Towards the recognition of State environmental responsibility

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1. Introduction. - 2. International normative sources. - 2.1. Possible jurisprudential suggestions. - 3. Profiles of European Law. - 3.1. The jurisprudence of reference. - 4. Conclusions.

1. - *Introduction.* The first consideration that undoubtedly comes to the fore whenever one is faced with the vastness of the sources of international environmental law is that it still today «lacks systematicity and specificity, as it is characterized by the presence, on the one hand, of general documents that facilitate the reconstruction of international customs, although lacking binding force, i.e. declarations of principles; on the other hand, of many treaties, which are binding legal instruments, but at the same time aimed at regulating the most varied forms of pollution»[1].

Just as an example, it is enough to recall, among the declarations of principles, the 1972 Stockholm Declaration[2], produced following the United Nations Conference on the Human Environment which for the first time informed the global community of the daunting threat posed by environmental damage as a whole[3], and the 1992 Rio Declaration[4]; among the treaties, instead, the Vienna Convention of 1963[5], the CLC Convention of 1969[6], the UNOOSA Convention of 1972[7], the MARPOL Convention of 1973[8], the Lugano Convention of 1992, valid for the European regional area only[9], the CBD of 1992[10], the Bunker Convention of 2001[11], and the Paris Agreement of 2015[12].

Accordingly, a real "parcellization" of environmental protection that some trace back to the United Nations Conference on Environment and Development of 1992, thanks to which this time the international community was actually encouraged to include ecological issues among its priorities and, as a result, to

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[1] A. ARUTA IMPROTA MALTESE, *La problematica formula definitoria del danno all'ecosistema*, in *Riv. giur. amb.*, 2023, 741. See also ID., *La tutela risarcitoria contro i danni ambientali. Normativa europea e italiana a confronto*, Milan, 2021, 9; ID., *Regulations on the prevention and remediation of environmental damage: a comparison between Directive 2004/35/EC and Legislative Decree 152/2006*, Lecce, 2019, 7.

[2] Declaration on the Human Environment (Stockholm, 16 June 1972), UN Doc A/CONF.48/14/Rev.1 (Stockholm Declaration).

[3] J. JAROSE, *A Sleeping Giant? The ENMOD Convention as a Limit on Intentional Environmental Harm in Armed Conflict and Beyond*, in *AJIL*, 2024, 469.

[4] Rio Declaration on Environment and Development (Rio de Janeiro, 3–14 June 1992) UN Doc A/CONF.151/26/Rev.1 (Vol. I) (Rio Declaration).

[5] Vienna Convention on Civil Liability for Nuclear Damage (adopted 21 May 1963, entered into force 12 November 1977) 1063 UNTS 1-16197 (Vienna Convention).

[6] International Convention on Civil Liability for Oil Pollution Damage (adopted 29 November 1969, entered into force 19 June 1975) 973 UNTS 3 (CLC).

[7] Convention on International Liability for Damage Caused by Space Objects (adopted 29 March 1972, entered into force 1 September 1972) 961 UNTS 187 (UNOOSA).

[8] International Convention for the Prevention of Pollution from Ships (adopted 2 November 1973, entered into force 2 October 1983) 1340 UNTS 61 (MARPOL).

[9] Lugano Convention on Civil Liability for Damage deriving from Activities Dangerous for the Environment (adopted 8 March 1992, ratified 21-22 June 1993) ILM 1993 32 480 (Lugano Convention).

[10] Rio de Janeiro Convention on the Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993), available in *https://eur-lex.europa.eu/legal-content/TR/TXT/?uri=celex%3A21993A1213%2801%29*, (CBD).

[11] International Convention on Civil Liability for Bunker Oil Pollution Damage (adopted 23 March 2001, entered into force 21 November 2008), available in *https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22002A0925(01)*, (Bunker Convention).

[12] Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016), available in *https://unfccc.int/sites/default/files/english_paris_agreement.pdf*.

«consolidate a vast and unwieldy patchwork of international legal commitments» reflecting, for the most part, the growing list of human productive activities susceptible to being regulated.
The aforementioned environmental priorities can essentially be grouped into two categories: those pertaining to environmental issues of a transboundary and even global nature, such as climate, biodiversity, deforestation, etc., and those concerning more limited forms of pollution, i.e. local in scope, and the related production activities that are potentially dangerous for human health and natural matrices[13].
About this, it should be noted that the need for legislative harmonization is so important that it emerges from the very first Stockholm declaration on the human environment, which at the principle 22 strongly urges the collaboration of the participating States in order to reach the «develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction»[14].
Uniformization that, *inter alia*, could be achieved also through the approval of a single instrument persuasive tool able to condition governments, companies and international law but not necessarily legally binding, of so-called "Soft Law"[15].
Nonetheless, there are also those who, without dwelling too much on the effectiveness of the legal instruments in question, aim to reconstruct the evolution of international environmental law in both quantitative and qualitative terms and to glimpse, overall, the inclination to overcome the original sectoral normative elaboration towards a greater integration of the different profiles to be addressed and of the set of norms that at various levels are referred to them[16].
At the European level, rather, preventive and restorative protection of the environment would seem to be outlined in an ad hoc framework Directive 2004/35/EC[17], inspired by the now obsolete Lugano Convention, containing the salient rules and procedures. In reality, such protection can also be found in other sector regulatory sources such as those relating to actions in the field of water policy, to waste management and treatment, to nature recovery and to climate.
But what is truly surprising is that in the face of phenomena of collective interest such as widespread air pollution and climate change, as well as the unrest of the population often affected in their health, as well as in their property, by the consequences of damage to the environment, the international community seems not to want to work effectively to put order to the aforementioned legislative fragmentation, nor to strengthen the same legal instruments developed.
In this sense, some of the most relevant agreements on global issues, such as those on biodiversity and climate, are of a purely programmatic nature and therefore do not provide for judicial bodies or sanctions of any kind against States that do not fulfill the objectives contained therein; while in almost all the sectoral treaties of more limited scope, state liability is not prescribed, not even in a joint or subsidiary manner, and even less so in reference to the possible spread of ecological damage beyond national borders, despite the basic principle that the polluter pays does not exclude it at all.
As reported in doctrine[18], the failure of international law to address the socio-ecological crisis is primarily

[13] P. SANDS, *Principles of International Environmental Law*, Cambridge, 2003, 4.
[14] *Ibid.* 870.
[15] F. ANTICH, *Origine ed evoluzione del diritto internazionale ambientale. Verso una governance globale dell'ambiente*, in *www.ambientediritto.it*, subsequently published in the full version entitled *Conflitti ambientali globali e diritto internazionale: attori e dinamiche per una loro risoluzione pacifica*, Florence, 2003.
[16] A. LIGUSTRO, *Il nuovo diritto dell'ambiente tra fonti internazionali, sovranazionali e interne*, in *DPCE Online*, 2023, 17; D. AMIRANTE, *L'ambiente «preso sul serio». Il percorso accidentato del costituzionalismo ambientale*, in *DPCE*, 2019, 1; G. CORDINI - P. FOIS - S. MARCHISIO, *Diritto ambientale. Profili internazionali europei e comparati*, Turin, 2017, 13.
[17] Parliament and Council Directive (EC) 35/2004 of 30 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage [2004] OJ L 143/56.
[18] T. ETTY - V. HEYVAERT - C. CARLARNE - B. HUBER - J. PEEL - J. VAN ZEBEN, *Protecting the Tangible and Intangible Values of Transnational Environmental Spaces*, in *TEL*, 2019, 2.

attributed to the lack of a specific body of international constitutional norms, determining the fundamental environmental values to which States should be bound by choice[19]. Indeed, a legislative project along these lines was even advanced within the UN[20], but it has not yet materialized.
And even in the European context, the basic directive on environmental liability does not impose an obligation for state intervention, especially in cases of insolvency, failure to identify or exemption by law of the perpetrator of environmental damage but limits itself to leaving the Member States of the Union the option of providing for other responsible subjects in addition to the first. Yet, in some of the other regulatory texts connected to the general one, such as that the Regulation (EU) 2024/1991 on the recovery of nature[21], the responsibility of the States takes on a central role.
From this last point of view, it proves to be precious, for the conclusion of this treatise, the observation of the jurisprudence on a global scale, in particular the phenomenon of climate justice before the most varied administrative, civil and constitutional courts in the world, and on a European scale, with specific regard to the Court of Human Rights, as well as doctrinal sources.

2. - *International normative sources*. As for the main element to analyze, i.e. the figure of the subject responsible for ecological damage, it is appropriate to start from the OECD recommendation of 26 May 1972[22], whither the well-known «polluter pays principle» (PPP) was coined for the first time: the statement according to which the person responsible for damage to the environment or the threat thereof must bear all «the costs of prevention and of actions against pollution as defined by the Public Authority in order to keep the environment in an acceptable state»[23]. By the way, without any exclusion regarding a possible intervention of the State in whose territory the ecological damage occurred, jointly and severally with the material author of the damage itself[24].
This recommendation, although not binding by nature, was taken as a model by the international community, which began to attest the cardinal principle of individual responsibility also with the treaties[25].
In fact, if we want to outline an overview of the agreements mentioned above, we can first observe the Bunker Convention, that in following the text of the oldest CLC Convention[26] places the responsibility on the «shipowner», understood as «the owner, including the registered owner, bareboat charterer, manager and operator of the ship»[27]. With the additional inclusion between the possible owners of ships «any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions»[28], even if «in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company»[29].
Similarly, according to the Vienna Convention, the hypothetical person responsible for the nuclear accident is the «operator of the nuclear installation»[30], qualified as «the person designated or recognized by the Installation State as the operator of that installation»[31]. And even in this scenario, it is represented

[19] L. KOTZÉ, *A Global Environmental Constitution for the Anthropocene?*, in *TEL*, 2019, 11-16.
[20] United Nations General Assembly (Resolution) "Towards a Global Pact for the Environment" on 10 May 2018 A/RES/72/277.
[21] European Parliament and Council Regulation (EU) 2024/1991 of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 [2024] OJ L 2024/1991.
[22] Organisation for Economic Co-operation and Development (Recommendation) C (72) 128 OECD/LEGAL/0132.
[23] A. ARUTA IMPROTA, *Regulations*, cit., 41; ID., *La tutela risarcitoria*, cit., 29.
[24] A. ARUTA IMPROTA, *Regulations*, cit., 42; ID., *Some considerations on the party responsible for the threat or environmental damage: international, european and italian legal system in comparison*, in *Ac. Lett.*, 2022, 3.
[25] A. ARUTA IMPROTA, *Some considerations*, cit., 1.
[26] CLC, art. 1, paras. 2-4.
[27] Bunker Convention, art. 1, para. 3.
[28] *Ibid.* art. 1, para. 2.
[29] *Ibid.* art. 1, para. 3.
[30] Vienna Convention, art. 2, para. 1.
[31] *Ibid.* art. 1, para. 1.

that «"Person" means any individual, partnership, any private or public body whether corporate or not, any international organization enjoying legal personality under the law of the Installation State, and any State or any of its constituent sub-divisions»[32].
Again, in the Lugano Convention, in which the prefiguration of a more general deterioration of the environment you can notice, places the entire burden of the compromise of the case on an equally generic «operator»[33], that is the «person who exercises the control of a dangerous activity»[34], but clearly including also a State or one of its departments[35].
Regarding, then, the MARPOL Convention, in it the «Administration», that is «the Governement of the State under whose authority the ship is operating», is identified as the potentially responsible subject[36], although the «present Convention shall not apply to any warships, naval auxiliary or other ships owned or operated by a State and used, for the time being, only on government non-commercial service»[37].
Outside these exclusions, the authorities of the State/Party to the Convention under whose jurisdiction a violation has been committed may initiate proceedings in accordance with their own laws (relying on the accused's adhesion), or report the violation to the authorities of the State/Party on which the vessel depends; the latter State in turn will be (at least in principle) required to inform the former of the measures taken[38].
As for the liability of public entities such as States, evidently, the international legal system still shows reluctance to fully or in solidarity with the operator prescribe it: «where provided, it is usually residual compared to that of the entity materially responsible for the damage to the ecosystem, i.e. the operator. Residuality in terms of supplying public funds that operate in the event that the damage exceeds the limits of the latter's liability and/or marginal state guarantee for damages always caused by the operator»[39].
And to think that the general ILC Draft Articles on Responsibility of States[40], while derogating from all special legislations concerning singular forms of State responsibility[41], opens in principle to the possibility of making States responsible for conducts which are not in themselves attributable to them, provided that the internal laws of such States provide for it: «Conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own»[42].
At present, practically, only the UNOOSA Convention outlines a full environmental liability of the State: «A launching State shall absolutely liable to pay compensation for damage caused by its space objects on the surface of the earth or to aircraft in flight»[43].
It follows that, in this specific area, the sole liability of the launching State exists, which is, above all,

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[32] *Ibid.* art. 1, para. 1.
[33] Lugano Convention, arts. 6-7.
[34] *Ibid.* art. 2, para. 5.
[35] *Ibid.* art. 2, para, 6.
[36] MARPOL, art. 2, para. 5.
[37] *Ibid.* art. 3, para. 3.
[38] *Ibid.* arts. 4 and 6.
[39] A. ARUTA IMPROTA, *Alcune considerazioni sul soggetto responsabile per la minaccia o il danno ambientale*, in *RGA Online*, 2022, referring to M. ALBERTON, *Il danno ambientale in un'ottica multilivello: spunti di riflessione*, in *IANUS*, 2010, 4-5, that in relation to contributions to public funds, it mentions the Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960, OECD/LEGAL/0053 (Brussels Supplementary Convention); while with regard to the guarantee of operators by States for damages caused, it identifies as examples the Vienna Convention and the Convention on the Regulation of Antarctic Mineral Resource Activities (adopted 2 June 1988, never entered into force due to the lack of the necessary number of ratifications) 27 ILM 868 (CRAMRA).
[40] Draft articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the work of its fifty-third session [2001] 2 (Part Two) Yearbook of the International Law Commission.
[41] J. CRAWFORD, *The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect*, in *AJIL*, 2002, 879, with in n. 19 the link to D. BODANSKY, J. R. CROOK, *Introduction and Overview*, in *AJIL*, 2002, 781.
[42] ILC Draft Articles on Responsibility of States, art. 11.
[43] UNOOSA, art. 2.

objective and absolute, that is, based on the pure and simple causal link and with few indisputable exceptions[44], regardless of whether the subject materially responsible for the space object carries out a public or private activity. Although in the event of damage to land surfaces or aircraft in flight of third States, the "diplomatic" route is always envisaged, as an alternative to the internal judicial/administrative one, to advance a claim for compensation by the injured State against the damaging State[45].
On top of that, it is assumed that the generic reference to the "Earth's surface" can be reasonably extended to all the natural resources that are part of it and that are damaged by the space object[46], given the provision according to which «In the event of damage being caused elsewhere than on the surface of the earth to a space object of one launching State or to persons or property on board such a space object by a space object of another launching State, the latter shall be liable only if the damage is due to its fault or the fault of persons for whom it is responsible»[47].
While in other monothematic agreements, in fact, one can only scrutinize moderate – to use a euphemism – programmatic duties on the part of the States, empty in this sense of sanctioning provisions and terms within which the latter should comply with the provisions contained therein, as well as the shortcomings in the designation of supranational bodies or organizations responsible for both the supervision and the judgment on the observance of said obligations. Although according someone in the most recent period of development of supranational law, the existence of global goods and common risks that must be managed by the international community as a whole has been consolidated, such as those relating to harmful emissions to the ozone layer, to the climate and to the global warming, as well as to the loss of biodiversity[48].
This is precisely the case of the very relevant 1992 CBD, which on the one hand, prescribes the duty of States only «to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction»[49]; on the other hand, it provides interventions as well as state economic incentives aimed at the conservation and sustainable use of biodiversity but always «as far as possible and as appropriate»[50] and without assigning to any specific control body explicit repressive-sanctioning powers[51].
Alike considerations, finally, with regard to the most worrying topic or sector of the moment, namely climate change, to which the well-known Paris Agreement on climate refers in particular[52]. Treaty that in substance «It sets out a global framework to avoid dangerous climate change by limiting global warming to well below 2 °C and aiming to limit it to 1.5 °C. It also aims to strengthen countries' ability to deal with the impacts of climate change and support them in their efforts»[53].
The burdens of the States that have joined it, in the form of achieving the pre-established objectives, are clear[54], but still "mitigated" by other textual expressions that weaken their original etymological and legal

[44] *Ibid.* arts. 6-7.
[45] *Ibid.* arts. 9-12.
[46] A. ARUTA IMPROTA, *La tutela risarcitoria*, cit., 30-31.
[47] UNOOSA, art. 3, as well as the subsequent arts. 4 and 5 concerning cases of solidarity between launching States.
[48] S. GRASSI, *La tutela dell'ambiente nelle fonti internazionali, europee ed interne*, in "1° LUGLIO 2022 - Relazione al convegno Scelte ambientali, azione amministrativa e tecniche di tutela dopo la legge di rev. cost. n. 1 del 2022", 13, n. 15.
[49] It is the ban on transboundary pollution pursuant to art. 3 of the convention under analysis.
[50] CBD, arts. 8-11, as well as 14 and 20.
[51] *Ibid.* arts. 23-25.
[52] G. VIVOLI, *L'insostenibile leggerezza degli obiettivi climatici: come gli impegni assunti dagli Stati vengono presi sul serio dai giudici*, in *AmbienteDiritto*, 2022, 4-5, concisely reports on the legislative antecedents of the Paris Agreement. And about the limited effectiveness of the work done by the 2015 Paris climate conference, especially in view of the emission targets and the impediment to full ecological protection due to the differentiation between industrialized and developing countries: L. HERMWILLE - W. OBERGASSEL - H. E. OTT - C. BEUERMANN - *UNFCCC before and after Paris – what's necessary for an effective climate regime?*, in *Clim. Pol.*, 2017, 150-170.
[53] Thus, in the institutional portal *www.eur-lex.europa.eu*.
[54] Paris Agreement, arts. 2 and 4, para. 13.

cogency to the point of translating them, in the final analysis, into simple exhortations or hopes, as follows: - «Parties should strengthen their cooperation on enhancing action on adaptation»[55]; - «United Nations specialized organizations and agencies are encouraged to support the efforts of Parties to implement the actions referred to in paragraph 7 of this Article, taking into account the provisions of paragraph 5 of this Article»[56]; - «Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change»[57]. After all, one should also keep in mind the doctrine that is most benevolent towards this type of regulatory approach based more on the participation, sharing and good faith of the Member States than on imposition on them[58].
So, a non-coercive textual setting that culminates both with the shortage of sanctioning/punitive provisions, also for the possible failure to provide financial resources by economically advanced States to developing ones[59]; and with the establishment of mere verification and assistance bodies, such as the Conference of the Parties, a forum for discussion between representatives of the signatory States[60], and the «mechanism», literally consisting «of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive»[61].

2. 1. - *Possible jurisprudential suggestions*. As already mentioned, States are not yet entirely inclined to assume environmental responsibility on a joint or subsidiary basis, and it is above all for this reason that «aside from legal proceedings within the State affected by the contamination, at an international level justice can currently only be brought through arbitration»[62].
At any rate, it must be recognized that if one observes the premises of Paris agreement, one comes across formulations that are not very thorough and complete, but which can be traced back to some principles of international law arising from the duties of States towards the international community as a whole, by virtue of which it is also conceivable to activate procedural actions aimed at ascertaining the observance of such obligations[63].
And in fact this is what has happened, starting from 2015 to today: a worldwide proliferation of disputes[64] activated not by one State against another State, but by the citizens of one State against the same State, that on one side, entails a certain decentralization of the interpretative practice which in turn «could have a destabilizing impact on claims to the universality of human rights»[65]; on the other side, it support, at

[55] *Ibid.* art. 7, para. 7.
[56] *Ibid.* art. 7, para. 8.
[57] *Ibid.* art. 8, para. 3.
[58] F. SCALIA, *L'Accordo di Parigi e i «paradossi» delle politiche dell'Europa su clima ed energia*, in *DGA Online*, 2016, 3; S. NESPOR, *La lunga marcia per un accordo globale sul clima: dal protocollo di Kyoto all'accordo di Parigi*, in *www.nespor.it*, para. 9, letter c.
[59] Paris Agreement, art 9.
[60] *Ibid.* art. 14.
[61] *Ibid.* art. 15, para. 2.
[62] A. ARUTA IMPROTA MALTESE, *La problematica formula*, cit., 752, n. 30, which reproduces the case law (in addition to that *Trail foundry case: USA v Canada*, 11 March 1941, UN Reports of International Arbitral Awards, vol. 3, 1941, 1965) cited by M. ALBERTON herself, *Il danno ambientale,* cit., 3: «*Lac Lanoux Arbitration, (Francia contro Spagna), XII, R.I.A.A., 1957; Nuclear Tests (Australia contro Francia), ICJ Reports, I, 1973; Nuclear Tests (Nuova Zelanda contro Francia), ICJ Reports, II, 1973; Certain Phosphate Lands in Nauru (Isola di Nauru contro Australia), ICJ Reports, 1992; Case concerning the Gab ikovo Nagymaros Project (Ungheria contro Slovacchia), ICJ Reports, 1997; The MOX Plant Case (Irlanda contro Regno Unito), in ITLOS Reports, 2001; Pulp Mills on the River Uruguay Case, (Argentina contro Uruguay), Judgment, 20 aprile 2010*».
[63] S. GRASSI, *La tutela dell'ambiente nelle fonti internazionali*, cit., n. cit. Of the same opinion, G. VIVOLI, *L'insostenibile leggerezza*, cit., 2, who also points out that the climate justice referred to in the preambles of the Paris Agreement must be understood, in the absence of other elements of specification, as any jurisdictional decision on a dispute arising 'in the name of climate change', as the only common denominator in the face of a multiplicity of proceedings that have appellants of different nature, whose claims can also be differentiated and asserted before different Courts.
[64] M. MAGRI, *Il 2021 è stato l'anno della "giustizia climatica"?*, in *AmbienteDiritto*, 2021, 5.
[65] E. LEES - E. GJALDBÆK SVERDRUP, *Fuzzy Universality in Climate Change Litigation*, in *TEL*, 2024, 502.

least from a global comparative perspective, the possibility of extending ecological responsibility to the States, given that, as we will see later, climate change is considered by many as a singular form of environmental degradation.
Procedures therefore aimed at ascertaining the inadequacy of the measures adopted to address climate change and consequently imposing the implementation of more incisive actions in this regard; that have a transnational diffusion and are brought before Courts of various types, including international ones[66].
But as meticulously reiterated, the disputes that see civil society against the State are only the best known and most widespread, because there are others in which the parties involved are public bodies of different territorial levels or public bodies against private entities[67].
Among these proceedings, it is worth mentioning: - the *Urgenda case*, concluded with the ruling of the Dutch Supreme Court of 20 December 2019[68], which was the first to condemn the State to make its environmental policy more rigorous by reducing, first of all, greenhouse gas emissions; - the *Affaire du Siécle case*, ended with the judgment of the Administrative Court of Paris on 3 February 2021[69], that recognized the need for more intense state action in addition to symbolic compensation for moral and ecological damage suffered by each applicant; - the *Klimashutzgesetz case*, at the end of which the Federal Constitutional Court, with its ruling of 24 March 2021[70], declared the unconstitutionality of some articles of the Federal Law on Climate Protection (LAC) of 12 December 2019 (in the Federal Official Journal I page 2513), ascertaining the scarcity of the measures undertaken by Germany in the fight against climate change; - the *Torres Strait Islanders case*, finished with the United Nations Human Rights Committee decision of 23 September 2022[71], from which it is clear that, that, by failing to implement appropriate and timely adaptation actions, the Australian institutions have violated the rights enshrined in the International Covenant on Civil and Political Rights to the detriment of several Australian citizens residing in the Torres Strait Islands.

3. - *Profiles of European Law*. At European level, first of all it is necessary to focus on the TFEU[72], firmly states the PPP regarding environmental liability, predetermining the following: «Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay»[73].
With particular regard to the aforementioned provision, the judgment of the Court of Justice of the European Union, Third Chamber, 4 March 2015[74], clarifies the fact that it, although primarily introducing the PPP, is in reality limited to outlining the main objectives of the Union in environmental matters, and therefore can be invoked only when no Union legislation adopted pursuant to article 192 TFEU which

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66 R. FORNASARI, *Comandare allo stato di agire: climate change e responsabilità civile del potere pubblico*, in *Per. Merc.* 2022, 481, that in n. 4 highlights the case *Duarte Agostinho and Others v Portugal and 32 Other States App No 39371/20*, ECtHR, 9 April 2024.
67 G. VIVOLI, *L'insostenibile leggerezza*, cit., 2.
68 *Netherlands v the Urgenda Foundation* (2019) 19/00135, available in *https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2019/20191220_2015-HAZA-C0900456689_judgment-1.pdf*.
69 *Our Everyone Affair and Other v French Government* (2021) 1904967, 1904968, 1904972, 1904976/4-1, available in *https://elaw.org/wp-content/uploads/archive/attachments/publicresource/190496719049681904972190497 6.pdf*.
70 *Citizens v the Federal Republic of Germany* (2021) 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, available in *https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html*.
71 *Daniel Billy and others v the Australian Government* (2022) CCPR/C/135/D/3624/2019, 2, available in *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fclimatecasechart.com%2Fwp-content%2Fuploads%2Fnon-us-case-documents%2F2022%2F20220923_CCPRC135D36242019_decision.docx&wdOrigin=BROWSELINK*.
72 Consolidated Versions of the Treaty on the Functioning of the European Union [2008] OJ C115/49.
73 *Ibid.* art. 191, para. 2.
74 C-534/13, *Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others v Fipa Group Srl and Others*, ECLI:EU:C:2015:140.

specifically regulates the hypothesis in question is applicable[75].
Over and above, it has been rightly observed[76] that with reference to the possibility of extending the liability for environmental damage to the States, the TFEU nevertheless preserves the right of the Member States of the Union to agree, at the competent international bodies, to strengthen their commitment and improve the standards of environmental protection[77]. Just as at internal level the Member States can «maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission»[78].
In second exam, the historic framework Directive 2004/35/EC immediately takes over, produced for the purpose of allowing compensation for ecological damage as damage caused to the environment itself[79]. It in also incorporating the PPP and configuring the first common discipline among the States belonging to the current European Union on the prevention and remediation of environmental damage[80], focuses again on individual responsibility: «The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced»[81].
From here, the deduction according to which the polluter pays principle cannot and must not be resolved in a negotiation having as its object the possibility of compromising, in whole or in part, the natural components: it would be too easy for wealthy operators and would be to the detriment of human health, as well as the environment, obviously. On the contrary, the provisions of the European legislation in question, in a dual function of deterrence and incentive, aim to induce operators to implement more virtuous practices, in order to avoid the risk of having to shoulder all the costs of the prevention and repair actions that they themselves are required to implement[82].
These primary functions of the PPP are unequivocally from the ECA Special Report 12/2021[83]. Nevertheless, from the relevant and attached Replies of the European Commission to the same Report, what was stated that «The Organisation for Economic Co-operation and Development (OECD) considers pricing instruments including environmental taxes an important tool for delivering the PPP. This includes charges, taxing of pollution that is permitted, environmental liability, and the phasing out of environmentally harmful subsidies' and, therefore, concluded that "The Commission is also acting to support Member States" implementation of the PPP, but despite doing so, it is still not fully applied (…) It is for

[75] C. SARTORETTI, *La responsabilità per danno ambientale e il principio "chi inquina paga" al vaglio della Corte di Giustizia Europea*, in *DPCE Online*, 2015, 3; N. DE SADELEER, *Preliminary Reference on Environmental Liability and the Polluter Pays Principle: Case C-534/13, Fipa*, in *RECIEL*, 2015, 234.
[76] A. ARUTA IMPROTA, *Some considerations*, cit., 4.
[77] TFEU, art. 191, para. 4.
[78] *Ibid.* 193.
[79] E. CORNU THENARD, *La réparation du dommage environnemental: étude comparative de la directive 2004/35/CE du 21 avril 2004 sur la responsabilité environnementale et de l'US Oil Pollution Act*, in *Rev. jur. env.*, 2008, 176.
[80] Directive 2004/35/EC, art. 1.
[81] *Ibid.* recital 2. Similarly, recital 18. And the costs of the necessary preventive and remedial actions by the responsible operator they are explained in the art. 2, para. 16.
[82] A. ARUTA IMPROTA, *Regulations*, cit., 41; ID., *La tutela risarcitoria*, cit., 30, referring precisely to recital 2 of the Directive. R. ROTA, *Profili di diritto comunitario dell'ambiente*, in P. DELL'ANNO, E. PICOZZA (eds), *Trattato di diritto dell'ambiente*, Milan, 2012, 175, equally speaks of a dual function of disincentive and incentive, asserting the original preventive and only subsequently compensatory value of the principle in the Community context; while A. PALMA, *Il principio "chi inquina paga", fra responsabilità aquiliana e peculiarità del danno ambientale, nell'interpretazione delle Sezioni Unite della Cassazione*, in *www.coisrivista.it*, traces the dissuasive purpose of the principle back to art. 191, para. 1, of TFEU, which, as we have seen, binds the Union's policy to achieving a high level of environmental protection.
[83] Court of Auditors (EU) 'The Polluter Pays Principle: Inconsistent application across EU environmental policies and actions' (Special Report 12/2021), available in *https://www.eca.europa.eu/Lists/ECADocuments/SR21_12/SR_polluter_pays_principle_EN.pdf, 4-7.*

Member States to ensure that pollution within permitted levels is priced»[84].
Further, for the sake of completeness, it should be borne in mind that the «Directive was neither the first nor the last to have implemented the international principle in question. In fact, this can already be found in the Council Recommendation concerning the allocation of costs and the intervention of public authorities in environmental matters, with the attached Communication from the European Commission concerning the allocation of costs and the intervention of public authorities in environmental matters (see Recommendation 75/436/Euratom, ECSC and EEC, in OJ no. L. 194/1 of 25/07/1975). This also applies to Framework Directive 2000/60/EC for Community action in the field of water policy (see Art. 9) and Directives 2008/98/EC on waste management and treatment (see Art. 14) and 1999/31/EC on the landfill of waste (see Art. 10), both amended by Directive 2018/850/EU»[85].
Clarifications aside, the broad definition of «operator» offered by Directive 2004/35/EC includes «any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity»[86].
Even if, to be precise, the liability of the person in question is unusually diversified: objective, for damage to natural resources[87] or the threat thereof – a hypothesis clearly envisaged therein[88] – caused by risky professional activities that can be classified among those listed in Annex III to the legislation in comment[89]; negligent/intentional, if the aforementioned damage or the threat thereof is caused by professional activities not included in Annex[90].
The state authority itself can, but must not, intervene; if it decides to do so, it can then recover the amount paid for prevention and repair measures by the operator eventually identified: «When the competent authority intervenes directly or through third parties instead of an operator, said authority should ensure that the cost incurred by is borne by the operator. It is also appropriate that operators ultimately bear the cost of assessing the environmental damage and possibly assessing the imminent threat of such damage»[91].
Thus structured, evidently, the Directive on the prevention and remedying of environmental damage does not provide for a real regime of ecological liability, because it does not actively involve state authorities: it is consecrated in it the internalization of costs through recourse to civil liability[92], although according to another exegesis the system of the Directive is rather different from that of civil liability and this emerges from Article 5 and recital 13 of the Directive[93].

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[84] *Ibid.* (European Commission Replies), 1-5. This bitter conclusion is also brought to light by G. VAN CALSTER in the interview *Does the polluter pay?*, available in *https://www.eea.europa.eu/signals-archived/signals-2020/articles/interview-does-the-polluter-pay*, 2-3: «Unfortunately, the current system can be seen and used as a "licence to pollute": as long as you can pay - meaning if you can afford it, you are allowed to pollute. This is closely linked to the unequal distribution of benefits and costs of these polluting activities».
[85] A. ARUTA IMPROTA, *Alcune considerazioni*, cit.
[86] Directive 2004/35/EC, art. 2, para. 6.
[87] *Ibid.* art. 2, para. 1.
[88] *Ibid.* art. 2, para. 9.
[89] Without forgetting the well-known judgment of the Court of Justice of the European Community, Grand Chamber, 9 March 2010, in C-378/08 *Raffinerie Mediterranee (ERG) SpA and others v Ministero dello Sviluppo economico and others*, ECLI:EU:C:2010:126, still valid, which was the first to point out that it was necessary to identify the causal link even in cases of objective environmental liability, establishing on that occasion that the etiological relationship could be determined presumptively, based on the proximity between the activity carried out by the operator and the damaged site, as well as the contaminating elements found on site and those used in the exercise of the aforementioned activity.
[90] Directive 2004/35/EC, recitals 8-9 and arts. 2-3.
[91] *Ibid.* recital 18. See also arts. 1 and 8 paras. 1-2.
[92] N. DE SADELEER, *Preliminary Reference*, cit., 232.
[93] L. GONZÁLEZ VAQUÉ, *La responsabilidad medioambiental en la Unión europea: la Directiva 2004/35/CE*, in *Rev. elect. est. int.*, 2006, 5 and 9.

Notwithstanding, it was also recalled[94] that the European Directive does not in any way inhibit the possibility for the States concerned to produce more rigorous domestic law provisions[95], aimed at making other subjects (including States), in addition to the operator, responsible for the provisions established in it[96].
And continuing, still, the debated problem of climate change, the resolution of which is first of all firmly anchored among the objectives of the TFEU[97], it can be noted that among the authors there are those who bring air pollution back into the category of environmental damage, since pollution from greenhouse gases causes contamination of the atmosphere, which is an environmental component like water and soil. In this manner, in principle, the most suitable remedial instrument would be the same liability for damage to the environment, also to regulate the related damage from climate change, not provided for by the sector international conventions[98].
On the other hand, one could object that the European guidelines referring precisely to the common interpretation of the notion of environmental damage, as per article 2 of Directive 2004/35/EC[99], exclude that the concept of «damage» can be extended to further natural components in addition to those to which the definition of environmental damage refers textually[100]. But the guidelines as such do not have the force of law and are therefore destined to be ignored, as demonstrated by the latest doctrinal analysis just reported.
Apropos, it is appropriate to attach other sector legislation here: the Directive 2024/1760/EU[101], the citated Regulation (EU) 2024/1991 and the Regulation (EU) 2021/1119[102].
The first one identifies: «(a) obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the operations carried out by their business partners in the chains of activities of those companies; (b) liability for violations of the obligations as referred to in point (a); and (c) the obligation for companies to adopt and put into effect a transition plan for climate change mitigation which aims to ensure, through best efforts, compatibility of the business model and of the strategy of the company with the transition to a sustainable economy and with the limiting of global warming to 1,5 °C in line with the Paris Agreement»[103].
The second, vice versa, foresees ecosystem restoration obligations to ensure the recovery of biodiversity and resilient nature[104], including the planting of at least three billion trees by 2030 throughout the territory

[94] A. ARUTA IMPROTA MALTESE, *La tutela ambientale nella costituzione italiana: il punto della situazione*, in *Riv. dir. ec. trasp. amb.*, 2024, 91-93; previously also ID., *Some considerations*, cit., 3-4; ID., *Regulations*, cit., 42.
[95] Directive 2004/35/EC, recital 29.
[96] *Ibid.* art. 16, para. 1. C. SARTORETTI, *La responsabilità per danno ambientale*, cit., 124-127, in the same way insists on this "concession" present in the legislative text, specifying however that the possible identification of further subjects responsible on a subsidiary basis must always take place in compliance with the European regulations on the matter.
[97] TFEU, art. 191, para. 1.
[98] U. SALANITRO, *Il danno all'ambiente nell'art. 41 della costituzione*, in *Astr. Rass.*, 2024, 16-17, that in n. 48 further identifies in M. HINTEREGGER, *Civil Liability and the Challenges of Climate Change: a Functional Analysis*, in *JETL*, 2017, 250, the doctrine in favor of the application of the Directive on environmental liability to the phenomenon of climate change, while reserving doubts regarding the determination of the causal link. This latter issue is contemplated in recital 13 and art. 4, para. 5, of the Directive 2004/35/CE regarding the general hypothesis of environmental damage of a widespread nature.
[99] Commission (EU) "Guidelines providing a common understanding of the term «environmental damage» as defined in Article 2 of Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage" (Notice) [2021] OJ C 118/1.
[100] *Ibid.* para. 3. 40.
[101] European Parliament and Council Directive (EU) 2024/1760 of 13 June 2024 on due diligence by companies for sustainability purposes and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] OJ L 2024/1760.
[102] European Parliament and Council Regulation (EU) 2021/1119 of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulation (EC) No 401/2009 and Regulation (EU) 2018/1999 [2021] OJ L 243/1.
[103] Directive (EU) 2024/1760, art. 1, para. 1.
[104] Regulation (EU) 2024/1991, recital 1 and arts. 4-12.

of the Union[105], on the part of the States: «Member States shall each prepare a national restoration plan and carry out the preparatory monitoring and research needed to identify the restoration measures that are necessary to meet the restoration targets and fulfil the obligations set out in Articles 4 to 13 and to contribute to the Union's overarching objectives and targets set out in Article 1, taking into account the latest scientific evidence»[106].
The third, in the final, represents the first programmatic "European climate law" after the Paris Agreement, having as its main objectives always for the States climate neutrality by 2050 and the reduction of emissions by 2030.
This confirms that also at the European level there is not really a single regulatory discipline, much less an appropriate harmonization of the aforementioned multiple normative sources, often conflicting in their interpretation and concrete implementation, and at the same time that state ecological responsibility is not only feasible but is progressively taking hold through regulations directly connected to those on environmental responsibility.

3. 1. - *The jurisprudence of reference*. Even highlighted increase in disputes in the name of climate justice has led to a new recent opening to the possibility of extending "climate responsibility" to States, moreover starting from that very assumption that frames climate change as a singular form of environmental degradation, of a purely anthropic nature[107]: the Grand Chamber judgment of the European Court of Human Rights on the *KlimaSeniorinnen case*[108], in fact the «first international court to deliver a judgment holding a state accountable for failing to take adequate measures to mitigate and pre-vent the negative impacts of climate change on the enjoyment of human rights»[109].
In particular, from the presupposition that article 8 of the ECHR[110] gives rise to the right of individuals to effective protection by State authorities against the serious adverse effects of climate change on their health and quality of life, the Court established that States are required, albeit at their discretion, to act effectively and concretely. And to do that, to apply regulations and measures capable of progressively and significantly reducing their levels of greenhouse gas emissions, including the calculation of the carbon budget, until reaching neutrality from carbon within the next thirty years[111].
The ruling subsequently paved the way for another important conclusion of the same Court: «More recently, in Cannavacciuolo and Others v. Italy, the ECtHR for the first time applied positive obligations under the right to life (Article 2 ECHR) in a case on large-scale environmental pollution»[112] caused by the dumping and illicit burning of waste[113], further softening the traditional requirements for reconstructing the cause-effect link and broadening the applications of the precautionary method to the right to life[114].
Anyhow, it must be acknowledged that this innovative approach has suffered two setbacks in the other

[105] *Ibid.* art. 13.
[106] *Ibid.* art. 14, para. 1.
[107] A. ARUTA IMPROTA, written interview regarding the work *La tutela risarcitoria contro i danni ambientali tra direttiva 2004/35/CE e d.lgs. 152/2006*, Roma, 2018, in *Il Geologo*, 2019, 30, in which global warming was already openly considered as the most worrying form of environmental damage and of threat of progressive environmental damage of our time.
[108] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland App No 53600/20*, ECtHR, 9 April 2024, paras. 110 and 114.
[109] A. SAVARESI, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making climate change litigation history*, in *RECIEL*, 2025, 279, available in *https://onlinelibrary.wiley.com/doi/epdf/10.1111/reel.12612*.
[110] Consolidated Versions of the European Convention for the Protection of Human Rights and Fundamental Freedoms [1950], available in *https://www.echr.coe.int/documents/d/echr/Convention_ENG*.
[111] *KlimaSeniorinnen case*, cit., paras. 544-550.
[112] C. STALENHOEF - E. DE JONG - M. FAURE, *Licence to Pollute? Revisiting the Regulatory Compliance Defence in Civil Proceedings in Cases of Human Rights Violations*, in *JEL*, 2025, 11, n. 83.
[113] *Cannavacciuolo and Others v Italy App no 51567/14*, ECtHR, 30 January 2025.
[114] K. HAMANN, *Cannavacciuolo and Others v Italy: Towards Applying a Precautionary Approach to the Right to Life*, in *www.ejiltalk.org*.

two similar cases *Duarte Agostinho*[115] and *Carême*[116], in which the Court, without going into the merits of state climate responsibility, declared the appeals inadmissible, noting, in the first case, the failure to use all available state remedies, both judicially and administratively, as well as the impossibility of extending the extraterritorial jurisdiction of the other defendant States other than Portugal; in the second case, the non-entitlement to the *status* of victim to a person who, no longer living in France, no longer has relevant ties with that country[117].

4. - *Conclusions*. In closing this contribution, it can be asserted, without any presumption, that on the basis of the various, normative, jurisprudential and doctrinal sources discussed, it would be possible and necessary to legally recognize the joint/alternative liability of the State, in which the possible damaging or threatening professional activity of the operator is exercised.
In fact, neither the TFEU nor Directive 2004/35/EC prevent this; while at the international level, there are already openings in this regard in both general international texts, such as the ILC Draft Articles on Responsibility of States, and specific ones, in particular the UNOOSA Convention and the MARPOL Convention, where the direct involvement of States in the remediation of the respective types of environmental damage considered is foreseen.
Furthermore, there is support from case law, both globally and Europeanly, leading to the recognition of States' climate obligations: particularly significant duties, given the close correlation between atmosphere/climate and environmental liability, as argued by legal scholars, which have also highlighted the lack of provisions regarding climate damage in the same sectoral conventions.
Therefore, we should proceed through a new European legislation, more complete and self-executing in the Member States: a Regulation[118], given the sensitivity of the problems to be addressed and the priority need for harmonisation of the law[119], capable of standardising the legislative texts pertinent to the theme of environmental responsibility, including the most sensitive ones relating to climate change.
Certainly, the hypothetical state solidarity, with obviously the preservation of the right of recourse where it is possible to exercise it, would favor the effective prevention and repair of the damages in question in the cases in which the operators are not solvent, identifiable and required by law to pay the related costs. Indeed, uncertainties about the possibility of recovering all the costs of preventing and repairing ecological disasters often lead state authorities, who are not required to act by law, to remain inert[120]: it is no coincidence that the number of sites to be reclaimed throughout Europe is very high[121], as attested by the first of all the recitals of Directive 2004/35/EC.
And in this context, among other things, all the hypothetical disputes between the Member States on the ecological disasters spread beyond national borders, could be addressed to the Court of Justice of the European Union, since it also has jurisdiction to settle disputes for non-compliance between Member States[122].
However, this legal instrument could prove insufficient in the face of highly complex and widespread ecosystem degradation phenomena, beyond the territory of the Union; so also at international level it would be good to rethink to an ad hoc global governance[123], perhaps within the United Nations and with

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[115] See R. FORNASARI, *Comandare allo stato di agire*, cit.
[116] *Carême v France App No 7189/21,* ECtHR, 9 April 2024.
[117] C. SARTORETTI, *La climate change litigation "sbarca" a Strasburgo: brevi riflessioni a margine delle tre recenti sentenze della Corte EDU*, in *DPCE Online*, 2024, 1487.
[118] TFUE, art. 288, para. 2.
[119] *Ibid.* art. 191, paras. 1-2.
[120] N. DE SADELEER, *Preliminary Reference*, cit., 233.
[121] *Ibid.* 232. This finding is also present in recital 1 of Directive 2004/35/EC.
[122] TFEU, art. 259.
[123] A. POSTIGLIONE, *Verso un Patto mondiale per l'ambiente*, in *Riv. giur. amb.*, 2017, para. 1 and para. 2. 2, available in *https://globalpactenvironment.org/uploads/Verso-un-Patto-Mondiale.pdf*; A. CHALOUX - P. SIMARD, *La gouvernance environnementale mondiale: évolu-*

«the necessary controls as well as any sanctions, including disqualifications»[124], on the actions of the States, including those on emissions reduction, «With the extension, obviously, of this form of joint and several liability also to all States affected by environmental damage of a widespread nature, in the event of failure to identify the operator»[125]. And to do this, approve the coveted international codification suitable for harmonizing the multitude of the supranational sources[126] and inspired by the dual environmental responsibility regime provided for by the current European Directive[127].

Supervisory and sanctioning powers which, in substance, could be entrusted to a new court or, alternatively, an agency with the same powers that supports the work of the United Nations Environment Programme (UNEP)[128], always promoting in advance the resolution of disputes before the International Court of Justice (ICJ) that, according to the rules of its Statute, which integrates the Charter of the United Nations of San Francisco,[129] can decide on violations of international law by States[130].

The aforementioned "vision" appears decidedly ambitious in such a consumerist and conflictual global context, but this does not mean we should give up on aspiring to greater environmental protection, «whose problems appear to be increasing and unstoppable due to the lack of sensitivity and to the superficiality with which they are approached by men»[131].

tion et enjeux, in *Rev. québ. dr. int.*, 2021, 231-232, which documents the existence of a fragmented and polycentric global governance, certainly in need of being improved especially in light of the global ecological challenges to be faced such as climate change.

[124] A. ARUTA IMPROTA, *Some considerations*, cit., 4.

[125] *Ibid.* 4.

[126] D. BODANSKY - J. R. CROOK, *Introduction*, cit., 781, differently, in contrast to all those who consider the unity and coherence of international law to be a virtue, reflect on the fact that the hypothetical univocal approach could compromise the adoption of more variegated rules, aimed at regulating in a more precise way different possible abstract situations, including the multiplicity of the EU's objectives.

[127] A. ARUTA IMPROTA, *Regulations*, cit., 105-106. Similar conclusions, in ID., *La tutela risarcitoria*, cit., 92, and ID., *La tutela ambientale*, cit., 112, where in n. 64, emphasis is placed on the unimplemented principle 22 of the Stockholm Declaration.

[128] See the specific prerogatives on the official website *www.unep.org*.

[129] Charter of the United Nations and Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945), available in https://treaties.un.org/doc/Publication/CTC/uncharter.pdf, (UN Charter).

[130] *Ibid.*, ICJ Statute, arts. 34-38. The role of this Court in the interpretation and reconstruction of the law has proven to be valuable, also in reference to the problem of climate change: XI NING, CUIBAI YANG, *The judicial dimension of climate governance: The role of the International Court of Justice*, in *RECIEL*, 2025, 194-209.

[131] A. ARUTA IMPROTA, *Regulations*, cit., 105-106; ID., *La tutela risarcitoria*, cit., 92.