Can Special Purpose Vehicles plug the Sovereignty Gap in Climate Finance for Post-conflict Regions?

Senior lecturer **Chamundeeswari KUPPUSWAMY**[1]

Abstract

This article examines how the state-centric characteristic of international climate finance creates access barriers for non-sovereign territories, such as the Kurdistan Region of Iraq and Northern Syria. Although these entities are not formally excluded from all climate funds, they are presented in the paper having regard to their limited international status, inconsistent governance arrangements, and strained relations with internationally recognised central authorities, a fact which significantly restricts direct and predictable access to adaptation and mitigation finance. The article finds that this institutional deficit also weakens the conditions necessary for stable green investment. Drawing on selected doctrines regarding effective control, functional international capacity, and investment structuring, the paper develops the concept of a limited functional legal personality for non-sovereign actors in the field of climate finance. On this basis, it analyses whether specially designed investment vehicles, including special purpose vehicles, would contribute to channelling green foreign direct investment, to the development of small-scale projects, and to mitigating some of the legal and political risks associated with contested governance. The conclusion that follows is that a carefully delimited functionalist approach would complement, without replacing, the state-based structure of the Paris regime, while also contributing to the strengthening of climate resilience and investment viability in territories characterised by political complexity.

Keywords: *international investment, climate finance, functional legal personality, effective control principle, special purpose vehicle, climate action, post conflict regions.*

JEL Classification: K22, K32, K33

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1. Introduction

The Levant faces extreme water scarcity, desertification, and rising temperatures and needs access to global climate funds, such as the Green Climate Fund (GCF) and the Adaptation Fund, both of which are beyond their reach.[2] This paper addresses structural issues in climate finance arising at the intersection of public international law and finance. The challenge faced by post-conflict regions, such as the Kurdistan Region of Iraq and the Autonomous Administration of North and East Syria (AANES) (also

[1] Chamundeeswari Kuppuswamy - Hertfordshire Law School, University of Hertfordshire, United Kingdom, c.kuppuswamy@herts.ac.uk, ORCID: 0000-0002-2226-5240.

[2] World Meteorological Organization (WMO), *State of the Climate in the Arab Region 2024* (Geneva: WMO, 2025), 12–15, https://wmo.int/files/state-of-climate-arab-region-2024.

referred to in this paper as northern Syria) in contributing to the fulfilment of national climate obligations lies in the 'sovereignty gap' created because of political non-recognition of these regions. The current international climate finance architecture built under the United Nations Framework Convention on Climate Change and the 2015 Paris Agreement framework operates on a strict state-centric model that fails to account for the complex governance realities of the Levant. The paper argues for a 'functional legal personality' for non-sovereign or contested regions for the purposes of climate finance, paving the way for Special Purpose Vehicles for climate finance, thereby enabling these regions to contribute to the realisation of sovereign climate goals. The latest UN report on emissions reductions warns that nations must cut annual emissions by 55% by 2035 to stay at 1.5 degree Celsius of global average temperature rise.[3] Therefore, all hands on are needed on deck, and no region or government can be left out of climate action.

2. Climate Finance

International climate finance is the aggregate of private and public flows of monies into countries to enable climate action. Private capital and Foreign Direct Investment (FDI) are mostly directed towards mitigation of climate change, i.e. projects that reduce the emissions of greenhouse gas emissions, such as renewable energy projects. There is an urgent and enormous need for climate finance globally, the estimate used in international climate negotiations is a colossal $1.3 – 2.4 trillion dollars annually for climate action.[4] Green FDI or climate FDI, refers to investment in the mitigation sector, and is often complicated by the high risks involved in such investment, partly due to the effects of climate change, and partly due to lack of immediate revenue returns that traditional private investors seek. Projects like flood defences or resilient agriculture are highly risky, with low returns or longer-term returns. Hence, green FDI is mostly focussed on renewable energy projects. According to UNCTAD's World Investment Report 2025, greenfield FDI in the energy transition remained heavily concentrated in solar energy, with announced investment values of around $450 billion, followed by investment in the electric vehicle and battery value chain[5]. The processing of critical minerals and the manufacturing of lithium-ion batteries attract FDI in numerous emerging markets. In Europe and the North America, cross-border investment in electric vehicle assembly plants and charging infrastructure networks has seen an upward surge. Although in its nascent stages, large-scale green hydrogen electrolysis projects (often involving European or Middle Eastern investors) are a growing segment of international project finance deals.

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[3] United Nations Environment Programme (UNEP), *Emissions Gap Report 2025: Off Target – Continued Collective Inaction Puts Global Temperature Goal at Risk* (Nairobi: UNEP, 2025), 22–25, https://www.unep.org/resources/emissions-gap-report-2025.

[4] Amar Bhattacharya, Vera Songwe, Eleonore Soubeyran, Nicholas Stern, *Raising Ambition and Accelerating Delivery of Climate Finance: Third Report of the Independent High-Level Expert Group on Climate Finance* (London: Grantham Research Institute on Climate Change and the Environment, 2024), 12–15, https://www.lse.ac.uk/granthaminstitute/publication/raising-ambition-and-accelerating-delivery-of-climate-finance/.

[5] United Nations Conference on Trade and Development, *World Investment Report 2025: International Investment in the Digital Economy* (New York: United Nations, 2025), https://unctad.org/system/files/official-document/wir2025en.pdf.

In the KRI and northern Syria, the energy sector is a key sector for investment.[6] The autonomous governments have felt the need to diversify their energy reliance, and to reduce long term reliance on fossil fuels and transition fuels such as natural gas.[7] As a result, KRI is moving towards more natural gas projects, aspiring to eventually to renewable energy. The Kurdistan Regional Government (KRG) has formalised a framework for clean energy that targets a thirty-one percent share in the public grid by the end of 2026.[8] The *Runaki* project launched in 2024 was a paradigm shift in moving from fossil dependence to a modernised grid that integrates natural gas and renewable energy.[9] Other projects are under review by the KRG Board of Investment amounting to several hundred megawatts of solar power. Large projects in the south of Iraq by the multi-billion-dollar consortium comprising of Total Energies, Qatar Energy and Basrah Oil Company have set a regulatory and technical precedent for the future of energy investments in the KRI. The region is investment friendly and allows for cent per cent foreign ownership, making it an attractive jurisdiction.[10] To hedge against the risk of federal budget volatility arising from the KRG's complicated relationship with the central government in Baghdad, investment is channelled through public-private partnerships which includes tax exemptions, land grants and related incentives.

While all the conditions for investment into KRI exist, climate mitigation action is only part of the obligation of states in addressing the problem of climate change. The Green Climate Fund and the Adaptation Fund are geared towards supporting holistic climate action, in areas that are often ignored by investment channels. It endorses the reality no investment is safe without adaptation to climate change. Mitigation measures are not sufficient in the short run to prevent exacerbation of the impact of climate change.[11] Disaster management and preparedness for disasters, change in agriculture, growing, adjustments in lifestyle during heatwaves, managing health impacts of warming climate and increased threat of diseases are all part of the solutions that could be financed by the GCF and Adaptation Funds.[12] Yet, these funds are not within direct

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[6] Loqman Radpey. "Kurdish Regional Self-rule Administration in Syria: A new Model of Statehood and its Status in International Law Compared to the Kurdistan Regional Government (KRG) in Iraq." *Japanese Journal of Political Science* 17, no. 3, 2016: 468–488. https://doi.org/10.1017/s1468109916000190.

[7] Can Cemgil, Clemens Hoffmann, 2016. "The 'Rojava Revolution' in Syrian Kurdistan: A Model of Development for the Middle East?", *IDS Bulletin*, Institute of Development Studies, volume 47, no. 3, May 2016: 53–76; Clemens Hoffmann. "Beyond the resource curse and pipeline conspiracies: Energy as a social relation in the Middle East." *Energy Research & Social Science,* Volume 41, July 2018: 39-47, https://doi.org/10.1016/j.erss.2018.04.025.

[8] Mohammed Hussein, "Kurdistan Region Electricity Reform and the 'Runaki' Project", Institute for Regional and International Studies (IRIS), American University of Iraq, Sulaimani, July 2025, 4–6, https://auis.edu.krd/iris/publications/kurdistan-region-electricity-reform-and-%E2%80%9Crunaki%E2%80%9D-project.

[9] Kurdistan Regional Government, "The Runaki Program: Advancing Reliable and Sustainable Power in the Kurdistan Region," Department of Media and Information, November 17, 2025, https://gov.krd/dmi-en/activities/news-and-press-releases/2025/november/the-runaki-program-advancing-reliable-and-sustainable-power-in-the-kurdistan-region/.

[10] Kurdistan Regional Government, *Investment Law No. (4) of 2006 for the Kurdistan Region* (Erbil: Kurdistan Board of Investment, 2006; amended 2024), arts. 4–9, https://invest.gov.krd/media/0biefavh/law-no-4-of-2006-investment-law-in-kurdistan-region-iraq-2.pdf.

[11] IPCC, "Summary for Policymakers," in *Climate Change 2022: Impacts, Adaptation and Vulnerability*, ed. Hans-O. Pörtner et al. (Cambridge: Cambridge University Press, 2022), 20–25, https://www.ipcc.ch/report/ar6/wg2/.

[12] Green Climate Fund, "Annex IX: Investment Framework," in *Decisions of the Board – Thirty-seventh*

reach of these autonomous non-sovereign regions. For the socio-economic development of the KRI and AANES, financing and investment in adaptation climate action is as crucial as financing and investments in clean energy, natural gas projects and diversification towards renewable energy. Global funds are available for climate action, but they are tied to states. The central clearing point for all GCF funds is the designated National Authority (NDA).[13] Although local institutions and regional governments can access GCF funds by submitting projects, they need to go through the NDA in order to submit projects for funding. The same system operates for the Adaptation Fund.

A healthy ecosystem of climate FDI, public funds, and GCF and Adaptation Funds are necessary to ensure the sustainability of climate action in the KRI and AANES regions. A blended finance approach is necessary in the region, to sufficiently scale up finance by derisking projects. Public funds, international climate finance (GCF and AF) and Climate FDI can help contribute the KRI and AANES's fair share to the Nationally Determined Contributions of Syria and Iraq.

3. Control over Natural Resources in Iraq and Syria – Constitutional Arrangements

Hydrocarbons dominate the economies of Iraq and Syria and their governance is of immense significance for the environment as well as the economy. The oil and gas industry is the largest source of greenhouse gas emissions for the Kurdistan region of Iraq, and the AANES region.

Under the Iraqi constitution, a trio of shared, exclusive and residual powers determine how the central government in Baghdad and the KRG in Erbil govern natural resources in their respective geographical regions.[14] Article 110 (1) provides exclusive power to the federal government in Baghdad to formulate foreign policy, negotiate, sign and ratify international treaties and conduct all external affairs of Iraq. It is significant that natural resources, environmental protection and climate action are not listed under the exclusive powers of the federal government. Article 114 (3) explicitly lists the formulation of 'environmental policy to ensure the protection of the environment from pollution and to preserve its cleanliness, in cooperation with the regions and governorates' indicating shared competency vested in the deferral and regional governments in this regard. In practice, this requires coproduction of national environmental priorities and strategies between the KRG and the federal government, including the drafting of the Nationally Determined Contributions (NDCs) under the Paris Agreement.

The constitution, however, in Article 115, tips the balance of power in favour of the regions. This provision, in dealing with residual powers, makes the regions and governorates repositories of (1) any power not mentioned in the exclusive list under Article 110 (1) to (4) and (2) gives priority to the regions and governates when it comes to shared powers under Article 114 (1) to (7). This creates a constitutional hierarchy

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Meeting of the Board, 23–26 October 2023, GCF/B.37/15 (Songdo, South Korea: GCF, 2023), 56–62, https://www.greenclimate.fund/sites/default/files/decision/b37/decision-b37-20-b37-a09.pdf.

[13] Pia Treichel, Michai Robertson, Emily Wilkinson, Jack Corbett, "Scale and Access to the Green Climate Fund: Big Challenges for Small Island Developing States," *Global Environmental Change* 89 (2024): 102943, https://doi.org/10.1016/j.gloenvcha.2024.102943.

[14] Iraq Constitution [2005], https://www.constituteproject.org/constitution/Iraq_2005.

giving the KRG competency to regulate and protect its local environment, so long as its measures are not seen to infringe upon the limited exclusive spheres of competence of the federal government. In tipping the balance in favour of the regions, the constitution attempts to balance the interests of disparate communities that form Iraq - the Sunnis, Shias and Kurds. This consocialism approach is designed to bring stability to deeply divided societies by ensuring that no single group can dominate over the other. However, it has been argued that this arrangement in the constitution has only produced a dysfunctional power sharing system with extreme decentralisation leading to an undermining of the development of a cohesive state.[15]

This is evident in natural resource governance in the KRI, wherein the disputes between the KRG and federal governments have led to intervention by courts. Courts have tried to tip the balance of power in favour of the federal government. The Supreme Court of Iraq has issued several landmark rulings between 2022 and 2026 that have significantly reshaped the understanding of shared and exclusive powers of federal government, KRG and the governorates. One of the most consequential decisions in terms of exploitation of the hydrocarbon resources of the region was handed down in February 2022 when the highest court declared the KRI's 2007 Oil and Gas Law as unconstitutional.[16] The court hinged its decision on a determination of competencies underpinned by Article 111, which declares that 'oil and gas are owned by all the people of Iraq in all the regions and governorates.' Following this, the court held that the KRG did not have the authority to independently manage, extract, or export hydrocarbons. This decision effectively reclassified hydrocarbon exploitation as a de facto exclusive federal power, even though Article 112 (1) vests 'the management of oil and gas extracted from the present fields' as a shared power between the federal government and regions. The federal government further consolidated its position in 2024 and 2025 through budgetary and executive measures that linked financial transfers to the transfer of Kurdish crude to the federal system and to greater federal oversight of regional oil contracts. Baghdad also insisted that exports be handled through the State Organization for Marketing of Oil (SOMO) and maintained that oil agreements concluded without federal approval were legally invalid.[17]

In sum, the legal framework governing control of hydrocarbons vests power in the federal government in Iraq and has put the KRG in the backfoot. It has lesser financial freedom and lesser resources going into climate action.

3.1. AANES Powers

The Autonomous Administration of North and East Syria (AANES) was, until recently, administered by a 'social contract' agreed between the Arabs, Kurds, Christians (Assyrians, Chaldeans, Syriacs, and Arameans), Yezidis, Turkmen, and Armenians who inhabit the region. First agreed upon in 2018, the social contract was updated in 2023, and came with a name change for the administration, to Democratic Autonomous

[15] Matthijs Bogaards, "Iraq's Constitution of 2005: The Case Against Consociationalism 'Light'", *Ethnopolitics* 20 (2), 2021: 186–202. doi: 10.1080/17449057.2019.1654200.

[16] Federal Supreme Court of Iraq, "Decision No. 59/Federal/2012 and 110/Federal/2019 [Unconstitutionality of KRG Oil and Gas Law]," February 15, 2022, www.iraqfsc.iq/ennews.

[17] Federal Supreme Court of Iraq, "Decision No. 224 and 269/Federal/2023 [Mandating Oil Revenue Handover]," February 21, 2024, www.iraqfsc.iq/ennews.5125/.

Administration of North and East Syria (DAANES).[18] The new social contract contained numerous progressive features such as coexistence of ethnic and religious communities, protection of the rights of women, and democratic governance institutions.

The primary role of DAANES was to provide essential services like education, healthcare, electricity, and water to around four million people in the region that have been historically marginalised by the federal government in Damascus. DAANES played a critical role in the management of Syria's primary oilfields in Deir ez-Zor and Hasakah.[19] A large part of the annual revenue came from these oilfields enabled the autonomous administration to fulfil its responsibilities in the region.

But following the collapse of the Assad regime in 2024, and the new transitional government taking over, DAANES has integrated with the federal government leading a significant shrinking of the authority of DAANES. A new agreement signed between DAANES and the federal government hands over control of the Deir-ez-Zor area, including the oilfields, in return for recognition of its local councils. While DAANES still manages local municipalities, control over international borders and the major oil fields is in the hands of the federal government in Damascus.[20]

The 2026 agreement mandates the transfer of all oil and gas fields, including the Al-Omar oil field, the largest in Syria, and the Conoco gas plant. Field operations are now overseen by the Syrian Petroleum Company, and technical teams have been deployed in February 2026 to the Rumeilan and Al-Suwaydiyah fields to appraise the infrastructure and upgrade the processes. All revenues from oil sales go into the national revenue account. Security has been hybridised with local Arab militia and the Syrian Democratic Forces being coopted for the physical protection of pipeline and facilities, but under the supervision of the Syrian Ministry of Interior. The 2026 agreement explicitly allows the federal government to sign new exploration deals with international companies, effectively nullifying previous DAANES contracts.[21]

In sum, the size and scope of the autonomous administration in northern Syria have shrunk, however, it holds stronger presence and governance with respect to local governance. The power to manage Syria's largest oilfields have no doubt been removed from the hands of the autonomous administration, but their role in climate action has not been fully superceded by the federal government. Their need for climate finance persists.

4. State Responsibility for Climate Action

The tension between federal sovereignty and regional autonomy adversely affects climate action in Iraq and Syria. It is necessary to consider the implications of the landmark ruling of the International Court of Justice in 2025 to underscore the shift in

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[18] DAANES, *The Social Contract of the Democratic Autonomous Administration of North and East Syria* [2023], art. 12.

[19] Atlantic Council, *Syria's Energy Sector and Its Impact on Stability and Regional Developments* (Washington, DC: Atlantic Council, 2025), 8–10, https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/syrias-energy-sector-and-its-impact-on-stability-and-regional-developments/.

[20] DAANES Executive Council, "Statement Regarding the 2026 Integration Agreement with Damascus," January 15, 2026, https://daanes.org/en/category/all-news/statements/.

[21] "Agreement on Phased Integration and National Unity between the Syrian Transitional Government and the Syrian Democratic Forces," January 30, 2026, art. 7 [Energy and Natural Resources], trans. Syrian Arab News Agency (SANA).

legal responsibility on states with regard to climate action. The International Court of Justice categorically ruled in its *Advisory Opinion on the Obligations of States in respect of Climate Change* that a failure to take climate action constitutes an internationally wrongful act.[22] The unanimous ruling delivered on 23 July 2025 has set the course for climate policy to move into the realm of legal responsibility. The identification of states' duty in both treaty and customary international law to prevent significant harm to the climate system also directly targets states promotion of fossil fuel production, subsidies and inadequate regulation of emissions. The latter is of significance in the context of this paper. Autonomous regions governed through constitutional sharing of power can put robust regulation of emissions into jeopardy.

Viewed from the perspective of the Kurdistan Regional Government and autonomous authorities in Northern Syria, the 2025 ICJ Advisory Opinion underscores a structural tension within the climate regime: while it affirms that a failure by states to take adequate climate action may constitute an internationally wrongful act, non-sovereign authorities exercising de facto governance remain unable to engage directly with major climate-finance mechanisms on an equivalent legal footing.

While federal governments can negotiate international treaties, their implementation requires local governments to act, which translates as the need for powers and resources.[23] In reality, the regional authorities who have local presence and authority on the ground are the primary actors capable of preventing transboundary harm, and their exclusion from the financial architecture of the international climate regime creates a systemic failure in the protection of *jus cogens* norms and human rights obligations, such as the right to a healthy environment.[24]

4.1. The 'Effective Control' Test in State Responsibility

This is not the first instance when international law's limitation in recognising non-sovereign authorities has become a barrier to legal determinations of rights and obligations. The law on state responsibility has grappled with the criteria for attribution of wrongful acts to non-state entities. In the *Nicarugua* case, the International Court of Justice laid out the 'effective control test'. If the wrongful activity was not just financed, but also planned and led by an entity, then, by virtue of having 'effective control' over the wrongful act, that act can be attributed to the entity in question. Therefore, responsibility is lain at the door of that entity. In the words of Judge Ago in the *Nicaragua* case, for an act to be attributed to a state, the entity must be acting 'on behalf of the state', and the state had 'directed or enforced the perpetration of the particular acts'.[25]

The effective control principle essentially looks past the distinction of states and non-state actors and reaches up to the entity that is the force behind the acts.

The *Nicaragua* principle was affirmed in the *Bosnian Genocide case* where the

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[22] *Obligations of States in respect of Climate Change*, Advisory Opinion, 2025 I.C.J. 187 (July 23), paras. 273–282, 427, https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-pre-01-00-en.pdf.
[23] Paul R. Williams, Matthew T. Simpson, "Rethinking the Political Future: An Alternative to the Ethno-Sectarian Division of Iraq", *American University International Law Review* 24, no. 2 (2008): 191-247.
[24] *Obligations of States in respect of Climate Change*, Advisory Opinion, 2025 I.C.J. 187 (July 23), paras. 314–316, 405, https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-pre-01-00-en.pdf.
[25] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, 1986 I.C.J. 14 (June 27), para. 115.

ICJ affirmed that 'effective control of operations' was required to attribute those operations to an entity.[26] The ICJ, in this case had to counter a decision by the International Criminal Court which had laid down a less strict standard for attribution, i.e. it was not effective control that was needed but instead, 'overall control' was sufficient. The ICJ rejected this weaker standard and affirmed *Nicaragua* decision's strict test. By choosing to uphold the effective control test, the ICJ confirmed the requirement that to be held responsible for a wrongful act under international law, the entity should have effective control over operations. The entity should have issued specific instructions or exercised direction over the very act that constitutes the breach. Only effective control can bring the entity within the purview of international law.

4.2. The 'Effective Control' Test in International Investment Tribunals

The attribution to the conduct of a host state is often in dispute in international investment tribunals. The test is used to determine whether the action of state-owned enterprises or similar entities can be legally attributed to the state under the international law of state responsibility. Investment tribunals have generally followed the stricter test of effective control, the threshold established by the ICJ in the *Nigaragua* and the *Genocide* cases. The tribunals require evidence that the state not only exercised general oversight but also directed a specific operation or activity. In the *Bayindir* and *EDF* cases, tribunals looked for a clear causal link between a state's specific instructions and the harmful act and did not rely on the state's general ownership of the entity or its systemic power over it.

In the *Bayindir* case, the tribunal explicitly rejected the idea that the Pakistan state highway authority actions could be counted as actions by the state of Pakistan and instead looked for whether the state had control over the specific project in Turkey by providing specific instructions or directions to the highway authority.[27] The tribunal looked for effective control over the operations. In the *EDF* case, the tribunal applied a stricter interpretation of the effective control test. In considered whether appointing of directors of a state-owned airline and a state-owned airport amounted to effective control of the entities by the state. It held that the tribunal required proof that the Romanian government, which owned these two corporations had actually played a part in the decision making of the contract with EDF. Since specific intervention by the state in granting the contract could not be proven, the tribunal did not uphold the claim by EDF against Romania.[28]

Some of the earlier cases by investment tribunals did however use the broader 'overall control' reasoning. In the *Maffezini* case, it was held that since a regional industrial development corporation of Spain was established to perform public functions and the state allocated its budget and received annual reports, its actions could be attributed to Spain.[29] The *Salina* tribunal found that that the actions of the Moroccan

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[26] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 I.C.J. 43 (February 26), paras. 398–407.

[27] *Bayindir Insaat Turizm Ticaret ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award (August 27, 2009), paras. 129–130.

[28] *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (October 8, 2009), paras. 190–193.

[29] *Emilio Agustín Maffezini v. The Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision on Jurisdiction

National Administration of Highways were attributable to the state because the state exercised a great degree of overall influence over the entity's decision-making processes and its very existence was tied to the state's public works policy.[30] In another case against Slovakia, the tribunal was invited to consider overall control of a state owned bank as sufficient for attribution, and it was held that since the bank was pursuing a state purpose and was under the general guidance of the state, it's acts were attributable to Slovakia.[31] Although these early decisions veered towards the overall control standard, the more recent decisions have aligned closely with the broader international law jurisprudence adhering to the effective control test to establish attribution.

The effective control test has been applied in a wide number of international issues. It has been used in traditional scenarios of deciding state responsibility, like in the *Nicaragua* and *Bosnian Genocide* cases, then applied to decide on the international nature of a conflict. It has been applied in non-traditional scenarios like in investment disputes, such as the above-mentioned cases. This paper extends its application to climate finance.

4.3. 'Functional Legal Personality' for Autonomous Parts of Iraq and Syria

Under the effective control test, legal personality follows the entity that exercises governmental authority and physical control over a territory. The KRG's legislative independence, its territoriality, and independent climate policy[32] demonstrates effective control over Kurdistan Region of Iraq. The Kurdistan Region of Iraq exercises the degree of effective control necessary to establish a functional basis for direct climate action under international law.

Under Article 114 of the 2005 Iraqi Constitution, environmental policy is classified as a shared competence between the federal authorities and the regions. Matters relating to oil and gas, however, are addressed separately under Articles 111 and 112, rather than being framed in Article 114 as a general shared power over the use of natural resources. For the shared power to be exercised, secondary legislation needs to be passed, which is still pending Iraq. Therefore, the absence of secondary legislation that clearly delineates the division of roles and responsibilities is barrier to climate governance in the KRI. It allows the Federal National Designated Authority under the UNFCCC to exercise a de facto veto over KRG's climate initiatives. The federal government can withhold 'no objection' letters for climate mitigation and adaptation projects of the KRG. It can block access to the Green Climate Fund in doing so. The federal government can effectively prevent the KRI from securing multilateral financing.

In Northern Syria, the Autonomous Administration of North and East Syria (AANES) exercises de facto governmental functions and controls important aspects of public-service delivery and local governance. However, due to its non-recognised and non-sovereign status, it lacks the legal capacity to participate in the Paris Agreement as

(January 25, 2000), paras. 77–83.

[30] *Salini Costruttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction (July 23, 2001), paras. 30–35.

[31] *Ceskoslovenska Obchodni Banka, A.S. v. The Slovak Republic*, ICSID Case No. ARB/97/4, Decision on Jurisdiction (May 24, 1999), paras. 17–20.

[32] Kurdistan Regional Government (KRG), *Kurdistan Region of Iraq: Local Adaptation Plan for Climate Change 2024–2030* (Erbil: Board of Environmental Protection and Improvement, 2024), 34–3.

a contracting party. The intersection of constitutional shared powers and the reality of effective control create a 'responsibility gap'. Despite the KRI's effective control and constitutional mandate, international climate funds are out of reach for the region. This bottleneck highlights a disconnect between the functional reality of governance and the formal requirements of international law to get recognised as duty holders for climate mitigation and adaptation. If the KRG manages the natural resources, it bears the positive obligation to protect those resources from climate degradation. However, without the procedural standing to access international climate finance, the KRG is unable to fulfill the very obligations that its effective control implies.

This paper proposes a 'Functional Legal Personality' to address this issue of access to climate finance. Legal personality is to be treated for the limited purpose of a tool for climate risk mitigation. By granting limited legal capacity predicated on the specific function of climate action, international law can enable infrastructure and adaptation projects that are currently not happening at scale. This approach aligns with the International Law Commission's Draft Principles on the Protection of the Environment in Relation to Armed Conflicts, which endorses that environmental protection must be maintained regardless of the legal status of the governing entity.[33] Decoupling climate action from formal statehood allows the international community to fulfil the climate targets set under the Paris Agreement. Integrating de facto authorities into the climate finance regime is not an act of de jure recognition, but a pathway for pragmatic fulfilment of international climate obligations.

Facilitating direct climate finance in autonomous regions promotes regional security through the mitigation of resource scarcity. Environmental collapse acts as a multiplier of instability, and the historical link between water scarcity and forced migration in the Levant is well-documented.[34] Enabling the KRI and Northern Syria to issue green bonds or participate in carbon credit frameworks allows for a more responsive and localised approach to adaptation. This aligns with Article 7(5) of the Paris Agreement, which endorses adaptation guided by local and traditional knowledge. By decoupling climate survival from formal political recognition, the international legal order can fulfil its mandate to protect vulnerable populations without necessitating a final determination on statehood.

5. Special Purpose Vehicles for Climate Finance

The 'Functional Legal Personality' model allows for the creation of Special Purpose legal Vehicles (SPVs) that facilitates climate action. SPVs have several advantages. Also known as a Special Purpose Entity (SPE), it is a subsidiary company formed by a parent organization to fulfil a specific, narrow, and temporary objective. The defining characteristic of an SPV is its legal isolation. It has its own assets and liabilities.

The independent holdings protect the parent entity's balance sheet from the risks

[33] International Law Commission, *Draft Principles on the Protection of the Environment in Relation to Armed Conflicts*, in *Report of the International Law Commission on the Work of Its Seventy-Third Session*, UN Doc. A/77/10 (2022), 94–98.

[34] Colin P. Kelleya, Shahrzad Mohtadib, Mark A. Canec, Richard Seagerc, and Yochanan Kushnirc, "Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought," *Proceedings of the National Academy of Sciences* 112, no. 11 (2015): 3241–3242, https://doi.org/10.1073/pnas.142153311.

associated with the SPV's activities.[35] SPVs can support large scale infrastructure projects and public-private partnerships.[36] A government and a private consortium might create an SPV to build a bridge or a power plant. The SPV holds the contract, hires the builders, and manages the debt. If the bridge fails to generate revenue, the private companies' main assets are protected because the debt is 'non-recourse' to them.

The SPV is a convenient mechanism in which to financially actualise the 'functional legal personality' of sub-state entities such as the KRI and the DAANES regions. Aggregation of small projects is possible under the SPV. Given the limited size of the interventions for climate adaptation in Kurdistan region of Iraq and Northern Syria, SPVs can aggregate climate action. Several thousand small-scale interventions, such as rooftop solar installations or cookstoves can be delivered by using an SPV which can be used to 'bundle' these micro-projects into a single financial instrument.[37] The SPV purchases these assets, aggregates their cash flows, and then issues Green Bonds or Green Credits to the market. This creates the scale necessary for institutional capital to participate in decentralised climate adaptation.

6. Conclusion

The state-centric structure embedded in the United Nations Framework Convention on Climate Change generates significant barriers to effective climate action in the political territories of the Levant. In the case of the Kurdistan Region of Iraq, the Iraqi Constitution, in particular Articles 114 and 115, provides a partial legal basis for regional involvement in climate governance and in the administration of natural resources. When it is analysed together with the de facto exercise of authority by the Kurdistan Regional Government in the relevant sectors, this constitutional framework somehow supports the hypothesis according to which a technically decentralised approach to climate finance is legally possible.

On this basis, the present paper has demonstrated that an evolutive interpretation of international law concerning attribution, responsibility, and governance capacity is capable of justifying a limited functional basis for a more direct engagement between non-sovereign authorities and international climate-finance mechanisms. Such an approach does not require the recognition of statehood. On the contrary, it is based on the narrower thesis according to which entities that exercise stable and effective governance over a population and a territory should not be excluded in this way from access pathways to climate finance merely because they do not possess full sovereign status. From this perspective, a limited functional model of legal personality provides a pragmatic doctrinal response to an increasingly visible mismatch between formal international status and material climate vulnerability.

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[35] Roberto Bianchini, Gianfranco Gianfrate, *Climate risks and the practice of corporate valuation*, in Sabri Boubaker, Douglas Cumming, and Duc K. Nguyen (eds.), *Research Handbook of Finance and Sustainability,* Edward Elgar Publishing, 2018, 436–457, https://doi.org/10.4337/9781786432636.00032.

[36] World Bank, *Public-Private Partnerships Reference Guide, Version 3.0* (Washington, DC: World Bank, 2017), 70–75, https://openknowledge.worldbank.org/handle/10986/29052.

[37] International Renewable Energy Agency (IRENA), *Unlocking Renewable Energy Investment: The Role of Risk Mitigation and Structured Finance* (Abu Dhabi: IRENA, 2016), 34–38, https://www.irena.org/publications/2016/Jun/Unlocking-Renewable-Energy-Investment-The-role-of-risk-mitigation-and-structured-finance.

The analysis has also shown that special purpose vehicles serve as useful legal and financial instruments for the operationalisation of this limited autonomy in the field of climate finance. Properly designed, SPVs contribute to the isolation of risks, to small-scale projects in the field of adaptation and mitigation, to facilitating access to green foreign direct investment, and to supporting project-specific financing without requiring a prior or definitive settlement of disputes concerning sovereignty. Although such vehicles do not have the capacity to eliminate the underlying legal and political tensions between federal and regional authorities, they do reduce some of the practical constraints that currently impede investment and climate implementation in contested territories.

Ultimately, the shift from a strictly formal conception of legal personality to a functional one, carefully delimited, must be understood not as a challenge to the state-centric status quo of the Paris Convention, but as a necessary complement to it. A more flexible legal approach and one more sensitive to function strengthens the capacity of vulnerable non-sovereign territories, such as the Kurdistan Region of Iraq and Northern Syria, to participate more effectively in adaptation, mitigation, and climate-resilient investment. In this way, the practice of climate finance would align more faithfully with the universalist logic of climate protection in international law.

Bibliography

1. Bhattacharya, Amar, Vera Songwe, Eleonore Soubeyran & Nicholas Stern, *Raising Ambition and Accelerating Delivery of Climate Finance: Third Report of the Independent High-Level Expert Group on Climate Finance* (London: Grantham Research Institute on Climate Change and the Environment, 2024), 12–15, https://www.lse.ac.uk/granthaminstitute/publication/raising-ambition-and-accelerating-delivery-of-climate-finance/.
2. Bianchini, Roberto & Gianfranco Gianfrate, *Climate risks and the practice of corporate valuation*, in Boubaker, Sabri, Douglas Cumming, and Duc K. Nguyen (eds.), *Research Handbook of Finance and Sustainability,* Edward Elgar Publishing, 2018, 436–457, https://doi.org/10.4337/9781786432636.00032.
3. Bogaards, Matthijs, "Iraq's Constitution of 2005: The Case Against Consociationalism 'Light'", *Ethnopolitics* 20 (2), 2021: 186–202. doi: 10.1080/17449057.2019.1654200.
4. Cemgil, Can & Clemens Hoffmann, 2016. "The 'Rojava Revolution' in Syrian Kurdistan: A Model of Development for the Middle East?", *IDS Bulletin*, Institute of Development Studies, volume 47, no. 3, May 2016: 53–76.
5. Hoffmann, Clemens. "Beyond the resource curse and pipeline conspiracies: Energy as a social relation in the Middle East." *Energy Research & Social Science,* Volume 41, July 2018: 39-47, https://doi. org/10.1016/j.erss.2018.04.025.
6. Hussein, Mohammed, "Kurdistan Region Electricity Reform and the 'Runaki' Project", Institute for Regional and International Studies (IRIS), American University of Iraq, Sulaimani, July 2025, 4–6, https://auis.edu.krd/iris/publications/kurdistan-region-electricity-reform-and-%E2%80%9Crunaki%E2%80%9D-project.
7. International Court of Justice, *Obligations of States in respect of Climate Change*, Advisory Opinion, 2025 I.C.J. 187 (July 23), https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-pre-01-00-en.pdf.
8. International Renewable Energy Agency (IRENA), *Unlocking Renewable Energy Investment: The Role of Risk Mitigation and Structured Finance* (Abu Dhabi: IRENA, 2016), 34–38, https://www.irena.org/publications/2016/Jun/Unlocking-Renewable-Energy-Investment-The-role-of-risk-mitigation-and-structured-finance.

9. Iraq Constitution [2005], https://www.constituteproject.org/constitution/Iraq_2005.
10. Kelleya, Colin P., Shahrzad Mohtadib, Mark A. Canec, Richard Seagerc, and Yochanan Kushnirc, "Climate Change in the Fertile Crescent and Implications of the Recent Syrian Drought," *Proceedings of the National Academy of Sciences* 112, no. 11 (2015): 3241–3242, https://doi.org/10.1073/pnas.142153311.
11. Kurdistan Regional Government, *Investment Law No. (4) of 2006 for the Kurdistan Region* (Erbil: Kurdistan Board of Investment, 2006; amended 2024), arts. 4–9, https://invest.gov.krd/media/0biefavh/law-no-4-of-2006-investment-law-in-kurdistan-region-iraq-2.pdf.
12. Radpey, Loqman, "Kurdish Regional Self-rule Administration in Syria: A new Model of Statehood and its Status in International Law Compared to the Kurdistan Regional Government (KRG) in Iraq." *Japanese Journal of Political Science* 17, no. 3, 2016: 468–488. https://doi.org/10.1017/s1468109916000190.
13. Treichel, Pia, Michai Robertson, Emily Wilkinson & Jack Corbett, "Scale and Access to the Green Climate Fund: Big Challenges for Small Island Developing States," *Global Environmental Change* 89 (2024): 102943, https://doi.org/10.1016/j.gloenvcha.2024.10 2943.
14. United Nations Conference on Trade and Development, *World Investment Report 2025: International Investment in the Digital Economy* (New York: United Nations, 2025), https://unctad.org/system/files/ official-document/wir2025en.pdf.
15. United Nations Environment Programme (UNEP), *Emissions Gap Report 2025: Off Target – Continued Collective Inaction Puts Global Temperature Goal at Risk* (Nairobi: UNEP, 2025), 22–25, https://www. unep.org/resources/emissions-gap-report-2025.
16. Williams, Paul R. & Matthew T. Simpson, "Rethinking the Political Future: An Alternative to the Ethno-Sectarian Division of Iraq", *American University International Law Review* 24, no. 2 (2008): 191-247.
17. World Bank, *Public-Private Partnerships Reference Guide, Version 3.0* (Washington, DC: World Bank, 2017), https://openknowledge.worldbank.org/handle/10986/29052.
18. World Meteorological Organization (WMO), *State of the Climate in the Arab Region 2024* (Geneva: WMO, 2025), 12–15, https://wmo.int/files/state-of-climate-arab-region-2024.