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**ENVIRONMENTAL SUSTAINABILITY BEFORE NATIONAL COURTS:
INTERGENERATIONAL EQUITY AND ITS FUTURE AFTER THE ICJ ADVISORY
OPINION ON CLIMATE CHANGE****

SUMMARY: 1. Introduction. – 2. Intergenerational Equity Before National Courts: Selected Cases. – 3. Preliminary Conclusions: The Application of Intergenerational Equity by National Courts. – 4. The Debate on the Nature of Intergenerational Equity in International Law. – 5. The ICJ Advisory Opinion on the Obligations of States in respect of Climate Change. – 6. Prospective Conclusions: The Application of Intergenerational Equity by National Courts after the ICJ's Advisory Opinion.

1. Introduction

By its very nature, the concept of sustainable development is intrinsically intergenerational, as it requires assessing the legitimacy of choices made by present generations also in light of their effects on future generations¹. The link between sustainable development and the intergenerational dimension was first highlighted in *Our Common Future* – the 1987 Report of the United Nations World Commission on Environment and

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¹ As is well known, the expression “future generations” is used in different ways. It is sometimes employed to refer exclusively to unborn children (see the Preamble of “Declaration on Future Generations”, annexed to the “Pact for the Future”, adopted by United Nations General Assembly, in Resolution 79/1, 22 September 2024, UN Doc. A/RES/79/1; for a reference in the scholarly literature this sense, see A. DALY, *Youth Climate Activism and Its Impact on International Human Rights Law*, in *Human Rights Law Review*, 2022, p. 1 ss., p. 21). It is sometimes used to include existing children as well (see Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, 24 January 2018, UN Doc. A/HRC/37/58, para. 68; see also, in this sense, S. SKOGLY, *The Right to Continuous Improvement of Living Conditions and Human Rights of Future Generations: A Circle Impossible to Square?*, in J. Hohmann, B. Goldblatt (eds), *The Right to the Continuous Improvement of Living Conditions: Responding to Complex Global Challenges*, Oxford, 2021, p. 147 ss., p. 148. The lack of precision in the definition of “future generations” and its implications have been analysed in detail by A. NOLAN, *Children and Future Generations Rights before the Courts: The Vexed Question of Definitions*, in *Transnational Environmental Law*, 2024, p. 522 ss. For the purposes of this contribution, future generations are understood to include both children not yet born and those already living.

Development² – and has since consistently been reflected in subsequent international instruments³.

In the specific context of environmental sustainability, the intergenerational dimension has long been of particular importance. Environmental resources and conditions must in fact be managed in such a way as not to compromise the capacity of ecosystems to sustain human life over time⁴. From this perspective, the absence, on the part of States, of adequate mitigation and prevention measures addressing climate change, as well as the adoption of public decisions involving the intensive and irreversible exploitation of natural resources, are incompatible with environmental sustainability, since they entail a deliberate shifting into the future of the burdens and negative effects of climate change and environmental degradation, thereby generating a structural imbalance between generations. This imbalance results in a particular vulnerability of future generations, who are exposed to the consequences of conduct often driven by short-term interests and undertaken by past and present generations, thus making their protection necessary.

In light of the foregoing, it is unsurprising that intergenerational issues, which raise questions concerning the protection of future generations, have become one of the most significant themes in climate litigation, as well as in environmental disputes which, although not directly concerning climate policies in the strict sense, nonetheless have a significant impact on climate governance⁵, before national and international courts, including regional human rights courts.

In these contexts, judges are not so much called upon to determine whether the intergenerational dimension may have some relevance – a circumstance that is by now widely acknowledged, at least as a shared value – but rather to identify the criteria through which it may be concretely integrated into judicial reasoning, and whether and to what extent it may be used to assess the legality of State climate and environmental policies.

Within this framework, intergenerational equity assumes fundamental importance.

The expression “intergenerational equity” is used to refer to the idea of social justice between generations. Indeed, intergenerational equity requires a fair balance between the needs of present and future generations and demands that considerations of distributive

² United Nations World Commission on Environment and Development, Report of the World Commission on Environment and Development “Our Common Future”, 1987, UN Doc. A/42/247, which defines the concept of sustainable development as «development that meets the needs of the present, without compromising the ability of future generations to meet their own needs» (see Chapter 2: Towards Sustainable Development, para. 1).

³ See, for instance, the outcome document of the United Nations summit for the adoption of the post-2015 development agenda “Transforming our world: the 2030 Agenda for Sustainable Development”, adopted by United Nations General Assembly, in Resolution 70/1, 25 September 2015, UN Doc. A/RES/70/1, which states that: «The future of humanity and our planet lies in our hands. It lies also in the hands of today’s younger generation who will pass the torch to future generations. We have mapped the road to sustainable development; it will be for all of us to ensure that the journey is successful and its gain irreversible» (para. 53).

⁴ By way of example, see United Nations Conference on the Human Environment, “Declaration of the United Nations Conference on the Human Environment”, 16 June 1972, UN Doc. A/CONF.48/14, which states that: «The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate» (Principle 2). See also the United Nations Conference on Environment and Development, “Rio Declaration on Environment and Development”, 12 August 1992, UN Doc. A/CONF.151/26, which states that: «The right to development must be fulfilled as to equitable meet development and environmental need of present and future generations» (Principle 3).

⁵ See P. LAWRENCE, *Justice for Future Generations: Climate Change and International Law*, Cheltenham, 2014.

justice be incorporated into the use of exhaustible resources, so as to preserve the diversity of the natural resource base and to ensure that each generation does not unduly limit the options available to future generations in meeting their own needs⁶.

Intergenerational equity thus allows for the protection of the interests of future generations irrespective of the ongoing debate concerning the possibility of regarding such generations – particularly those not yet born – as rights-holders⁷. It instead serves as an appropriate framework for conceptualizing present generations as bearers of specific responsibilities towards future ones⁸.

In this sense, intergenerational equity may also function as a benchmark through which national courts, in particular, can assess the compatibility of domestic policies with intergenerational concerns, thereby encouraging institutions to recalibrate their policies on the basis of the concept of “burden sharing”, that is, a fair distribution of the burdens associated with the climate and environmental crisis among different generations.

When national courts exercise judicial review over State policies with the aim of ensuring effective environmental sustainability, the application of intergenerational equity raises significant questions both as to its legal value and as to the degree of binding force that should be attributed to it. These questions directly affect the manner and intensity of judicial scrutiny exercised by national courts over domestic policies.

Against this background, the present contribution initially refers to the “concept” of intergenerational equity⁹, without qualifying its nature and seeks to analyze how it has been qualified and used by national courts in climate litigation, with attention to cases concerning climate change in the strict sense as well as to structurally related environmental disputes. Having outlined this framework, the analysis then turns to the recent Advisory Opinion delivered by the International Court of Justice on States’ obligations in respect of climate change, with the aim of examining the potential effects that the Court’s findings regarding the qualification and function of intergenerational equity may have on its use by national courts.

⁶ S. BOOKMAN, M. WEWERINKE-SINGH, *Intergenerational Equity*, in M. Wewerinke-Singh, S. Mead (eds), *The Cambridge Handbook on Climate Litigation*, Cambridge, 2025, p. 344 ss.

⁷ This is a highly debated issue. While it is generally accepted that existing children can be considered rights-holders, this is far less clear with regard to unborn children. For diametrically opposed positions see S. HUMPHREYS, *Against Future Generations*, in *The European Journal of International Law*, 2022, p. 1061 ss., who criticizes the use of future generations concept as a framework for climate responsibility. He argues that this abstract and indefinite notion obscures urgent responsibilities towards people living today and that considering future generations as rights-holders is legally problematic and not recognized. In contrast, M. WEWERINKE-SINGH, A. GARG, S. AGARWALLA, *In Defence of Future Generations: A Reply to Stephen Humphreys*, in *The European Journal of International Law*, 2023, p. 651 ss., assert that future generations can and should be considered rights-holders. They argue that this status is already recognized in various legal forums, as demonstrated by the jurisprudence of national and international courts, and that this constitutes an effective tool to promote climate justice and intergenerational equity. In this sense, see also P. LAWRENCE, *International Law Must Respond to the Reality of Future Generations: A Reply to Stephen Humphreys*, in *The European Journal of International Law*, 2023, p. 665 ss., who argues that – contrary to Humphrey’s claim – the category of future generations is no more legally indeterminate than other protected vulnerable groups, such as “children”.

⁸ The trust model of intergenerational equity originates with E. BROWN WEISS, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, New York, 1989.

⁹ This reasoning reflects the approach already employed by M. GERVASI, *Equità intergenerazionale, tutela dei diritti umani e protezione dell’ambiente nel contenzioso climatico*, in M. Frulli (ed), *L’interesse delle generazioni future nel diritto internazionale e dell’Unione europea*, Napoli, 2023, p. 297 ss.

2. Intergenerational Equity Before National Courts: Selected Cases

In light of the premises outlined above, the paper moves on to explore how intergenerational equity has been qualified and used by national judges in cases concerning climate change, as well as, more broadly, in structurally related environmental disputes¹⁰.

Before turning to the decisions of domestic courts, it is necessary to make two preliminary remarks.

First, the large – and steadily growing – number of climate-related disputes¹¹ at the domestic level¹² necessarily required the research underlying this paper to be circumscribed to a selected sample of landmark decisions in the field of climate and environmental litigation. Only some of these decisions are discussed in this paper, as they are considered by the author paradigmatic in illustrating how national legal systems may qualify and make use of intergenerational equity. This analysis does not, however, claim to provide an exhaustive overview of the different domestic systems and related judicial practices, having been, as anticipated, confined to a limited sample of decisions.

Second, it should be noted that there is no consistency in the terminology employed by domestic courts with regard to “intergenerational equity”. While some decisions invoke “intergenerational equity”, others refer to “intergenerational justice” or “intergenerational responsibility”, and still others frame the issue in terms of “protecting of the interests or rights of future generations”. Notwithstanding these terminological differences, such expressions point to a common underlying concern: the incorporation of an intergenerational dimension into judicial reasoning, enabling courts to assess the temporal distribution of the benefits and burdens arising from public action and inaction, including their impact on future generations.

The first case to be examined is the decision of 24 March 2021 of the German Federal Constitutional Court in the *Neubauer* case¹³.

The application was brought by a group of young citizens who challenged the constitutionality of the 2019 Federal Climate Change Act. According to the applicants, the Federal Climate Change Act violated the State’s duty to protect the fundamental rights to life and physical integrity (art. 2(2) of the Basic Law), as well as the right to property (art. 14(1) of the Basic Law), from the risks posed by climate change. This duty of protection was argued to derive from a combined reading of the aforementioned provisions with art. 20a of the Basic Law, which requires the State to protect the natural foundations of life also in

¹⁰ The limits of the present contribution do not allow for an analysis of the direct or indirect references to intergenerational equity in treaties and international law soft documents, as well as in case law of international tribunals and regional human rights courts. For a comprehensive reconstruction of the issue, both in the environmental field and in other areas in which the protection of the interests of future generations has acquired normative relevance, see M. MARCIANTE, *L’equità intergenerazionale nel sistema delle fonti del diritto internazionale*, in *Federalismi.it*, 2025, p. 103 ss., available at www.federalismi.it. See also F. CERULLI, *Safeguarding Future Generations: The Legal Status of Intergenerational Equity in International Law*, in *Netherlands Yearbook of International Law*, 2024, forthcoming.

¹¹ As noted by M. GERVASI, *Equità intergenerazionale*, cit., p. 299, climate litigation represents a rapidly expanding trend and appears to constitute a new frontier in efforts to address climate change.

¹² On national case law, see, notably, P. PUSTORINO, *Cambiamento climatico e diritti umani: sviluppi della giurisprudenza nazionale*, in *Ordine internazionale e diritti umani*, 2021, p. 596 ss., available at www.rivistaoidu.net.

¹³ German Constitutional Court, *Neubauer and others v. Germany*, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20, Order of the First Senate, 24 March 2021.

responsibility towards future generations, by providing that: «Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order». The applicants maintained that the Federal Climate Change Act failed to comply with the objective set out in the Paris Agreement, as it established emission-reduction targets up to 2030 that were insufficiently ambitious. Moreover, they complained about the absence of mitigation measures for the period beyond 2030, which, in their view, would result in an inequitable allocation of Germany's remaining carbon budget, allowing the present generation to consume a disproportionate share and thereby transferring an excessive mitigation burden onto future generations.

In its decision, the Court expressly referred to art. 20a of the Basic Law. According to the Court, this provision, read in conjunction with fundamental rights, imposes on the State a duty of protection against climate-related risks. However, the Court held that the Federal Climate Change Act did not, as such, amount to a violation of that duty, recognizing that the legislature enjoys a wide margin of discretion in determining the necessary protective measures, and affirming that a breach would arise only in cases of complete inaction or of measures that are manifestly inadequate or wholly insufficient.

Nevertheless, the Court declared the Federal Climate Change Act to be partially unconstitutional, finding that it infringed fundamental freedoms from an intertemporal perspective. According to the Court, art. 20a of the Basic Law is not a mere statement of intent, but a binding and justiciable legal provision that imposes on the State an obligation to act for the protection of the climate, taking into account its responsibility towards future generations. Art. 20a therefore does not merely enshrine an abstract principle, but serves as a constitutional parameter for the interpretation of fundamental rights. From this perspective, fundamental rights themselves operate as intertemporal guarantees of freedom. This means that they protect present citizens against a future, but highly likely, excessive shifting of the burden of greenhouse gas reduction onto future generations. Consequently, the principle of intergenerational equity, enshrined in art. 20a, imposes on the legislature a concrete obligation to ensure a proportionate distribution of mitigation burdens over time, by adopting sufficiently precautionary measures so as to avoid placing almost the entire weight of the ecological transition on future generations. By failing to establish a clear emission-reduction pathway for the period after 2030, the legislature had thus created a concrete and disproportionate risk of shifting the primary mitigation burden onto future generations, with the consequence of a future drastic restriction of their fundamental freedoms.

The second decision to be examined is the landmark judgment of 30 July 1993 of the Supreme Court of the Philippines in *Minors Oposa v. Factoran*¹⁴.

The case originated from a class action brought, *inter alia*, by a group of minors, represented by their parents, against the Secretary of the Philippine Department of Environment and Natural Resources. The action sought the annulment of all timber license agreements covering virgin tropical forests, as well as an injunction preventing the issuance of new logging permits, with the aim of halting the large-scale deforestation taking place in the Philippines. Such deforestation was in fact causing irreparable damage to the ecosystem and violating the applicants' right to a balanced and healthful environment. This right was

¹⁴ Supreme Court of Philippines, *Oposa v. Factoran*, G.R. no. 101083, Judgment of 30 July 1993.

claimed on the basis of a number of domestic legal provisions, including art. II, sect. 16, of the Constitution, according to which «[t]he State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature», and was interpreted by the applicants as corresponding to a correlative obligation on the part of the respondent to safeguard it. It should be noted that the applicants acted not only on their own behalf, but also in representation of their generation and of generations yet unborn.

The Regional Trial Court dismissed the action, holding, among other things, that the right invoked by the applicants could not be construed as a specific, individual and judicially enforceable right, but rather as a mere statement of principle or a State policy, which therefore did not give rise to a corresponding duty of protection on the part of the State.

However, the applicants appealed to the Supreme Court, which ruled in their favor, set aside the dismissal order, and remanded the case to the Regional Trial Court for a determination on the merits. The Supreme Court referred to art. II, sect. 16, of the Constitution. On the basis of this provision, the Court held that the right to a balanced and healthful ecology constitutes a fundamental, specific and fully justiciable right. Its explicit recognition in the Constitution imposes upon the State a solemn obligation to protect and promote it, together with a corresponding duty not to harm the environment.

On this basis, the Court recognized the applicants' standing to sue for themselves and in representation of future generations. The Court established that this standing derives from the concept of intergenerational responsibility, which is inseparable from the right to a balanced and healthful ecology. According to the Court, the rhythm and harmony of nature are central to this right and require that natural resources be managed and conserved to ensure they are equitably accessible to the present as well as future generations. In particular, the Court stated that: «Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come».

The third decision examined is the judgment of 4 September 2015 of the Lahore High Court in *Asghar Leghari v. Federation of Pakistan*¹⁵.

The decision arose from an action brought by a Pakistani farmer against the Federal Government and the Government of Punjab. The applicant argued that the challenges and vulnerabilities associated with climate change had not been adequately addressed. Although a national climate policy had been adopted in 2012, together with an implementation framework covering the period 2014-2030, the applicant maintained that no concrete progress had been made in implementing the measures envisaged therein. Such governmental inaction therefore amounted to a violation of the applicant's fundamental right to life guaranteed by art. 9 of the Pakistani Constitution, which encompasses the right to a clean and healthy environment.

The Court upheld the applicant's concerns, recognizing climate change as one of the defining challenges of our time. In particular, it linked environmental protection and the fight against climate change to the core of constitutionally guaranteed rights. According to the Court, these rights provide the judicial tools necessary to address and monitor the

¹⁵ Lahore High Court, *Asghar Leghari v. Federation of Pakistan*, Case No. 25501/2015, Order of 4 September 2015.

government's response to climate change. Specifically, the Court held that fundamental rights – including the right to life (art. 9 of the Constitution) and the right to human dignity (art. 14 of the Constitution) – when read in conjunction with the constitutional principles of democracy, equality, social justice, economy and polity, incorporate within their scope and commitment international environmental principles, including inter- and intra-generational equity. On the basis of these principles, the Court concluded that the State's failure to implement the climate policy and its corresponding framework violated the fundamental rights of citizens, which are required to be protected. Consequently, the Court imposed a series of concrete measures on the Government.

The fourth decision examined is the judgment of 2 June 2000 of the Sri Lanka Supreme Court in the *Eppawela* case¹⁶.

Some residents in the Eppawela region had filed a petition before the Supreme Court of Sri Lanka, alleging the violation of their constitutionally guaranteed right to a healthy environment, due to a proposed agreement between the government and a private company for the large-scale phosphate mining in their region, which would have caused an environmental disaster.

The Supreme Court upheld the petition. In this decision, the Court explicitly and thoroughly addressed the concept of intergenerational equity, qualifying it as a fundamental principle of sustainable development. The Court clarified that the principle of intergenerational equity originates from sources of international law, referring in particular to the 1972 Stockholm Declaration on the Human Environment and the 1992 Rio de Janeiro Declaration on Environment and Development. It also analyzed the legal nature of these declarations, recognizing that they fall into the category of “soft law” and are not, therefore, in themselves legally binding on a State in the same way as legislation enacted by Parliament. However, according to the Court, Sri Lanka, as a member of the United Nations, could not ignore these universally recognized principles, and declared that principles of international “soft law” become binding if they are expressly enacted or become part of the domestic law by adoption by the superior courts of record, and in particular by the Supreme Court, in their decisions. With this statement, the Supreme Court actively incorporates the principle of intergenerational equity into the Sri Lankan legal system through its own ruling, effectively making it a legally relevant criterion for assessing the legitimacy of governmental action.

The last decision to be examined is the judgment of 2 March 2006 of the High Court of Kenya in *Waveru v. Republic*¹⁷.

The case concerned a criminal action against property owners for polluting a public water source with sewage. The owners argued that the responsibility to provide an adequate sewerage system was not theirs, but that of the local public authorities, and that the criminal prosecution violated their constitutional rights.

The High Court granted the applicants' claim, quashing the criminal proceedings on grounds of procedural defects and discrimination. However, the Court decided to go beyond the procedural aspects to address the substantive environmental issues raised by the case, deeming them to be of fundamental importance. The Court's decision is particularly noteworthy for the way in which it grounds intergenerational equity on a plurality of legal bases within a multi-layered legal framework, thereby conferring upon it considerable

¹⁶ Supreme Court of Sri Lanka, *Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others*, SC (FR) Application No. 884/99, Judgment of 2 June 2000.

¹⁷ High Court of Kenya, *Peter K. Waveru v. Republic*, Miscellaneous Civil Application No. 118 of 2004, Judgment of 2 March 2006.

normative force. First, the Court identified the source of intergenerational equity in national legislation, specifically in the Environmental Management and Coordination Act of 1999. Section 3(5) of this Act lists the principles of sustainable development that must guide judicial interpretation, explicitly including «the principle of intergenerational equity». Second, and significantly, the Court elevated intergenerational equity to customary international law, stating that, beyond its codification in national law, it possesses an autonomous and binding status. Indeed, the Court declared: «[a]part from the EMCA it is our view that the principles set out in s 3 do constitute part of international customary law and the courts ought to take cognizance of them in all the relevant situations». This statement implies that judges have a duty to recognize and apply the principle of intergenerational equity not only because it is provided for by national law, but as an established norm of international law, thereby strengthening its binding nature and universal scope. Finally, the Court closely linked intergenerational equity to the public trust doctrine. In conclusion, the Court affirmed that the irreversible environmental damage to the public water, caused by unregulated development, constituted a breach of intergenerational equity and consequently issued a mandamus order to compel the competent public authorities to construct a wastewater treatment plant.

3. Preliminary Conclusions: The Application of Intergenerational Equity by National Courts

On the basis of the discussion in the previous paragraph, it is now possible to outline the theoretical framework that emerges with regard to the qualification and application of the concept of intergenerational equity by national courts.

Within the legal systems examined, intergenerational equity is unequivocally regarded as a binding normative reality, with the consequence that States are required to adopt an approach grounded in the assessment of long-term effects when adopting and reviewing public decisions of environmental and climatic relevance.

In many legal systems, intergenerational equity is provided for by domestic legislation, often as a constitutional value or even as a genuine duty incumbent upon the State to protect the interests of future generations, usually in connection with environmental policies¹⁸. In such cases, intergenerational equity constitutes an internal parameter available to judges. As demonstrated in the *Neubauer* case, by virtue of its constitutional relevance, intergenerational equity has in itself been sufficient to support constitutional review of legislation that fails to safeguard the interests of future generations.

As further shown by the other cases analyzed, intergenerational equity may also be regarded as a binding normative reality even where it is not, at least expressly, enshrined in domestic law, and in particular at constitutional level. In such systems, courts may derive the existence of intergenerational equity through different interpretative approaches.

First, judges may adopt an extensive interpretation of applicable domestic law, through which the existence of a principle of intergenerational equity is inferred on the basis of a systematic interpretation of the provisions of the internal legal order. This constitutes a static

¹⁸ See the list of constitutions created by the Centre for International Environmental Law, available at www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/Child/CIEL.pdf. As noted by M. MARCIANTE, *L'equità intergenerazionale*, cit., p. 144., States have thus chosen to bind themselves to environmental, social, fiscal and welfare policies that must be conceived from an intergenerational perspective.

interpretation of domestic norms, whereby judges confine themselves to identifying a meaning that, although not expressly articulated, is nonetheless considered implicit within the legal system as a whole¹⁹. This approach was adopted by the Supreme Court of the Philippines in the above-mentioned case of *Minors Oposa v. Factoran*, where intergenerational equity was regarded as already inherent in the domestic law to be applied.

Intergenerational equity may, however, also be valued as a source of international law capable of influencing national legal systems.

In particular, it may be regarded as an external element for the interpretation of domestic law. In this case, an evolutionary interpretation is carried out, whereby the meaning of domestic law expands as a result of the influence of an external factor, understood as a change in the factual or legal context²⁰. This approach was followed by the Lahore High Court in *Asgbar Leghari v. Federation of Pakistan*, where intergenerational equity was considered a principle of international environmental law and, therefore, an element external to the domestic legal order. On that basis, the fundamental rights guaranteed by the Constitution were interpreted. Intergenerational equity thus came to “inform” domestic legal obligations.

Moreover, intergenerational equity may also acquire autonomous value within national legal systems, independently of domestic legislation. This is the case in *Eppawela*, where the Supreme Court of Sri Lanka qualified intergenerational equity as a principle belonging to international soft law, capable of acquiring binding force when incorporated into domestic law or otherwise introduced into it through judicial decisions. Similarly, in *Waweru*, the High Court of Kenya qualified intergenerational equity as a rule of customary international law, with consequent binding force within the national legal order.

In conclusion, in legal systems that expressly provide for, or derive through the interpretation of domestic provisions, the existence of the principle of intergenerational equity, national courts already possess and make use of this principle. In such systems, the nature of intergenerational equity under international law therefore assumes reduced importance²¹.

Conversely, in legal systems in which the principle of intergenerational equity is neither expressly identified within domestic law nor otherwise perceived as inherent therein, the qualification of intergenerational equity under international law may instead become relevant, if not crucial²².

If intergenerational equity under international law amounts to something more than a mere ethical value, it may indeed be called upon to play a significant role in national judicial decisions, affecting both the intensity and the scope of judicial review, depending on the legal qualification attributed to it. It is therefore evident that identifying the exact nature of intergenerational equity within the international legal order is of primary importance, also in order to avoid the risk of fragmentation in national judicial decisions when courts rely on intergenerational equity as articulated under international law.

However, as will be further discussed below, and as already emerges from the national judicial decisions examined above, the nature of intergenerational equity has long remained

¹⁹ With regard to this mode of interpretation, see, P. TURRINI, *Teoria e prassi dell'interpretazione evolutiva nel diritto internazionale*, Napoli, 2018, p. 40, who defines it as “extensive”.

²⁰ *Ibidem*. Turrini defines this mode of interpretation as “evolutionary”.

²¹ L. MAGI, *Environmental Chronic Emergencies and Future Generations*, in S. De Vido, D. Russo, E. Tramontana, (eds) *Gendering International Legal Responses to Environmental Chronic Emergencies*, Cheltenham/Northampton, 2026, p. 147 ss., p. 158.

²² *Ibidem*.

controversial. The issue has received wide attention in the literature, especially in the field of intergenerational environmental law, without any uniform view ever having emerged among scholars.

4. *The Debate on the Nature of Intergenerational Equity in International Law*

On the basis of the premises set out in the previous paragraph, it is now appropriate to briefly recall the scholarly debate concerning the nature of intergenerational equity in international law²³.

Some Authors have argued that intergenerational equity has not yet attained full legal expression and should therefore be understood solely as a moral value or obligation²⁴. Others have included intergenerational equity among the elements of sustainable development²⁵. Some have classified intergenerational equity as a programmatic principle, endorsed by the international community, though not immediately binding²⁶. There are also authors who have maintained that intergenerational equity is not merely a meta-legal principle²⁷, but has instead translated into a binding normative reality. Indeed, many Scholars consider intergenerational equity to be a general principle of international law, although divergent views can also be identified in this respect²⁸. Some view it as a general principle formed within the international legal system²⁹; others interpret it as a general principle of law derived from national legal systems³⁰; still others argue that it may be qualified both as a principle formed within the international legal system and as a general principle of law derived from national legal

²³ For an overview on the issue, see L. PINESCHI, *Equità inter-generazionale e diritto internazionale dell'ambiente: principio meta-giuridico o regola di diritto?*, in R. BIFULCO, A. D'ALOIA (eds), *Un diritto per il futuro: teorie e modelli dello sviluppo sostenibile e della responsabilità intergenerazionale*, Napoli, 2008, p. 113 ss.

²⁴ P. BIRNIE, A. BOYLE, C. REDGWELL, *International Law & the Environment*, Oxford, 2009, p. 120.

²⁵ P. SANDS, J. PEEL, *Principles of International Environment Law*, Cambridge, 2012, p. 207 ss.

²⁶ R. PISILLO MAZZESCHI, A. VIVIANI, *General Principles of International Law: From Rules to Values?*, in R. Pisillo Mazzeschi, P. De Sena (eds), *Global Justice, Human Rights and the Modernization of International Law*, Heidelberg, 2018, p. 272 ss.

²⁷ Among the first scholars to argue that intergenerational equity is not merely a moral value, see L. PINESCHI, *Equità intergenerazionale*, cit., *passim*.

²⁸ The term "general principle of law" refers to a category that encompasses both general principles formed within the international legal system and general principles of law derived from national legal systems. This is the approach is adopted by the International Law Commission, in its work of codification on the topic of general principles of international law: "General Principles of Law: Texts and Titles of the Draft Conclusions Adopted by the Drafting Committee on Second Reading" (2025), UN Doc. A/CN.4/L.1018," where, in Draft Conclusion 3 «Categories of General Principles of Law», it is stated that: «General principles of law comprise those: (a) that are derived from national legal systems; and (b) that may be formed within the international legal system». See also G. GAJA, *General Principles of Law*, in *Max Planck Encyclopedia of Public International Law* (2020), available at www.mpepil.com; F. SALERNO, *Principi generali di diritto (Diritto internazionale)*, in *Digesto delle discipline pubblicistiche*, vol. IX, Torino, 1996, p. 524 ss.; G. PALMISANO, *Fondamenti di diritto internazionale. Fenomenologia del diritto di un mondo di Stati*, Milano, 2025, pp. 60-75.

²⁹ L. MAGI, *Environmental Chronic Emergencies*, cit., *passim*.

³⁰ A. GIANELLI, *La tutela delle future generazioni nel diritto internazionale: regola, principio o valore?*, in M. Frulli (ed), *L'interesse delle generazioni future nel diritto internazionale e dell'Unione europea*, Napoli, 2023, p. 19 ss.

systems³¹; finally, it has also been argued that intergenerational equity has attained the status of customary international law³².

More recently, however, the uncertainty surrounding the legal qualification of intergenerational equity under international law has been overcome by the International Court of Justice, which, in its Advisory Opinion on States' obligations in respect of climate change – to be examined below – expressly addressed this issue.

5. The ICJ Advisory Opinion on the Obligations of States in respect of Climate Change

In the light of the analysis conducted thus far, this contribution now seeks to assess the impact that the recent Advisory Opinion of the ICJ on the *Obligations of States in respect of climate change*³³, delivered on 23 July 2025, may have on the application of intergenerational equity by national courts.

Before entering *in medias res* and examining the findings of the Court's Advisory Opinion, a preliminary remark is required. Among the numerous relevant decisions recently adopted by international courts and human rights treaty bodies in environmental matter³⁴, the focus here is deliberately placed on the Advisory Opinion of the ICJ. This choice is justified by the fact that the Court's decisions – whether judgments or advisory opinions – are regarded as genuine turning points for the international community, marking a clear “before” and “after”³⁵.

³¹ F. CERULLI, *Safeguarding Future Generations*, cit.

³² J.D.F. QUISING, *Beyond OPOSA: Courts Reinforcing Intergenerational Equity as Customary International Law*, in *European Law Journal*, 2023, p. 422 ss.

³³ International Court of Justice, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025. For a collection of early insightful contributions on the Advisory Opinion see M.A. TIGRE, M. BÖNNEMANN, A. DE SPIEGELEIR (eds), *The ICJ's Advisory Opinion on Climate Change*, Berlin, 2025.

³⁴ Just to mention some of the most widely discussed decision, see Inter-American Court of Human Rights, *Case of Inhabitants of La Oroya v. Peru*, Judgment of 27 November 2023; European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20), Judgment of 9 April 2024; International Tribunal for the Law of the Sea, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Case No. 31) Advisory Opinion of 21 May 2024; Inter-American Court of Human Rights, *Climate Emergency and Human Rights*, Advisory Opinion OC-32/25 of 29 May 2025.

³⁵ On this aspect, see A. PELLET, *Decisions of the ICJ as Sources of International Law?*, in *Decision of the ICJ as Sources of International Law? Gaetano Morelli Lectures Series*, vol. II, Rome, p. 7 ss. In particular, the Author recognizes that the ICJ plays a crucial role in the progressive development of international law. Although the Court cannot be considered a legislator, it performs a function that is not limited to a mere mechanical application of the law, but involves an activity of interpretation and, at times, of specification and adaptation of the rules to the new needs of international society. As expressly stated: «while staying within the existing legal framework the Court constantly and consistently (even if rather prudently) adapts the law to the new circumstances and needs of the international society, notably when it is clear that a more orthodox interpretation would lead to a dead-end or is no longer acceptable by international society, or because there appears to be gaps in the existing applicable rules» (p. 42).

In particular, the Advisory Opinion on climate change had been widely regarded, from the moment the request was submitted to the Court³⁶, as one destined to stand out in several respects³⁷.

For the purposes of this contribution, one specific aspect deserves particular attention. As noted by Pineschi, the request adopted by the United Nations General Assembly for an advisory opinion on climate change was adopted by consensus; however, «divergences and unresolved tensions» remained, *inter alia*, with regard to «the nature and content of certain principles and rules»³⁸. It was therefore evident that the Court's opinion was bound to be perceived as an *arbitrator inter discordantes*. This is also true with regard to intergenerational equity, whose nature clearly fell within the “divergences and unresolved tensions” emerging from the scholarly debate, as discussed above.

As is well known, in some of its past decisions the Court had already addressed – albeit indirectly – the issue of intergenerational equity, essentially pointing to the need to interpret and apply international treaties also in light of the protection of the interests of future generations³⁹.

In its 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*⁴⁰, the Court articulated a concept that has since become a cornerstone of environmental law – and that, as will be shown, was also recalled in the Court's recent Advisory Opinion of July 2025 – according to which «the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn»⁴¹. The Court further emphasized that, when applying the rules and principles of the law of armed conflict, due account must also be taken of environmental considerations, which limit the scope of military actions otherwise considered lawful under international law. Accordingly, the Court held that it was imperative, in its assessment, to take into account the unique

³⁶ United Nations General Assembly, *Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change*, 29 March 2023, UN Doc. A/RES/77/276.

³⁷ Indeed, immediately after the advisory opinion was adopted, it was characterized in academic literature as «the great reset». See M. WEWERINKE-SINGH, J. VIÑUALES, *The Great Reset: The ICJ Reframes the Conduct Responsible for Climate Change Through the Prism of Internationally Wrongful Acts*, in *EJILTalk!*, (2025), available at: www.ejiltalk.org. Among the aspects in which the Advisory Opinion stands out is the function it was called upon to perform. Some scholars have emphasized its “strategic function” for the implementation of international environmental law. See, in this regard, S. MECKIEVI, J. E. VIÑUALES, *The Search for Clarity: Resort to Advisory Opinions as a Strategy for the Implementation of International Environmental Law*, in *The Italian Yearbook of International Law*, 2023, p. 85 ss. At the same time, the role of the Advisory Opinion may also be understood within a logic of “lawfare”. In this respect, the advisory function exercised by the ICJ could be regarded as reflecting a broader trend promoted by States and international organizations, whereby requests for advisory opinions are increasingly used as strategic tools within international legal and political processes. Especially when they concern issues with far-reaching political implications, such requests are not limited to seeking legal clarification. Rather, they aim to support specific, political positions, legitimize certain normative trajectories, and influence global debates by mobilizing the authority of international adjudication. On the advisory function as a form of “lawfare” see G. ADINOLFI, M. BUSCEMI, C. RAGNI, *Quo Vadis Advisory Function? An Introduction*, in *The Italian Review of International and Comparative Law*, 2024, p. 5 ss., p. 7.

³⁸ L. PINESCHI, *The Request to the International Court of Justice for an Advisory Opinion on Climate Change: Some Preliminary Remarks through the Lens of Statements Made upon the Adoption of Resolution 77/276*, in *The Italian Review of International and Comparative Law*, 2024, p. 21 ss., p. 23.

³⁹ This is consistent with what has already been affirmed in various *fora* and across different fields – albeit predominantly in the environmental domain – since 1945. For an analysis aimed at identifying where the protection of the interests of future generations may be found as a tool for treaty interpretations, see A. GIANELLI, *La tutela delle future generazioni*, cit., pp. 21-30.

⁴⁰ International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996.

⁴¹ Para. 29.

characteristics of nuclear weapons, including their capacity to cause harm to future generations.

In its 1997 judgment in the *Gabčíkovo-Nagymaros Project* case⁴², the Court affirmed the obligation to interpret treaties in the light of the rules and standards contained in international agreements and soft-law instruments concerning environmental protection, which the Court regarded as reflecting a growing awareness of the risks that decades of human interference with the natural balance pose not only to present generations, but also to future ones.

Finally, in its 2014 judgment in the *Whaling in the Antarctic* case⁴³, the Court, in interpreting Article VIII of the International Convention for the Regulation of Whaling – which allows contracting States to grant special permits for the killing of whales for purposes of scientific research – referred to the Convention’s Preamble, emphasizing that it defines the object and purpose of the treaty. The Preamble expressly refers to the need to safeguard the interests of future generations.

In its Advisory Opinion of 23 July 2025, the ICJ, for the first time, expressly examined the concept of intergenerational equity, defining its nature and function. The Court’s analysis is found in the section addressing the first question raised in the request for the advisory opinion, concerning State’s obligations in respect of climate change⁴⁴. In particular, in the part devoted to the “Applicable law”, after reviewing the relevant treaty-based and customary sources, the Court turned to “Other principles”, stating that it was necessary to determine whether such principles – including intergenerational equity – formed part of the applicable legal framework⁴⁵.

With specific reference to intergenerational equity, the Court first observed that, irrespective of differing interpretations advanced in the various positions submitted by the participants, the relevance of intergenerational equity to climate obligations was «undisputable»⁴⁶. In support of this assertion, the Court referred to art. 3, para. 1, of the United Nations Framework Convention on Climate Change and to the Preamble of the Paris Agreement. The Court further noted that these provisions echo its own prior recognition in the 1996 Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, according to which the environment cannot be regarded as an abstraction, but rather as encompassing the living space, quality of life, and the health of human beings, including future generations⁴⁷.

From a substantive perspective, the Court describes intergenerational equity as an expression of the idea that present generations are «trustees of humanity tasked with preserving dignified living conditions and transmitting them to future generations»⁴⁸. In this context, the Court highlights the findings of the Intergovernmental Panel on Climate Change, which underscored the long-term and irreversible nature of climate change impacts across generations⁴⁹.

⁴² International Court of Justice, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997.

⁴³ International Court of Justice, *Whaling in the Antarctic (Australia/Japan: New Zealand intervening)*, Judgment of 31 March 2014.

⁴⁴ Para. 112 ss.

⁴⁵ Para. 146 ss.

⁴⁶ Para. 155.

⁴⁷ *Ibidem*.

⁴⁸ Para. 156.

⁴⁹ *Ibidem*.

That being said, what deserves particular emphasis here is that the Court clarified that intergenerational equity constitutes a manifestation of equity in a general sense⁵⁰. Consequently, according to the Court, intergenerational equity possesses the same legal relevance as equity as such and serves as a guide for the interpretation of applicable rules⁵¹. The Court further stressed that the function of equity, as a legal principle, is not to replace the law or to exceed its limits and that, therefore, «considerations of intergenerational equity must play a role *infra legem*, without displacing or exceeding the limits of the applicable law»⁵².

The Court then concluded by stating that «[d]ue regard for the interests of future generations and the long-term implications of conduct are equitable considerations that need to be taken into account where States contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law»⁵³.

The role of intergenerational equity was reaffirmed by the Court both in the *Conclusion* to its analysis of the «Other principles»⁵⁴ and in the *Conclusion* of the entire section devoted to the «Applicable law»⁵⁵. Moreover, in the immediately following part, specifically addressing the «Obligations of States under the climate change treaty framework», the Court reiterated the interpretative role of “other principles”, including intergenerational equity, which, while not constituting standalone obligations under the climate change treaty framework, nevertheless guide the interpretation of treaty obligations⁵⁶.

Overall, the position adopted by the ICJ in its Advisory Opinion on intergenerational equity unquestionably merits a positive assessment. The Court took a further step forward compared to its previous rulings⁵⁷. As discussed above, in its earlier case law the Court had taken into account the protection of future generations; however, it had never reconstructed intergenerational equity as a general principle of international law. In the 2025 Advisory Opinion, the Court expressly addressed intergenerational equity, defining its status. In doing so, it conferred greater legal certainty and authority upon intergenerational equity⁵⁸ which, far from being a moral obligation or a political aspiration, constitutes a general principle of international law.

It is nonetheless true that, for the Court, intergenerational equity remains a guiding principle intended to orient the interpretation and application of the law, rather than a binding principle in the strict sense. From this perspective, the innovative scope of the Advisory Opinion with regard to the principle of intergenerational equity is somewhat

⁵⁰ Para. 157.

⁵¹ *Ibidem*.

⁵² *Ibidem*.

⁵³ *Ibidem*.

⁵⁴ Para. 161.

⁵⁵ Para. 172.

⁵⁶ Para. 178.

⁵⁷ In this sense, see R. MARCONI, *L'equità intergenerazionale al vaglio della Corte internazionale di giustizia nel parere consultivo sul cambiamento climatico*, in *Ordine internazionale e diritti umani*, 2025, p. 1420 ss., p. 1423, available at: www.rivistaoidu.net.

⁵⁸ Wewerinke-Singh underlined that «the Court's recognition of intergenerational equity is remarkable [...]»: a concept whose legal status was long debated is now affirmed as a manifestation of equity that must inform the application of both treaties and custom, ensuring “due regard for the interests of future generations” across the board». M. WEWERINKE-SINGH, *Harmonizing Sources, Hardening Duties: Inside the ICJ's Advisory Opinion on Climate Change*, in M.A. TIGRE, M. BÖNNEMANN, A. DE SPIEGELEIR (eds), *The ICJ's Advisory Opinion on Climate Change*, cit., p. 43 ss., pp. 51-52.

reduced, as it was not accorded autonomous normative value⁵⁹. The Court could undoubtedly have accorded greater space to intergenerational equity *tout court* as a general principle of international law and defined it in such a way as to render it more amenable to flexible application by national courts. Had the Court taken this approach, it could likely have acted as a catalyst – as will be examined below – for a broader and more incisive use of intergenerational equity by national case law as a general principle of international law.

6. Prospective Conclusions: The Application of Intergenerational Equity by National Courts after the ICJ's Advisory Opinion

Of course, only a few months after its release, it is too early to assess the concrete and effective impact of the ICJ Advisory Opinion.

As recently emphasized by Pineschi, the «success» of an advisory opinion depends on several factors, including its reasonableness and persuasive strength, and the support of key States through their practice⁶⁰.

In light of these criteria, Pineschi has observed that, even prior to the adoption of the Advisory Opinion on Climate Change, scholarly literature had expressed doubts as to the persuasive power of the opinion the Court was expected to deliver. Such doubts stemmed from the generality and vagueness of the norms involved, the Court's limited prior case law on environmental obligations, and the highly political nature of the issue, which inevitably affects States' willingness to comply with the ICJ's guidance⁶¹.

Notwithstanding this, Pineschi has pointed out that the Advisory Opinion may nonetheless exert a significant impact on States, notably through the action of national courts: should national judges align their decisions with the ICJ's findings, the «success» of the Advisory Opinion would be achieved⁶².

With regard to intergenerational equity in particular, it seems likely that national courts will follow the Court's *dictum*, thereby confirming the «success» of the Advisory Opinion at least under this profile. This could have positive effects.

The recognition of intergenerational equity as a general principle of international law may be invoked by national courts when attributing State responsibility for inadequate, ineffective, or deficient policies. This holds true both in legal systems in which

⁵⁹ As noted by Odermatt, the ICJ avoided framing intergenerational equity as a foundation for concrete obligations and likewise sidestepped the issue of State's obligations towards future generations that will suffer the greatest harms from climate change, limiting itself to sporadic reference to those not yet born. See J. ODERMATT, *What the Court Didn't Say: The ICJ's Climate Opinion and the Politics of Judicial Restraint*, in M.A. TIGRE, M. BÖNNEMANN, A. DE SPIEGELEIR (eds), *The ICJ's Advisory Opinion on Climate Change*, cit., p. 291 ss., p. 301. Notwithstanding this, it should also be noted that, in the part of the Advisory Opinion devoted to States' preventive obligations – which cannot be examined here – the Court has undoubtedly charted a course that strengthens States' responsibilities and paves the way for a more effective deployment of certain legal concepts, which must likewise be oriented towards the protection of future generations. Overall, the Court's approach to safeguarding future generations is therefore more far-reaching than it may appear *prima facie*: while it adopts a cautious stance with respect to the role of intergenerational equity, it simultaneously imposes significant constraints through its examination of States' preventive obligations.

⁶⁰ L. PINESCHI, *The Request to the International Court of Justice*, cit., p. 28.

⁶¹ *Ibidem*.

⁶² *Ivi*, p. 29.

intergenerational equity is recognized in domestic legislation, in particular at constitutional level, where national courts may reinforce their reasoning by expressly referring to the Advisory Opinion of the ICJ, and in legal systems that lack any reference in domestic legislation to future generations, where national courts may nonetheless rely on the Advisory Opinion in order to justify and legitimize their decisions through an interpretation of the law grounded in intergenerational equity as a general principle of international law⁶³.

This may foster the initiation of a process of progressive harmonization of national courts' case law in the interpretation and application of intergenerational equity (also) as a source of international law, thereby strengthening its operability and effectiveness and contributing, over time, to the formation of a uniform body of jurisprudence of a transnational character.

That being said, the Court's statements also entail a critical dimension with respect to their potential effects on proceedings before national courts. By attributing to intergenerational equity, as a general principle of international law, a purely interpretative role, there is a risk that the Court may have restricted its future use by national courts.

As is well known, the function of general principles of international law is not limited to interpretation. They may fill normative gaps (suppletive function) and, in some cases, may even constitute the basis for autonomous legal obligations (self-standing normative function)⁶⁴. However, if national courts, when called upon to assess whether a State has complied with its climate obligations, were to follow the *dictum* of the ICJ, they would not consider intergenerational equity in isolation as an autonomous legal basis, but solely as a means of interpreting and applying existing legal norms. In some cases, this might even result in a form of "regression" compared to the achievements reached by certain national courts; suffice it to recall the example of the High Court of Kenya in the *Waweru* case, where intergenerational equity was also recognized as a rule of customary international law and, accordingly, endowed with binding and autonomous normative value. By clarifying that the principle of intergenerational equity does not replace the law but forms an integral part of the correct method of interpreting it, the ICJ may therefore have weakened its impact within domestic legal systems, depriving it of some of the functions it could otherwise perform.

⁶³ As observed by R. MARCONI, *L'equità intergenerazionale*, cit., p. 1427, at least in principle, intergenerational equity should strengthen the binding nature of international obligations in the field of climate change. Any commitment undertaken by States should therefore be interpreted as requiring the adoption of the most future-oriented solution.

⁶⁴ On the functions of general principles of international law, see the International Law Commission, in its work of codification on the topic of general principles of international law: "General Principles of Law: Texts and Titles of the Draft Conclusions Adopted by the Drafting Committee on Second Reading" (2025), UN Doc. A/CN.4/L.1018, where Draft Conclusion 10 («Functions of general principles of law») provides that: «1. General principles of law may contribute to the coherence of the international legal system. They serve, *inter alia*: (a) as a basis for substantive rights and obligations, as well as a basis for secondary and procedural rules; (b) to interpret and complement other rules of international law. 2. General principles of law are mainly resorted to when other rules of international law do not resolve a particular issue in whole or in part». However, in light of Draft Conclusion 3 («Categories of general principles of law»), which refers both to principles derived from national legal systems and to those formed within the international legal system, it remains unclear whether the functions identified in Draft Conclusion 10 apply to both categories of principles. See also International Law Commission, Report on the Work of the Seventy-sixth Session (2025), UN Doc. A/80/10, Chapter VI General Principles of Law, 2. Summary of the Debate, para. (k) Draft Conclusion 10, (Functions of general principles of law), which shows that an ongoing debate persists on the functions of general principles of international law based on States' practice and positions. For a comprehensive and authoritative scholarly account of the functions of general principles of international law, see generally G. PALMISANO, *Fondamenti di diritto internazionale*, cit., pp. 60-75.

This could prove particularly detrimental in legal systems that do not provide for any reference to intergenerational equity in domestic legislation and might therefore rely their reasoning exclusively on intergenerational equity as a general principle of international law.

It will thus be necessary to await future decisions of national courts in order to verify how case law will evolve, and whether intergenerational equity as a general principle of international law may claim – as would be desirable – an even broader role in domestic judicial decisions than that explicitly recognized in the Advisory Opinion.