually responsive ways. Within this emerging dialogue, a shared core has already begun to crystallize – namely, a standard of human-rights-based climate due diligence that is likely to shape the future architecture of global climate jurisprudence.

### The European approach: time, space, and species

The European Court of Human Rights (ECtHR) has adopted an approach that differs, in certain respects, from those of other human rights bodies. I will develop this along three dimensions – time, space, and species. The ECtHR has extended the reach of climate-related human rights protection in respect of time in a novel and innovative manner. As regards the dimensions of space and species, however, it has adhered more closely to the traditional liberal script. The Inter-American Court of Human Rights, by contrast, extended all three dimensions in its Advisory Opinion this year, making a comparison between these two approaches particularly instructive.

(1) Extension of time

In its recent climate judgment, the Verein KlimaSeniorinnen case, the European Court has extended the temporal dimension of human rights protection by reinforcing intergenerational burden-sharing in relation to climate protection. The Court did not recognize a direct right of future generations, but it allowed the association of elderly Swiss women to invoke the right to private and family life to require their government to meet its own climate commitments under the Paris Agreement and domestic law. It emphasized that, under the UNFCCC, states parties have undertaken the obligation to protect the climate system for the benefit of present and future generations. The high risk of severe and irreversible harm, combined with the tendency of democratic decision-making to focus on short-term interests, justified judicial scrutiny in Court's eyes. In essence, the Court's reasoning strengthens transparency and accountability

in the political process and aligns legislative and administrative frameworks with long-term interests.

This extension of time is mirrored in the approach taken by the Inter-American Court of Human Rights in its Advisory Opinion on the climate emergency and human rights, which also draws on the principle of intergenerational equity in its human rights interpretation and requires states to avoid imposing disproportionate burdens on present or future generations.

(2) Extension of space

In another case – Duarte Agostinho and Others v. Portugal and Others – the Strasbourg Court clarified that it would not extend extraterritorial jurisdiction under Article 1 of the Convention in relation to climate change. The Court's reasoning implied that doing so would fundamentally change the nature of the Convention: from a treaty protecting individuals within European states against their own governments, to one protecting people outside Europe from actions occurring within it. Accordingly, the Court maintained a narrow interpretation of jurisdiction, requiring "effective authority or control" over persons or territory. In this respect, it rejected extending human rights protection in space.

This stands in contrast to the Inter-American Court of Human Rights, which has taken a broader approach. The Inter-American Court has held that human rights obligations apply whenever a causal link exists between conduct within a state's territory and human rights harm abroad, as the state retains jurisdiction and control over the originating activity. In this regard, the Court has extended human rights protection in the environmental context across space.

(3) Extension of species

A third dimension is that of species. Here we move from humans in time and space to the relationship between humans and nature. The Strasbourg Court has been clear (as Nicola Wenzel illustrates in her contribution to this symposium) that it does *not* recognize a right to a healthy climate as such. Its focus remains on *protecting human beings* from the adverse impacts of climate change.

By contrast, the Inter-American Court has gone further. It recognizes a right to a healthy environment and extends it to the climate system where the primary *object* of protection becomes the environment. In its collective dimension, the right protects natural living conditions for present and future generations. According to the Court, the right to a healthy environment reflects the dependence of human beings on nature – its applicability is thus not contingent upon a concrete risk or infringement of other human rights.

The UN General Assembly similarly recognized this right in 2022.

## Managing legal pluralism from The Hague: restraint and deference

The ICJ manages this legal pluralism with restraint and deference. In its Advisory Opinion of 23 July 2025, the Court stated that it need not determine the specific circumstances under which a State can be regarded as exercising its jurisdiction outside its own territory, since any such determination depends on the provisions of each respective human rights treaty. Hence, instead of choosing one interpretation over another, the Court implied that different instruments may legitimately lead to different interpretations. It also mentioned that the scope of customary and conventional human rights law is distinct. In this way, the ICJ deferred to regional and domestic bodies, rather than imposing a single authoritative reading that regional courts would have to incorporate into their interpretation under Art. 31 of the Vienna Convention on the Law of Treaties. As for the extension of species, the Court noted the General Assembly's recognition of the right to a healthy, clean, and sustainable environment, and observed that this right appears in many regional treaties and national constitutions. However, it stopped short of declaring it customary international law. Instead, it described it as inherent in other human rights. With this nuanced approach, the ICJ left the door open for courts such as the ECtHR to continue interpreting environmental protection through existing rights – without turning the environment itself into a direct legal object of protection.

## Human rights-based climate due diligence as a consolidated tool of climate protection

Despite pluralism and doctrinal differences, *human rights protection is incrementally emerging as a consolidated and decisive element of climate protection.* During the ICJ proceedings, the United States argued that human rights should not apply to climate change – viewing it as a collective action problem to be solved through inter-state cooperation. They suggested that human rights obligations might disrupt cooperation by imposing heavier burdens on certain states, thereby creating potential *free-rider* dynamics. The ICJ rejected this argument, noting the long-standing recognition of the interdependence between human rights and the environment, including in case-law from the three major regional human rights courts and UN human rights treaty bodies.

Indeed, when we look at the recent case law, human rights obligations are increasingly consolidated around a due diligence standard oriented toward the prevention of significant harm to the climate system and more specifically to the goals of the Paris Agreement. The Inter-American Court has referred to the ECtHR, which has specified what this means: states must adopt a transparent framework that allows individuals to hold authorities accountable for adhering to their envisaged climate pathways. The IACtHR has expanded on this standard, especially regarding the obligation to regulate corporate conduct. The ICJ's reasoning reinforces this trend. It underlined that States must take measures to protect the climate system, including the adoption of standards and legislation, and the regulation of the activities of private actors, taking international climate obligations into account when implementing human rights obligations. Moreover, it recognized that fulfilling the treaty obligations suggests compliance with its obligations under customary international law to diligently prevent climate change. This makes clear that preventive environmental duties will continue to inform the interpretation of human rights even if states withdraw from the Paris Agreement.

## Conclusion

Climate change mitigation poses the same legal challenge to all courts: how to integrate international climate obligations into existing human rights frameworks. What we currently observe is the emergence of a rights-based approach to climate change across regional and international courts and UN treaty bodies. This is a notable development because it reflects an acceptance of human rights as a tool to ensure climate protection – an interest that does not primarily serve individual interests but a global public good.

Differences remain, particularly in how courts address the collective and transboundary dimensions of climate-related rights. Yet, at their core, all converge on developing a standard of human-rights-based due diligence. In times of political backlash against climate policies, courts reaffirm their role as non-majoritarian institutions. They strive to oversee and strengthen the rule of law while avoiding the temptation to replace political decision-making with judicial will. The ECtHR explicitly positioned itself as complementary to, rather than in place of, democratic decision-making. Similarly, the ICJ expressly conceived its own role as complementary, not catalytic of international law-making and cooperation (cf. para. 456, for an elaborate discussion of the Opinion, see the symposium on Völkerrechtsblog). The challenge ahead is to preserve this delicate balance – and in doing so, to make human rights an enduring anchor of global climate governance.

## ABOUT THE AUTHOR

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