INDIGENOUS PEOPLES AND CLIMATE JUSTICE: ADVISORY OPINION 32/25 OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS AND THE OPINION OF THE INTERNATIONAL COURT OF JUSTICE ON THE OBLIGATIONS OF STATES IN RELATION TO CLIMATE CHANGE

MARÍA DEL ÁNGEL IGLESIAS[1]

Abstract: This paper explores how two 2025 Advisory Opinions, the Inter-American Court of Human Rights' OC-32/25 and the International Court of Justice's opinion on climate change, address indigenous peoples' rights. Both recognise climate change as an existential threat but adopt contrasting approaches. The ICJ portrays indigenous peoples as vulnerable communities, without differentiated standards. Conversely, the IACtHR promotes a *pro persona* perspective, incorporating environmental democracy into its climate reasoning, recognising eco-anxiety, and equating indigenous knowledge with scientific evidence. Through comparative and critical analysis, this paper argues that while the ICJ reinforces universal obligations, the Inter-American Opinion operationalises them, providing stronger protection for indigenous identity and territorial rights.

Keywords: Indigenous Peoples, Climate change litigation, Climate emergency, Eco-anxiety, Environmental democracy, Advisory Opinion OC-32/25; Advisory Opinion ICJ 2025.

1. Introduction

The climate emergency (using the term from the Inter-American Court of Human Rights, IACtHR) represents an undeniable threat with negative consequences that unfold like a domino effect: the environment around us is affected, and both States and human rights are also harmed. The rights to life, personal integrity, privacy,

[1] Professor, Department Public International Law, UNIR, Universidad Internacional de La Rioja, Spain (ma.iglesias@unir.net, https://orcid.org/0000-0002-3069-0183).

health, water, food, housing, participation in cultural life, property, and the right not to be forcibly displaced are all at risk. Thus, the consequences of climate change that "underscore the urgent and existential threat posed by climate change (AO, OC-32/25, para. 73).

As we will see in this paper, international, regional, and national organizations have been addressing how climate change impacts the earth and humanity, aiming to reduce negative effects and find solutions. However, our focus is not on this impact in general but specifically on how it affects indigenous peoples, whose connection to nature is not just symbolic or incidental but fundamental to their identity, spirituality, collective survival, and worldview.

Two advisory opinions, issued in July 2025 in San José, Costa Rica, and The Hague, The Netherlands, will be examined in this paper from the perspective of protecting the rights of indigenous peoples. This will be done without excluding other more general aspects when necessary. It should also be noted that the International Tribunal for the Law of the Sea (ITLOS) previously issued an AO on May 21, 2024, regarding the obligations of states to prevent, reduce, and control marine pollution and to protect and preserve the marine ecosystem from the impacts of climate change. Since our focus is specific and space is limited, we will not analyze this in detail. Additionally, another AO has been filed before the African Court on Human and Peoples' Rights (AfCHPR), which is also of great interest. While it is too early to draw conclusions, in its only case involving indigenous peoples, the Ogiek case, the AfCHPR recognized them as guardians of the environment, thus creating a connection to the recognition made by the IACtHR.

We will reference the normative contributions of the United Nations (UN) system prior to the ICJ 2025 Advisory Opinion (AO, ICJ 2025), as extensively documented in the AO. Based on this framework, we will critically analyze the limitations and real possibilities of international law to protect indigenous peoples in the face of climate change (considered an emergency by the AO, OC-32/25), remaining open to discussion and counterarguments. Our methodology is mainly analytical and comparative critical. The order we choose responds to both chronological and methodological reasons: we begin with the Inter-American system, not only because the IACtHR issued its pronouncement before the ICJ, but also because its previous jurisprudence offers a more established framework regarding indigenous peoples and the environment. Additionally, the IACtHR has employed innovative concepts such as environmental democracy, eco-anxiety, and referenced rights of nature in ways that will be further explained below (as we interpret them), which are absent in the AO, ICJ 2025.

The comparison we want to make will give a broad overview of the current international legal situation for these individuals, while also allowing us to critically compare the two perspectives.

2. The protection of indigenous peoples from climate change

The protection of indigenous peoples from climate change has recently gained direct focus in international law as this legal field has developed and as indigenous peoples' own laws have been strengthened through legal texts, organizations, and court decisions.

Although indigenous peoples make up only 6% of the world's population, they protect 80% of the planet's remaining biodiversity (UN, April 2025, online); many of the most biologically diverse regions on Earth are inhabited by indigenous peoples. Leaflet 10 of the UN High Commissioner for Human Rights (Indigenous Peoples and the Environment) also highlights that "the "biological 17", i.e., the 17 countries that are home to more than two-thirds of the Earth's biological resources, are also the traditional territories of the majority of the world's indigenous peoples" (UN, 2025b, online; Iglesias, 2021, p. 217).

Indigenous peoples are among the groups most affected by climate change. Forced displacement, loss of territories, criminalization of their rights defenders, and destruction of livelihoods have been consistently documented by UN bodies, including the Special Rapporteur on the rights of indigenous peoples, the Permanent Forum on Indigenous Issues, the UN Declaration on the Right to Sustainable Development (2021), and numerous IPCC reports, which highlight the structural vulnerability of these communities in their inhabited areas.

This situation creates a paradox: those who contribute the least to the climate crisis are the ones who face the most severe impacts. From an international law perspective, this demands not only reparative actions but also preventive and participatory measures that recognize the crucial role of their knowledge in climate mitigation and adaptation.

2.1. United Nations

International law, although delayed, has started to outline responses from various institutional frameworks. Within the UN system, the Brundtland Report, Our Common Future, officially addressed the connection between the environment and indigenous peoples for the first time. In Chapter II, we find a contribution from Bruyère, a representative of the Native Council of Canada, which we include here because the reader will see it almost exactly reproduced in AO, OC-32/25 of the IACtHR.

> "Indigenous peoples rely on what I think can be called an environmental security system. We are the sentinels of the success or failure of our resource economy. However, for many of us, the last few centuries have meant a great loss of control over our lands and watersheds.
>
> We are still the first to know about changes in the environment, but we are the last to be asked or consulted.

> We are the first to discover that our forests are threatened, as they are under the influence of this country's unscrupulous economy, and we are the last to be asked about the future of our forests.
>
> We are the first to notice the pollution of our waters to which the people of the Ojiway, our homeland north of Ontario, can attest.
>
> Of course, we are the last to be consulted on how, when and where development will occur to ensure continued harmony for the seventh generation.
>
> The most we have learned is to expect that we will be compensated too late and too little.
>
> Very seldom are we asked to help, by our experience and by granting our consent, how we can be spared the need to be indemnified".

In ILO Convention 169 of 1989, there is an important reference in the Preamble to "social and harmony" and the specific contribution of indigenous and tribal peoples to it. Three years later, at the Rio de Janeiro Conference, two conventions were adopted and opened for signature: the Framework Convention on Climate Change, which still does not mention indigenous peoples and communities, and the Convention on Biological Diversity, which in its Preamble recognizes: "... the close and traditional dependence of many local communities and indigenous peoples who have traditional livelihood systems based on biological resources. It also includes specific provisions (arts. 8 j. and 10 c.) on traditional knowledge and indigenous participation.

Agenda 21, 1992, made repeated references to "indigenous peoples," specifically dedicating a chapter (Chapter 26) to the issue of "Recognizing and strengthening the role of indigenous peoples and their communities". This document acknowledges that indigenous peoples "have accumulated holistic traditional scientific knowledge of their lands, natural resources and environment," and affirms that the lands of indigenous peoples and their communities should be protected from activities that threaten the environment. Principle 22 of the 1992 Rio Declaration states that "States should recognize and duly support their identity, culture and interests and enable their effective participation in achieving sustainable development".

Subsequently, the UN Declaration on the Rights of Indigenous Peoples (2007) broadens the scope to include self-determination, territorial ownership, and informed consent, all of which are related to environmental sustainability.

Following Human Rights Council Resolution 1/2 of June 29, 2006, the United Nations adopted the Declaration on the Rights of Indigenous Peoples with Resolution 61/295. In its Preamble, it states that "respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment". This text outlines certain obligations for States closely related to their habitat and environment, such as the principle of free, prior, and

informed consent, which also references the 2025 AO of the Inter-American Court of Human Rights.

The year 2008 marks an important milestone with the creation of the International Indigenous Peoples Forum on Climate Change (IPFCC) as a committee for indigenous peoples participating in the processes of the United Nations Framework Convention on Climate Change (UNFCCC). If up to now we have been talking about protecting the environment and the habitat of these peoples, from here, we can already find direct allusions to them and climate change. Nor can we fail to transcribe the words pronounced at this Forum by Kleist, an Inuit, which are very much in line with Bruyère's aforementioned statement:

> "Inuit have been alerting the international community about global warming since the first Earth Summit in Rio de Janeiro in 1992. This year Alaska experienced the hottest July in history, Greenland faced unprecedented ice melt and wildfires in the Canadian Arctic broke records in numbers and emissions. We also stood in solidarity with the indigenous peoples of the Amazon in the face of tragic wildfires and the irreparable implications for the entire planet, including the Nunaat Inuit, our lives and livelihoods".

Meanwhile, organizations like the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights (OHCHR) have published reports and resolutions that strengthen the link between climate change and human rights. Report A/HRC/10/61 from January 15, for instance, was the first to highlight the disproportionate impact of climate change on indigenous peoples, and a series of reports reaffirming this concern has since been produced (paras. 51-56).

In "The Future We Want" from 2012, item 197 states that:

> "the traditional knowledge, innovations and practices of indigenous peoples and local communities make an important contribution to the conservation and sustainable use of biological diversity, and their wider application can advance social well-being and sustainable livelihoods. We recognize that indigenous peoples and local communities are often the most directly dependent on biodiversity and ecosystems and therefore are often the most immediately affected by their loss and degradation".

To the above texts, we could continue adding others that emphasize the importance and duty of States in protecting the environment of indigenous peoples and communities. More recently, the 2018 Escazú Agreement incorporated procedural guarantees for affected communities, recognizing indigenous peoples as holders of the rights to participation, access to information, and environmental justice. Thus, "indigenous peoples have achieved that international law begins to make their categories and ways of life visible, not only as 'vulnerable communities', but as normative agents of another way of understanding life" (Iglesias, 2021). The 2015 Paris Agreement, along with the Kyoto Protocol and the UNFCCC, constitutes the so-called *corpus iuris* of climate change. Paris 2015 mentions indigenous peoples twice, in the Preamble and in Article 7.5 regarding the recognition of their knowledge.

Recently, UN General Assembly (UNGA) resolutions 76/300 of 2022 and 77/276 of 2023 formally acknowledged the right to a clean, healthy, and sustainable environment as a human right. The latter includes the Request for an Advisory Opinion from the ICJ, which is the focus of this paper. In paragraph 393 of its AO, the ICJ states:

> Based on all of the above, the Court is of the view that a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing.

Concern for the rights of indigenous peoples has also been evident in initiatives supported by States like Vanuatu, whose population is nearly entirely ni-Vanuatu (94% indigenous Melanesians). As mentioned earlier, this country led the request for an Advisory Opinion at the International Court of Justice, supported by more than 130 States, to clarify international obligations regarding climate change. Although it was not an initiative made specifically on behalf of indigenous peoples, it clearly acknowledged their vulnerable situation and their role as directly affected communities. All of this will be explained in the section dedicated to this AO, ICJ 2025.

2.2. The Inter-American system

The Inter-American Court has adopted a progressive approach. Based on Article 26 of the American Convention, it has interpreted economic, social, cultural, and environmental rights as part of the broader legal framework, developing a concept of the environment as an independent legal good and as an "indispensable condition for the exercise of other rights" (Castillo, 2012: 195), especially when it concerns indigenous peoples whose survival relies on the ecological integrity of their territories. This perspective was reinforced through contentious decisions (for example, *Saramaka, Sarayaku*, or *Lhaka Honhat* cases, among others) and in the AO, OC-23/17, and AO, OC-32/25, as will be discussed below.

The following sections will examine in detail the developments of the Inter-American Court of Human Rights in this area, as well as the most recent responses from the universal system, particularly in light of AO, OC- 32/25, which will be compared with that of the ICJ, emphasizing, we reiterate, the treatment of the rights of indigenous peoples.

2.2.1. From the Mayagna (Sumo)Awas Tingni Community case and the protection of the environment as part of indigenous identity, to the right to a (healthy) environment

The IACtHR has progressively built a strong jurisprudence on the connection between the rights of indigenous peoples, their territory, and the environment, although climate change as a specific issue has emerged more recently. This connection has consistently informed its decisions and has helped indigenous peoples secure favorable outcomes. Compliance and, later, reparations, especially when problems are undeniable, are another matter. In the *Awas Tingni v. Nicaragua* case (2001), the Court recognized

the right to collective indigenous property over traditionally occupied lands, establishing a legal foundation for recognizing territory as a core aspect of cultural rights. Although the ruling did not explicitly mention the environment, it implied the protection of the environment as part of indigenous identity (para. 149, among others). This encompasses both the material and spiritual significance of land.

This perspective was also developed in *Saramaka v. Suriname* (2007), where the Court established that large-scale development projects such as hydroelectric, mining, or logging require the free, prior, and informed consent of the affected peoples (para. 134 et seq.). The connection between territorial integrity, ecological sustainability, and cultural survival was thus acknowledged, although the climate aspect was not yet included. The spiritual relationship with the land was further emphasized in *Sarayaku v. Ecuador* (2012), where installing explosives in ancestral territory without consultation or consent was found to violate not only property rights but also the value system and indigenous worldview (paras. 57, 105, 137, 219, 220, among others). The Court reiterated that the natural environment is part of the spiritual and cultural fabric of indigenous peoples.

In *Kaliña and Lokono vs. Suriname* (2015), the State's obligation to provide adequate ecological conditions for enjoying the territory was reaffirmed, especially in cases of overexploitation or pollution (paras. 92, 116, 217, among others).

The case of *Lhaka Honhat vs. Argentina* (2020) marked a milestone by recognizing the right to a healthy environment independently, for the first time, within the framework of Article 26 of the American Convention (paras 201 et seq.). The Court held that restricting access to water, illegal logging, and the expansion of cattle ranching practices had caused environmental degradation incompatible with the collective rights of the affected indigenous peoples. This decision established a clear precedent for the enforceability of the right to the environment from an ESCR perspective.[2]

2.2.2. Advisory Opinion OC-23/17. Environment and human rights

Among these emblematic cases mentioned above, the AO, OC-23/17, was initiated with the main goal of clarifying the scope of state obligations concerning the environment under the framework of the American Convention (Basaure, 2021, 141-63; López

[2] Outside the indigenous context, in the recent case of *La Oroya vs. Perú*, the IACtHR further examined the connection between health, the environment, and the State's regulatory responsibilities toward private actors. This case concerns severe lead and other metal contamination in the city of La Oroya and highlights the independent nature of the right to a healthy environment and the State's obligation to protect it through prevention, correction, and punishment measures. Although it does not involve indigenous peoples and communities, we believe it is relevant because the IACHR Court has stated that the standards applied here are applicable to other environmental vulnerability contexts, such as those faced by these communities confronting climate change. IACtHR, Inhabitants of *La Oroya v. Peru*. Judgment of November 27, 2023 (preliminary objections, merits, reparations and costs). Available at https://www.corteidh.or.cr/docs/casos/articulos/seriec_511_ing.pdf

Zamora, 2021; Siwior, 2021, 177-188). It was requested by Colombia. The questions were reformulated or clarified by the Court so that the first question was:

> According to the provisions of Article 1(1) of the Pact of San José, should it be considered that a person, although not located in the territory of a State party, could be subject to the jurisdiction of that State in the framework of compliance with environmental obligations? Regarding the second and third questions, the Court understands that Colombia is consulting the Court on the obligations of the States Parties to the Convention regarding environmental protection, in order to respect and guarantee the rights to life and personal integrity, both for damage occurring within its territory and for damage crossing its borders. Consequently, it decides to group its considerations related to these consultations to answer, collectively, what obligations the States have, based on the duty to respect and guarantee the rights to life and personal integrity, concerning environmental damage.

The Court went beyond merely contesting by interpreting the scope of environmental damage. It affirmed that a healthy environment is an autonomous right, stating that "environmental degradation can cause irreparable damage to human beings, and therefore a healthy environment is a fundamental right for the existence of humanity" (para. 59). as did the Working Group on the Protocol of San Salvador (para. 60) or the African Commission on Human and Peoples' Rights (ACtHPR) referred to in para. 61.

But additionally, it considered that this right to a healthy environment is an autonomous right (para. 63) and that its violation may entail international responsibility, even when the damage has not occurred within the national territory (principle of extraterritoriality), based on an interpretation of Article 1 of the Inter-American Convention (among others, paras. 75, 79, referring to the European Court of Human Rights). It also recalled the idea we expressed at the beginning of this work: the domino effect: its impact directly affects the enjoyment of other rights, such as health, life, access to water, and culture (110, 114, 120, 125, among others).

The AO, OC-23/17, was not specifically centered on indigenous peoples, but it referenced relevant precedents such as the *Yakye Axa, Sawhoyamaxa*, and *Sarayaku* cases (para. 108) and other UN documents (A/HRC/10/61, para. 67; A/HRC/22/43, paras. 53, 54, 64; A/HRC/25/53, paras. 64, 67, 242) to show that environmental protection has a distinct aspect when dealing with collective groups that have a vital and spiritual connection to their environment.

Furthermore, in this opinion, it reaffirmed the State's duty to prevent, mitigate, and punish significant environmental damage recognized by international law or the duty to ensure access to environmental justice (paras. 212, 218). It stressed the importance of the precautionary principle (paras. 175 et seq., 223, 242) and the preventive approach, including the access rights outlined in instruments like the Escazú Agreement (para. 218).

The AO, OC-23/17, thus laid a doctrinal foundation that enabled the Court to gain a clearer understanding of the environment as a key part of the inter-American protection system. As Siwior (2021, 185) states, "For the first time in history, an international human rights court examined thoroughly environmental law separately from single cases of environmental harm". However, it also raised several important questions and criticisms, as López Zamora noted, with the IACtHR, through this Opinion, "has gone beyond its competence" (2021, 238; Vitolo, 2020, 193 et seq.). This development was then reflected in AO, OC-32/25, which directly addresses the climate emergency and its effects on collective rights.

3. The first advisory opinion on climate change, AO, OC-32/25

The AO, OC-32/25, stems from a joint petition submitted by the States of Colombia and Chile on January 9, 2023, in which they asked the Inter-American Court of Human Rights to clarify the extent of State obligations regarding the climate emergency. In their petition, indigenous peoples were specifically mentioned alongside other groups (pp. 3, 5, and 12).

On May 29, 2025, the IACtHR issued its opinion, which was made public on July 3. While its previous opinion recognized the right to a healthy environment as an autonomous right, it now had to address specific issues related to climate change (emergency, literally). As with the previous AO, it reformulated (para. 29) the questions posed as follows:

> 1. What are the obligations and their scope to respect, guarantee, and implement necessary measures to realize (Articles 1(1) and 2 of the American Convention and Articles 1 and 2 of the Protocol of San Salvador) substantive rights such as the right to life and health (Article 4(1) of the American Convention and Article 10 of the Protocol of San Salvador), to personal integrity (Article 5(1) of the American Convention), to private and family life (Articles 11(2) and 17.1 of the American Convention and Article 15 of the Protocol of San Salvador), to private property (Article 21 of the American Convention), to freedom of movement and choice of residence (Article 22 of the American Convention), to housing (Article 26 of the American Convention), to water (Article 26 of the American Convention), to food (Article 26 of the American Convention and Article 12 of the Protocol of San Salvador), to work and social security (Article 26 of the American Convention and Articles 6, 7, and 9 of the Protocol of San Salvador), to culture (Article 26 of the American Convention and Article 14 of the Protocol of San Salvador), to education (Article 26 of the American Convention and Article 13 of the Protocol of San Salvador), and to enjoy a healthy environment (Article 26 of the American Convention and Article 11 of the Protocol of San Salvador) in light of the effects or threats generated or worsened by the climate emergency?
>
> 2. What are the obligations and their scope to respect, guarantee, and implement necessary measures to realize (Articles 1(1) and 2 of the American Convention and Articles 1 and 2 of the Protocol of San Salvador) procedural

> rights such as access to information (Article 13 of the American Convention), the right to participation (Article 23(1)(a) of the American Convention), and access to justice (Articles 8(1) and 25 of the American Convention) in the face of impacts generated or worsened amid the climate emergency?
>
> 3. What are the obligations and their scope to respect, guarantee, and implement these rights without discrimination (Articles 1.1 and 2 of the American Convention and Articles 1, 2, and 3 of the Protocol of San Salvador), including the rights of children (Article 19 of the American Convention and Article 16 of the Protocol of San Salvador), environmental defenders, women, indigenous peoples, Afro-descendant and peasant communities, as well as other vulnerable groups within the context of the climate emergency?

The Court, in establishing the sources of law it needed to rely on to answer the questions posed, "for the purpose of interpreting the American Convention and the Protocol of San Salvador," the American Declaration of the Rights and Duties of Man, was very open. It considered the *corpus iuris* composed of the "founding" instruments of the OAS and the system of protection for regional and international human rights.

In addition to the above, it deemed it necessary to consider the 1969 Vienna Convention on the Law of Treaties, "the international principles and norms, conventional and customary, on the environment and climate change, the jurisprudence and other decisions on these issues adopted at the international level". In short, as it explicitly states, "the relevant sources of international law that may contribute to fix the scope of the provisions to be interpreted," it includes the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the Convention on the Rights of the Child, and the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazu Agreement.

This broad approach to sources reflects a growing trend in the IACtHR: it goes beyond a literal interpretation of the ACHR and places it within an evolving normative framework. This reinforces the integration of environmental law with human rights, based on the *pro persona* principle and the interdependence of rights, legitimizing the use of non-binding international standards (soft law) as mandatory interpretative criteria for member states of the inter-American system.

In addressing the question of its competence, the Court states:

> It should be noted that the request for an Advisory Opinion does not aim to resolve a contentious case pending before the Court; its purpose is not connected to issues on which the Court has already issued a clear stance in its jurisprudence; nor does it seek to resolve questions of fact. This Court notes, on the contrary, that the request provides an opportunity to explore aspects of Inter-American public policy, considering the regional and global

> interests in defining the scope of State obligations regarding the impact of climate change on human rights.

We have reproduced this paragraph because it seems key: it emphasizes that the Court takes on a creative role, beyond resolving specific disputes, to strengthen principles of inter-American public law with global influence. This function brings the IACtHR closer to the advisory role of the ICJ, and we believe it raises questions about the extent of its interpretative authority over the States.

The oral phase of the consultative process took place in April and May 2024, in Barbados and Brazil respectively, with the participation of 9 States, 4 organs of the Organization of American States, 14 international organizations, 10 State institutions, 62 communities (including indigenous peoples), 178 NGOs, 70 NGOs along with individuals from civil society or academic institutions, 1 company, 134 academic institutions, and 131 individuals from civil society: a total of 613 actors. In short, the Court not only listened to States but also to other actors, which reinforces its value and aligns with the principle of "environmental democracy" mentioned by the IACtHR.

Recognizing that climate change is a direct threat to human rights and an emergency, it includes some declarations that faced significant opposition, having been approved with four votes against and five in favor. One of these relates to recognizing nature as a "collective subject of public interest," without explicitly affirming, at least clearly, the rights of nature as stated in the constitutions of Ecuador and Bolivia, adopting a position that is as close to ambiguous as possible without fully committing. We will revisit this issue later when discussing the right to a healthy environment (AO, OC-32/25, section VI, B.1), as it is within that context that this matter is addressed, without losing focus on the impact on indigenous peoples.

Before proceeding, it should be emphasized once again that our focus is not on the general analysis of the AO, but rather on how the Court, in answering the questions raised, refers to the rights of indigenous peoples. This does not prevent us from noting a kind of outline of the opinion.

After addressing the climate emergency, including its causes, impacts, international response, normative developments in OAS States, litigation, and decisions on climate issues, he then discusses the obligations of States in the context of the emergency. Here, the Court divides its analysis into four main groups of issues.

> 1. The scope of the general obligations on human rights in this climate emergency framework includes the obligations to respect rights, adopt measures for the progressive development of ESCR, and implement domestic law provisions and cooperation obligations (paras. 218-265). 2. Obligations derived from substantive rights, which include: a. the right to a healthy environment—protecting Nature as a subject of Rights and preventing irreversible damage to the climate and environment as a norm

of ius cogens, as well as the right to a healthy climate (referring to the protection of present and future generations, Nature, or rights derived from the right to a healthy environment) (paras. 266 to 457); b. other affected rights -both common and specific-such as the rights to life, integrity, private property, housing, freedom of residence and movement, water, food, work, social security, culture, and education.

3. Obligations stemming from procedural rights (where ecological democracy, science, and local, traditional, and indigenous knowledge are emphasized, as well as the issue of human rights defenders in general and environmental rights in particular, which will be highlighted later on) (paras. 458 to 588). 4. The obligations arising from the principle of equality and non-discrimination (addressing the impact on and differentiated protection of certain groups) (paras. 588 to 629).

3.1. Indigenous peoples and communities in the AO, OC- 32/25

The IACtHR frequently references indigenous peoples, either directly or through citations of documents or issues in its footnotes. It is not an exaggeration to say that many of the statements concerning the climate emergency and its impacts have already been discussed within the context of protecting the rights of these peoples in several of its rulings. As we will see below, the Court reaffirms its previous jurisprudence on prior consultation and the protection of ancestral lands, framing these issues within the context of the climate emergency and establishing reinforced obligations related to intergenerational equity or the aforementioned environmental democracy. This section brings together those dimensions, impacts, consultation, and the connection with self-determination in a continuous discussion.

First, it recognises indigenous peoples as one of the groups most intensely and widely affected (para. 26), which necessitates the adoption of targeted measures to achieve equality (para. 223). The IACtHR adopts a broad approach in defining who are the specifically protected subjects in the face of the climate emergency, and therefore differential measures must be implemented in all actions taken by the States. This differentiated protection must be especially considered for indigenous peoples because they "depend on ecosystems exposed to the effects of climate change and to extreme meteorological phenomena such as floods, droughts, heat waves, forest fires and cyclones" (para. 605).

The impact on indigenous peoples and their lands is disproportionate (para. 605) because their ecosystems are more vulnerable to climate change, extractivism, and land grabbing. Consequently, the State has an obligation to improve the condition of these peoples' territories and dwellings by strengthening the recognition and participation of their representative institutions in the design of studies, records, and statistics, as well as in the development of public policies and strategies (para. 606, among others).

It highlights, among other impacts, the effect on the use and enjoyment of property and housing (para. 407) of communal property that, once destroyed, cannot be restored.

This reinforces an obligation of result, not just of means, aligning with the increasingly stringent standard of due diligence developed by international environmental law, as also noted in the AO, ICJ 2025.

Therefore, there is also an obligation to obtain their free, prior, and informed consent (para. 608; summary of paras. 610-613). The Court also recalls (para. 515) the obligation to conduct an Environmental Impact Assessment (para. 514), providing information in accessible formats and languages (para. 522, reiterated in para. 610), which leads to effective participation (para. 537). Free, prior and informed consent here is not just a procedural step; it is a concrete form of exercising collective self-determination in climate decision-making. If, as emphasised in para. 593, it was already clear during both the oral and written phases that they are a particularly vulnerable group, the Court confirms this again in para. 596 (referring to children and adolescents), and repeats it in paras. 598 and 599, the latter referring to mental illnesses related to "eco-anxiety". For indigenous communities, that eco-anxiety intertwines environmental loss with cultural and identity loss. This further demonstrates that the impact is different for this group (which is later also discussed in paras. 614 and following).

But, the Court does not define eco-anxiety as such but refers to it indirectly through other international instruments, including the General Comments of the UN Committee on the Rights of the Child and the amicus curiae submitted by the UN Special Rapporteurs on Toxics and Human Rights (Marcos Orellana), Human Rights and the Environment (David Boyd), and the Right to Development (Surya Deva) on 22 November 2023. These documents describe the growing connection between environmental harm and mental health, particularly among children, identifying eco-anxiety as a psychological effect of the climate crisis (p. 52, para. 154).

Witnessing how their lands and lives are impacted has also made them advocates for the environment (para. 571). This involves risks and a need for protection, especially for women, who face specific dangers when fighting for this right (para. 572). This further increases their vulnerability and creates a state obligation to implement special measures to safeguard them in their claims (para. 576; Gómez-Isa and Urrutia, 2025). It is undeniable that a gender perspective runs through all their arguments, both in their struggle for rights and in the science they present. Point 20 of the AO, OC-32/25 highlights the existence of specific obligations due to the particular vulnerability of these peoples (approved by four votes to three). Cultural continuity, gender justice and collective consent thus converge as key dimensions of indigenous self-determination**.**

3.2. Indigenous knowledge, environmental democracy, and new contributions

A key issue is acknowledging and utilising the knowledge of these peoples (paras. 107 or 479), as noted by some speakers, including Bruyère. In the Paris Agreement, in its Article 7.5, and in other UN documents (such as the FAO, note 846), it is highlighted that the best scientific information available should include local, traditional, and indigenous knowledge "where appropriate". What appears here as 'new' is not the term itself, but its projection onto the climate emergency within the Inter-American reasoning. The Court

takes this further, linking indigenous knowledge not only to adaptation and mitigation but also to a broader notion of environmental democracy, where their epistemologies and community practices are recognised as sources of guidance for climate action.

For the Court (para. 215), responding to the climate emergency requires ongoing dialogue with relevant knowledge, especially when implementing protective measures (para. 283). When addressing the restoration or regeneration of systems, or non-regression, the Court emphasises that the "best available science" must be considered. It recognises that indigenous peoples play a vital role in preserving and sustainably managing ecosystems due to their knowledge and connection with nature (para. 339, 340). It acknowledges that indigenous knowledge is not ancillary but complementary to scientific expertise, forming part of the "best available knowledge" required to face the climate emergency.

Therefore, it is necessary to recognise, alongside this science, the value of traditional, local and indigenous knowledge. And this must be taken into account when establishing mitigation strategies, protecting ecosystems and biodiversity, listening to these communities and involving them in decision-making (para. 366). This forms part of what the Tribunal refers to as 'environmental democracy' (paragraph 368). It had mentioned this in its AO, OC-23/17.

But, in AO, OC-23/17, the Court did not provide a formal definition of environmental democracy but explained it through its core elements: access to information, public participation, and access to justice in environmental matters (para. 224). Now, AO-32/25 extends this concept to the climate realm, encompassing the protection of the climate system, the use of science in decision-making, non-regression, and the safeguarding of environmental defenders. But again, the IACtHR does not provide us with a definition or concept.

For indigenous peoples, this idea is directly linked to their right to decide on their lands and knowledge: everyone participates, but those most affected have the final say. This notion of environmental democracy is a novel addition in AO, OC-32/25. Compared to AO, OC-23/17, the advancement, we emphasize, lies in integrating this framework into the climate emergency and prioritizing it for historically marginalized communities. It is not limited to the right to participate; rather, the Court insists that communities' effective participation, "especially those that have been historically excluded", be guaranteed.

The right to political participation, ensuring it is effective, is included in point 16 of the unanimously accepted ruling.

Returning to the question of their knowledge, in paras. 471 et seq., in section C.2., "Right to Science and to the recognition of its knowledge", the Court invokes Art. XIII of the Declaration of the Rights and Duties of Man. It states that science must be protected (paras. 477, 483, or 484) and that measures must be taken to protect this knowledge by collecting it (para. 476). Again, alongside the best science, there is their knowledge, and especially that of women (para. 482). Point 14 of the AO, OC-32/25 (approved by eight votes to one) refers to the human right to science and the recognition of local knowledge,

in harmony with Art. 26 of the American Convention and Art. 14.2 of the Protocol of San Salvador. This connection between science and indigenous knowledge shows a step forward: it recognizes epistemic plurality and the coexistence of different ways of producing and transmitting environmental understanding. Placed against AO, OC-23/17, this confirms a gradual move from participation to shared governance in climate matters.

Of course, what land represents, the damage and destruction of its culture and heritage is reflected in this AO (paras. 450, 451, among many others). In the context of the climate emergency, there is a special obligation to protect their culture. Therefore, when plans are developed, they must include the affected communities, and this obligation extends to future generations through the concept of generational equity (para. 306), because it is about safeguarding the transmission of heritage and ensuring its continuity. All of this has already been affirmed by the IACtHR in the *Yakye Axa* case, in AO, OC-23/17, as well as in the *Awas Tingni* and *Lhaka Honhat* cases. Thus, intergenerational equity is not abstract: it expresses the duty to protect cultural continuity as part of the environmental and human rights "fabric".

From the above, we believe that the doctrinal "novelties" of the IACtHR primarily involve the consideration of the so-called "eco-anxiety" in the way we have expressed it above. Let's remember that, in this Opinion, eco-anxiety enters the Inter-American climate discussion as part of the harm that needs to be prevented and repaired. This, when applied to children as well, leads us to anticipate future claims for psychological and mental damages, in addition to the material damages already recognized by the Court in many of its decisions. For indigenous peoples, this dimension takes on a deeper meaning: the loss of ecosystems also threatens language, ritual, and collective identity.

Secondly, there is the concept of "environmental democracy," which pertains to the effective participation of the most vulnerable groups. Applied to indigenous peoples, it implies genuine co-decision power regarding climate and environmental measures that affect their territories.

Thirdly, regarding the science and knowledge of these peoples, if it also highlights the knowledge of women, the Court's scope or innovation becomes more evident. By linking this human right to science and the recognition of knowledge with the obligation to collect, preserve, and value indigenous knowledge, its contribution surpasses what has been done so far, including the UN documents mentioned by the AO, OC-32/25.

Regarding the meaning of land that the Court has already expressed since the *Awas* case, now, the AO, OC-23/25, reinforces it with intergenerational equity. Finally, the imposition of reinforced obligations for States in terms of protection for defenders of the rights of indigenous peoples with a gender focus. This closing emphasis on protection for indigenous women and defenders ties back to the broader principle of environmental democracy as shared responsibility and care.

One important aspect that we consider necessary to comment on, even briefly, is the Rights of Nature. The Court states in the AO, OC-23/25, that it "will specify its

position with respect to the protection of Nature as a subject of rights" (para. 269) within the scope of the substantive rights affected by the climate emergency and, specifically, in the right to a healthy environment.

In point 7 of its Opinion (adopted by majority, with four votes in favor and three against), the Court rules that:

> The recognition of Nature and its components as subjects of rights is a legal development that enhances the protection of ecosystems' integrity and functionality over the long term. It provides effective legal tools to address the triple planetary crisis and helps prevent existential harm before it becomes irreversible. This view illustrates a modern expression of the principle of interdependence between human rights and the environment, reflecting a growing international trend to strengthen ecological protection against current and future threats, in accordance with paragraphs 279 to 286.

In our opinion, this does not constitute a clear affirmation or full incorporation into the Inter-American corpus juris. We do not believe that the Court explicitly proclaims or affirms the rights of Nature as such, similar in argumentative terms to constitutional experiences such as those of Ecuador or Bolivia, but rather adopts an ambiguous position, without reaching a definitive conclusion on this integration. As we have pointed out above, the Court refers to Nature as a 'collective subject of public interest,' which indicates an opening rather than a firm and definitive position. This approach is outlined in paragraphs 269 to 286, within the framework of the right to a healthy environment.

The Court notes that environmental protection is justified not only by the risk that environmental degradation could harm humans but also by the intrinsic value of ecosystems and their components, which support life on Earth. It also emphasizes that this view aligns with key principles of international environmental law, such as intergenerational equity, the precautionary principle, and the duty of prevention. These principles, which become customary when significant damage occurs, reflect an evolving legal and judicial trend recognizing the legal personality of nature in Latin America and other regions (para. 286). The Court does not oppose this trend but rather "welcomes" it, so to speak. This discussion, while still open, shows how the Court's reasoning aligns, without merging, with indigenous worldviews that see Nature as a living subject intertwined with human existence.

However, this ecocentric perspective is not presented as a mandatory or fully binding rule, but rather as an evolving normative option supported by internal examples and best practices. Its effectiveness depends on its ability to strengthen legal tools against significant environmental threats. The Court clarifies that this recognition does not conflict with the Inter-American legal framework but rather complements it by endorsing the principle of interdependence between human rights and the environment (para. 285). On the surface, this approach appears to align with the worldview of indigenous peoples, who, based on their cultural, spiritual, and philosophical systems, view the earth, water, animals, and forests as living beings with agency and dignity. The Court emphasises this connection by

noting that indigenous peoples have historically been guardians of ecosystems, possess ancestral knowledge crucial to conservation, and should be considered key actors in the development of public policies, adaptation plans, and mitigation strategies (paras. 366, 367, and 368).

To strengthen our argument, we will highlight paragraph 452 of the AO, OC-23/25, which we reproduce below:

> 452. States also have an obligation to refrain from adopting and implementing climate mitigation or adaptation measures that may affect cultural and natural heritage. (...)

The question we leave for reflection is: how does this align with the rights of nature? The IACtHR explicitly warns that States must avoid adopting climate mitigation or adaptation measures that could harm the cultural heritage of indigenous peoples, even if such measures aim to protect the environment.

Rather, it appears that ecocentric regulatory development cannot be enforced on indigenous collective rights, especially when their culture, identity, or spiritual connection to the land is at risk. Therefore, although the Court does not explicitly **prioritize** Nature over indigenous peoples, the practical outcome of its reasoning effectively **prioritizes** the latter by limiting state environmental actions if they do not **honor** the consent and self-determination of the affected communities.

After highlighting the ideas we consider most relevant in AO, OC-32/25 of the IACtHR, we move on to the ruling issued by the ICJ in The Hague a few days later.

4. Indigenous peoples in the opinion of the International Court of Justice of July 2025

4.1. Background. Indigenous participation in the opinion of the International Court

The AO requested from the ICJ in 2023 came from an initiative by small Pacific island states, especially Vanuatu, worried about the existential impacts of climate change on their territory, population, and sovereignty.

On March 29, 2023, the UNGA adopted resolution 77/276, asking the ICJ to interpret "the obligations of States under international law to ensure the protection of the climate system from greenhouse gas emissions". This resolution notes, in its Preamble, that indigenous peoples are among the groups most affected by the climate crisis, along with young people, future generations, and coastal communities.

The legal context of this request is quite complex. Although the *corpus iuris* includes the UNFCCC, the Kyoto Protocol, and the Paris Agreement (along with other applicable regulations), many legal scholars have criticized many of its provisions, especially those

of the Paris Agreement, for being based on flexible commitments ("progressive efforts", "nationally determined contributions") and lacking mechanisms to enforce noncompliance. Therefore, while the Paris Agreement is generally legally binding (see UNFCCC website), the enforceability of its substantive obligations remains a topic of debate (Bodansky, 2016a, 25 (2); 2016b, 288-319; Bodansky, Brunnée, and Rajamani, 2017). In requesting this opinion, the UNGA acknowledged that a clearer interpretation of these obligations is needed to better guide states and national and international judicial bodies.

The attached documentation provided by the UN Secretary-General with the question is extensive and divided into several sections: Part I is the request for the Advisory Opinion, Part II includes multilateral treaties, Part III contains scientific reports, Part IV covers documents related to the development of international law, Part V includes materials related to the protection of the climate system and other parts of the environment, Part V also covers the Outcomes of United Nations conferences and follow-up processes along with related documents, Part VII pertains to the Law of the Sea, and Part VIII focuses on Human Rights and Climate Change. Along with the request, the Introductory Note of June 30, 2023 ("Introductory Note (documents received from the Secretariat of the United Nations)") includes Section E, which contains the Report of the Special Rapporteur on the rights of Indigenous Peoples.

Admittedly, the UNGA question does not explicitly mention these people, but it has been shown that they are a group particularly affected by the negative consequences of non-compliance with rules related to protecting the climate system for both present and future generations.

The ICJ website lists over 156 written submissions from States, groups of States, and organizations. During the oral hearings held between March and April 2024, it became clear that there were different views on the obligations of States. For example, and without trying to cover every scenario, some argue for limited climate obligations based on treaties (the US, the UK, Germany, among others), while others support more ambitious, binding, and results-focused rules (Vanuatu, Kenya, Samoa, among others).

The voices of indigenous peoples were heard through statements like that of the Melanesian Spearhead Group (MSG), [3] which said in its *Written Statement* (WS, MSG, p. 5): "Melanesian peoples are also united by a fundamental cultural value: the inseparability of peoples and their environments" (para. 46) or "their place is their identity" or "In many Melanesian belief systems, all elements of nature, of which human beings are only one, are interconnected throughout the cosmos" (para. 48). Paragraph 50 reproduces the words of a member of the Kanak community.

> "In the West, they see a separation between man and the environment. In the Kanak world, there is no space. We are all of these things. We are them. We

[3] Cfr. WS, MSG, footnote 3: Melanesia is a subregion of the Indigenous Pacific, which also includes the subregions of Polynesia and Micronesia (…) While the majority of the population in the subregion identify as Melanesian, there are also other Pacific peoples, such as Polynesians who are also indigenous to this subregion.

> are one of the elements that make up the environment. We are the Sharks, we are the trees, we are the stones, we are all that. There is no space, so when we disturb or hurt the environment, we hurt ourselves. That's how it is" (vid., para. 50).

In this document, there are almost fifty references to indigenous peoples.

Other states, such as Tuvalu, or groups of states, such as the African Union, emphasized that climate change violates not only the basic social rights of indigenous peoples but also their worldview, spiritual relationship with the land, collective right to territory, right to self-determination, and their own means of subsistence. In short, it infringes on rights contained in the 1966 Covenants and other protections for these peoples, citing, in addition, the jurisprudence of the IACtHR (as in footnote 175 concerning the *Lhaka Honhat* case).

Similarly, and this time with reference to Cançado Trindade (para. 76), it is worth highlighting the brief of the Commission of Small Islands States, which refers to the special impact on indigenous peoples on almost thirty occasions.

Thus, although the question submitted to the ICJ does not explicitly mention "indigenous peoples," it is evident that the Court could have provided more detail on how climate change affects these peoples.

The ICJ released its Opinion on July 23. In its table of contents, it references indigenous peoples (along with the rights of women and children) in the section on the obligations of States under international human rights law (p. 5). It later mentions these people again when discussing the Paris Agreement (para. 374, Preamble to the Agreement), especially regarding the unequal impact on their rights' enjoyment (again alongside those of women and children in paras. 382 and 384). They are specifically mentioned five times.

In general, we can reaffirm that it does not provide special reparation to these people, but rather to the extent that they are particularly vulnerable groups and without reference to differentiated guidelines, unlike the IACtHR, as we have highlighted above. The AO, ICJ 2025 missed the opportunity to include this approach. However, it should be noted that they benefit from the obligations that the ICJ affirms are applicable to States.[4]

[4] Summarizing the ICJ's 2025 Advisory Opinion, we highlight that it unanimously declared that international law imposes binding obligations on States to protect the climate system and the environment from anthropogenic emissions: (i) conventional (UNFCCC, Kyoto, Paris): mitigate and adapt, cooperate in good faith, act with due diligence, submit and strengthen successive NDCs, and that Annex I States must exercise leadership in reducing emissions; (ii) customary: prevent significant environmental damage and cooperate continuously and effectively, in accordance with the principle of common but differentiated responsibilities; (iii) specific treaties (Vienna/Montreal-Kigali, CBD, UNCCD, UNCLOS): take measures to protect the climate, biodiversity, soils, and the marine environment from climate impacts; and (iv) human rights: ensure the effective enjoyment of rights through adequate climate measures. Any violation constitutes an internationally wrongful act that gives rise to State responsibility (cessation, guarantees of non-repetition, and full reparation, with a continuing duty to comply.

We believe, however, that given the importance of this advisory opinion, the AO, ICJ 2025 could have been more explicit about its impact on these people, especially considering the vulnerability highlighted by Judge Sebutinde in paragraph 6 of her opinion, which refers to paragraph 11 of the AO, ICJ 2025.

It is also notable that Judge Aurescu cites the 2007 United Nations Declaration on the Rights of Indigenous Peoples (in paragraph 30 of his opinion) and the 2016 American Declaration on the Rights of Indigenous Peoples when he laments that the ICJ "has once again shown itself to be overly cautious even in the face of compelling evidence, and has failed to explicitly conclude that the right to a clean, healthy, and sustainable environment is already a norm of customary international law". In the judge's view, this can be inferred, among other things, from state practice, referencing agreements such as Stockholm 1972, Rio 1992, the 2007 Declaration (and the American Declaration in the footnote), among others.

Charlesworth makes a valuable contribution with extensive reference to the recently issued AO, OC 32/25 of the IACtHR. From the index he provides, we already see his concern for the special impact of climate change on indigenous peoples, without forgetting women, children, the disabled, or those experiencing intersectional discrimination, which is the approach adopted by the IACtHR.

Starting with the question: "Is there a right to a clean and healthy environment in international law?", Charlesworth states that "It should be noted that the Inter-American Court of Human Rights (IACHR) has clarified that the right to a healthy environment is distinct from the environmental aspect of the protection of other rights," referring specifically to paragraph 274 of the aforementioned AO of the IACtHR.

Furthermore, she highlights that this AO, OC-32/25 emphasizes that climate change worsens inequality and poverty. This is because climate change limits access to food, drinking water, sanitation, housing, medical care, education, and other goods and services essential for a dignified life (paragraph 15) in a differentiated way. She is really the only judge who recalls the special bond, the material and spiritual significance of the land for indigenous peoples, their threatened intangible cultural heritage, and the forced displacement that leads to the loss of their identity. And she quotes the words of a member of the Tebunginako community in Kiribati.

> "People of Abaiang, including my village are connected to the sea and to the land. Imagine that in the past, in the old place, it was a big community with big land. Now since we relocated, we are scattered. Broken. In the past, all this was in the vast place. There was a bond between us because they live closely, now it is not the same. Now we all live far apart" (para. 17).

Judge Charlesworth concludes in paragraph 29 that: "In light of all these considerations, in my opinion, States have a particular obligation to protect the human rights of vulnerable groups. This requires paying special attention to the potentially discriminatory effects of measures taken to respond to climate change".

It should be noted that the ICJ is not primarily a human rights court, nor does it grant standing to individuals. It is not an institution specializing in these rights, but the scope of Chapter II of its Statute (Jurisdiction of the Court) has led to judgments and opinions concerning this matter, as it did its predecessor, the Permanent Court of International Justice. Since the Corfu Channel case in 1948, the Court has addressed issues related to human rights and serious violations. The case before us now has significant human rights implications.

In the AO, ICJ 2025, it has been stated that states, under international law, are obligated to prevent significant environmental harm, cooperate internationally, and protect fundamental rights in light of increasing climate risks for current and future generations.

This AO, ICJ 2025 was meant to address several questions, and any strengthening of States' obligations regarding the protection of the climate system is welcome in defending the living space of indigenous peoples. However, in our view, the impact of climate change, which has serious repercussions on states and individuals, calls for more focus on the human aspect, especially that of the most vulnerable groups, as AO, OC 32/25 states.

We have emphasized from the outset that our goal was to compare both opinions solely from the perspective of strengthening the rights of indigenous peoples, and we believe that in the AO, ICJ 2025, we will need to rely more on what we can interpret as general obligations rather than on explicit references to these peoples. As mentioned above, the Opinion explicitly mentions indigenous peoples five times, identifying them as groups most vulnerable to climate change, but it does not establish differentiated standards, which is lacking, especially after AO, OC- 32/25.

4.2. The state without territory: consequences for indigenous peoples

What concerns us, and here we would like to refer specifically to Tomka's opinion, is the ICJ's ex cathedra assertion that "In the view of the Court, once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood" (para. 363). In this regard, following Tomka's idea,[5] we leave these questions: Does this assertion not imply that the Court is exceeding its powers? Is it not anticipating the law before the legislator establishes it, as Tomka suggests? Then, ultimately, is it acting as a legislator?

Along with them, considering the importance of land for indigenous peoples and without expanding on the argument, we believe that the consequences for them are

[5] Tomka states in para 4.: But the role of the Court, all the more so in the context of an advisory opinion, is to clarify the law, not to "anticipate the law before the legislator has laid it down" (Fisheries Jurisdiction (United Kingdom v. Iceland), Merits, Judgment, I.C.J. Reports 1974, pp. 23-24, para. 53).; Then, in para. 10, the judge states: "The Court had not been asked by the General Assembly to do so, to pronounce itself upon statehood as such was not only unwise, but also unnecessary" and in para. 11: "The Court should have given the General Assembly the courtesy of a thorough, rigorous, and well-reasoned exposition…Instead, we have descended upon the Great Hall of Justice not unlike the high priestess Pythia once did at the Temple of Apollo — uttering a single sentence, the brevity of which belies its astonishing ramifications.

significant and could justify resettlement policies that lack cultural safeguards. While for states at risk of disappearing due to rising sea levels, this might be seen as a guarantee of continuity (they remain international entities even without territory), for indigenous peoples, it represents a loss that deeply impacts their identity.

Any solution must ensure a strong connection to the land as a condition for cultural survival; any legal framework on climate change must recognize and respect the right of peoples to self-determination, since indigenous peoples' identity can only be exercised in relation to their land; it must uphold the continuity of their cultures and the unique spiritual connection they have with the land.

Perhaps the ICJ, in our opinion, could have added (if it wishes to maintain this idea of a state without territory) that, although the continuity of the state cannot be ruled out (always under these exceptional circumstances), any interpretation in this regard would require an inter-state agreement. If the Court affirms that territory is not solely a functional element of sovereignty, it should have noted that territory is an essential space for the cultural identity and survival of indigenous peoples and communities. Therefore, there is an obligation to prevent the loss of territory through urgent climate action, while ensuring solutions that respect the self-determination and cultural rights of affected people.

5. As a final reflection: some convergences and divergences (from an indigenous perspective)

The Advisory Opinions of the ICJ and the Inter-American Court of Human Rights provide different frameworks for protecting indigenous peoples amid the climate crisis. The former reaffirms universal principles: *erga omnes* obligations, potential evolution toward *jus cogens* norms, and the applicability of Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), which could be strategically valuable for future international litigation and claims. What we find lacking is that the ICJ does not apply these differentiated standards, especially when it devotes sections to human rights affected by climate change.

However, from the perspective we have taken in this work, we see the AO, ICJ 2025 as somewhat abstract, as it overlooks differentiated standards and fails to give proper weight to the cultural, spiritual, and territorial dimensions of indigenous identity. The mentioned "ex cathedra" statement on the continuity of the State without territory, noted by Judge Tomka, exemplifies this uncertainty: although it addresses sovereignty, it neglects the fundamental connection between land and people, which is central to the right to self-determination. The IACtHR has been noted for its creativity, sometimes criticized as normativist, which makes the ICJ's caution even more pronounced.

In response to this, the AO, OC-32/25, adopts a pro-persona model, explicitly recognizing the autonomous right to a healthy environment and linking it to life, health, culture, and ancestral lands. It establishes specific obligations: prior consultation, territorial protection, and access to environmental justice, incorporating the principles of non-regression and "environmental democracy". Additionally, it introduces the

concept of "eco-anxiety" in its climate reasoning and emphasizes the State's strengthened responsibility toward historically marginalized groups, paving the way for positive measures. Undoubtedly, one key aspect to highlight is the absence of indigenous knowledge alongside the best science: here again, the Courts diverge.

From an indigenous perspective, this comparison shows that, while the ICJ provides normative legitimacy and universality, the Inter-American Court offers practicality and an intercultural approach. In practice, both are vital, but they are not enough on their own: the full protection of indigenous peoples requires the coordination of global principles with effective safeguards that recognize that indigenous identity is not exercised in the abstract but in close connection with the land, as we have earlier noted. True legal innovation does not consist in reiterating general principles, but in translating them into mechanisms that preserve specific cultures and lives in the face of existential threats.

We believe that, based on these opinions, the likelihood of increased internal litigation will rise. This is highly probable and could be a significant consequence of both AOs. Although these opinions do not have the force of a judgment, their moral and political importance cannot be overlooked, and we wonder whether, following these opinions, in a hypothetical dispute before the ICJ (the same could be said of many national forums), the court would issue a different ruling. Of course, we must also consider the question of jurisdiction in favor of the ICJ. This is a crucial issue that has been widely debated in many forums.

In the end, the success of the international climate regime will depend on its ability to safeguard the land, identity, and cultural survival of those who have preserved it for the longest time. Here, indigenous words and knowledge deserve significant recognition at the international level (not just regionally). They are not an afterthought but a central guide for a fair and sustainable future.

References

BASAURE MIRANDA, I. M. (2021). "El derecho a un medio ambiente sano en el sistema interamericano de derechos humanos", *Estudios de Deusto, 69*(1), 141-63. https://doi.org/10.18543/ed-69(1)-2021

BODANSKY, D. (2016a). "The Legal Character of the Paris Agreement", *Review of European Community and International Environmental Law, RECIEL*, *25*(2) 2016.

BODANSKY, D. (2016b). "The Paris Agreement: A New Hope?", *The American Journal of International Law,* Vol. 110, No. 2 (April 2016), pp. 288-319.

BODANSKY, D., BRUNNÉE, J. and RAJAMANI, L. (2017). "Paris Agreement", *International Climate Change Law* (2017; online edn, Oxford Law Pro). https://doi.org/10.1093/law/9780199664290.003.0007

CASTILLO TORRES, S. E. (2012). "Reconocimiento y garantías del derecho a un ambiente sano y ecológicamente equilibrado", *LEX FACULTAD DE DERECHO Y CIENCIA POLÍTICA*. Facultad de Derecho de la Universidad de Guantánamo.

GÓMEZ ISA, F. y URRUTIA, G. (eds.) (2025). *Human Rights and defenders under siege*. Elgar Publishers. https://doi.org/10.4337/9781035355921.fm3

IGLESIAS VÁZQUEZ, M. A. (2021). "Los pueblos indígenas y la protección del medio ambiente: la indigenización del derecho internacional, los derechos bioculturales y los derechos de la naturaleza", *Cadernos de Direito Actual*, *16*, pp. 216-240.

INTER-AMERICAN COURT OF HUMAN RIGHTS (2023). *Case of the Residents of La Oroya v. Peru*. Judgment of November 27 (preliminary objections, merits, reparations, and costs).

INTERNATIONAL COURT OF JUSTICE (2025). Advisory Opinion, 23 July. Obligations of States in respect of climate change.

INTERNATIONAL COURT OF JUSTICE (2025). Advisory Opinion, 23 July. Obligations of States in respect of climate change. Written Statement of the Melanesian Spearhead Group.

INTERNATIONAL LABOR ORGANIZATION (1989). Indigenous and Tribal Peoples Convention, 1989 (No. 169).

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, ITLOS (2024). Obligations of States to prevent, reduce and control marine pollution and to protect and preserve the marine ecosystem from the impacts of climate change. Advisory Opinion of 21 May 2024.

LÓPEZ ZAMORA, L. (2021). "Normative Perplexities and the Limits to the Advisory Powers of the Inter-American Court of Human Rights - Some Lessons from the Adoption of the Advisory Opinion Oc-23/17 on the Environment and Human Rights", *Anuario Español de Derecho Internacional*, Vol. 37.

SIWIOR, P. (2021). "The Inter-American Court of Human Rights Advisory Opinion OC-23/17 on the Relationship between Human Rights and the Environment", *Review of European and Comparative Law*, *46*(3), 177–188. https://doi.org/10.31743/recl.11915

UNITED NATIONS (1987). General Assembly. Doc. Res A/42/427 of August 4, 1987 "Development and International Economic Cooperation: Environment. Report of the World Commission on Environment and Development. Note by the Secretary-General". Report "Our Common Future".

UNITED NATIONS (1992). Convention on Biological Diversity. Retrieved from https://www.un.org/en/observances/biological-diversity-day/convention

UNITED NATIONS (1992). Department of Economic and Social Affairs. Division for Sustainable Development. "Agenda 21", Retrieved from https://sdgs.un.org/publications/agenda21

UNITED NATIONS (1992). United Nations Framework Convention on Climate Change. Retrieved from: https://unfccc.int/

UNITED NATIONS (1997). "Kyoto Protocol". Framework Convention on Climate Change. FCCC/CP/1997/L.7/Add.1 10 December 1997. Retrieved from https://docs.un.org/en/FCCC/CP/1997/L.7/Add.1

UNITED NATIONS (2006). Human Rights Council. Resolution 1/2 of June 29, 2006. Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53), Part One, chap. II, sect. A.

UNITED NATIONS (2007). General Assembly. Resolution adopted by the General Assembly [without prior referral to a Main Committee (A/61/L.67 and Add.1)] 61/295, September 13, 2007. "United Nations Declaration on the Rights of Indigenous Peoples".

UNITED NATIONS (2009). Human Rights Council. A/HRC/10/61, January 15, 2009, "Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights".

UNITED NATIONS (2015). OHCHR. Fact Sheet 10: "Indigenous peoples and the environment," New York and Geneva, 2015.

UNITED NATIONS (2018). Escazú Agreement. United Nations, *Treaty Series*, Vol. 3388, C.N.195.2018.TREATIES-XXVII.18 of 9 April 2018 (Opening for signature) and C.N.196.2018.TREATIES-XXVII.18 of 9 April 2018 (Issuance of Certified True Copies).

UNITED NATIONS (2022). General Assembly. Doc. A/RES/76/300, August 1, 2022, "The human right to a clean, healthy and sustainable environment".

UNITED NATIONS (2023). General Assembly. Doc. A/RES/77/276, April 4, 2023, "Request for an advisory opinion from the International Court of Justice on the obligations of States with regard to climate change".

UNITED NATIONS (2025). *UN News*. April 25, 2025, "Human rights" (Last accessed 10/11/2015). Retrieved from https://news.un.org/es/story/2025/04/1538301

VITOLO, A. (2020). "El Valor de las Opiniones Consultivas de la Corte Interamericana de Derechos Humanos a la Luz de las OC-21/14 y 23/17 (El 'Canto del Tero' u 'Otro Ladrillo más en la Pared de la Doctrina del 'Control de Convencionalidad')" *Revista Jurídica Austral*, *1*(1), pp. 193 y ss.

Received: 30th July 2025
Accepted: 26th October 2025