

Implications from the ICJ's Climate Opinion for Sovereigns and Businesses

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On 23 July 2025, the International Court of Justice (the “ICJ”) delivered its long-anticipated Advisory Opinion on the *Obligations of States in Respect of Climate Change* – marking a potential turning point in the responsibility of States for failure to protect the climate. The ICJ reaffirmed that States have binding legal obligations under international law – including both treaty and customary law – to take meaningful action to mitigate climate change, including by limiting global warming to 1.5°C above pre-industrial levels.

While the Advisory Opinion is not legally binding, it carries substantial persuasive authority and can shape international legal standards and domestic regulatory frameworks going forward, with consequences that are likely to extend to both States and private actors, including corporate business entities. In particular, as detailed further below, the Advisory Opinion may create new pathways for climate litigation against corporations, foster stricter climate-related reporting obligations, result in increased regulation of fossil fuel-related activities, and amplify stakeholder demands for alignment with international climate goals.

The ICJ's Advisory Opinion is the third opinion issued by an international tribunal on climate change in just over a year, following the July 2025 Advisory Opinion of the Inter-American Court of Human Rights and the 2024 Opinion of the International Tribunal for the Law of the Sea (“ITLOS”). Taken together, these rulings represent a growing legal foundation for climate-related responsibility.

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Background and questions before the ICJ

The ICJ issued its Advisory Opinion upon a request from the United Nations (the “UN”) General Assembly. The campaign towards an ICJ Advisory Opinion on climate change began in 2019 with a grassroots movement led by a student group, the Pacific Islands Students Fighting Climate Change (the “PISFCC”). The Pacific island state of Vanuatu first tabled the PISFCC proposal at a meeting of the Pacific Islands Forum (the “PIF”) in 2019, and in 2022 the PIF endorsed the proposal, leading to a broader campaign in the UN. This culminated in the UN General Assembly passing a resolution in 2023, resolving to request the ICJ for an Advisory Opinion on climate change. The UN submitted two questions for the ICJ’s consideration:

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases (“GHGs”) for States and for present and future generations?
- (b) What are the legal consequences under these obligations for States, where they, by their acts and omissions have caused significant harm to the climate system and other parts of the environment, particularly in respect of vulnerable countries and people of present and future generations?

Key findings: States’ legal obligations to protect the climate system from GHG emissions

On question (a), the ICJ found that there was no inconsistency between the provisions of climate change treaties and other relevant rules and principles of international law. Further, the ICJ found that climate change treaties do not constitute a *lex specialis* regime that displaces the application of other relevant international law rules and obligations such as customary international law. As a result, the ICJ concluded that States’ obligations with respect to climate change arose not *only* under climate change treaties (such as the United Nations Framework Convention on Climate Change (the “UNFCCC”), the Kyoto Protocol, and the Paris Agreement, together the “Climate Change Treaties”) but *also* under

customary international law, international human rights law and the law of the sea, and these formed overlapping but separate obligations. In particular, the ICJ opined that:

- *On climate change and other treaties*: The Climate Change Treaties are the principal legal instruments regulating the international response to climate change, and impose binding legal obligations on State parties to protect the climate system from the adverse impacts of GHGs. The ICJ methodically analysed each of the Climate Change Treaties and grouped the legally binding obligations of states into: (i) mitigation obligations; (ii) adaptation obligations; and (iii) obligations of cooperation and assistance. For instance, the ICJ concluded that under the Paris Agreement, the “*nationally determined contributions*” of States to the global climate change response must represent each States’ “*highest possible ambition*” and this is a mitigation obligation.
 - When originally drafted, the Paris Agreement aimed to limit temperature increase to at least 2°C above pre-industrial levels, and pursue additional efforts to limit this to 1.5°C. However, the ICJ noted that 1.5°C has become the scientifically based consensus target under the Paris Agreement, and this is reflected in decisions at the Conference of Parties to the Paris Agreement. Therefore, the ICJ concluded that States had an obligation to limit global warming to 1.5°C above pre-industrial levels, and this was the “*agreed primary temperature goal*” of the Paris Agreement.
 - The ICJ analysed the legal obligations of States with respect to GHG emissions and climate change under some further international treaties (the Ozone Layer Convention, the Montreal Protocol, the Biodiversity Convention and the Desertification Convention), but noted that this was not intended to be an exhaustive list of all relevant treaties.
- *On customary international law*: Under customary international law, States have a duty to prevent significant harm to the environment,

and this includes harm to the climate system. In order to fulfil this duty, States must comply with a stringent standard of due diligence, taking into account a variety of factors including the availability of scientific information and current standards. States also have a duty to co-operate for the protection of the environment, including the climate system.

It follows that even States which are not party to the Climate Change Treaties are bound under international law to protect the climate system from the adverse effects of GHG emissions. The ICJ opined that in practice, the customary obligations of these non-party States might be considered to be fulfilled through the same practices required under the Climate Change Treaties.

- *On international human rights law:* There is a link between the adverse impacts of climate change and human rights, because events such as sea level rise, desertification, drought and natural disaster may impair the enjoyment of human rights. The ICJ concluded that under international law the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.
- *On the law of the sea:* Anthropogenic GHG emissions may be characterised as pollution of the marine environment within the meaning of the United Nations Convention on the Law of the Sea. Therefore, States also have legal obligations under the UNCLOS to ensure protection of the climate system.
- *Other principles in international law:* The five principles contained in Article 3 of the UNFCCC are key. These are: (i) common but differentiated responsibilities and respective capabilities; (ii) the precautionary approach or principle, (iii) sustainable development; (iv) equity; and (v) intergenerational equity. While these do not constitute standalone obligations under the Climate Change Treaties, they guide the interpretation of treaty obligations.

Key findings: Legal consequences for States which cause harm to the climate system through GHG emissions

On question (b): The ICJ opined that the failure of a State to comply with its legal obligations (as identified in response to question(a)) to take appropriate action to protect the climate system from anthropogenic GHG emissions may, in certain circumstances, constitute an internationally wrongful act which is attributable to that State. These may include failures by States to act with due diligence and put in place regulatory and legislative measures in relation to fossil fuel production and consumption, the granting of fossil fuel exploration licenses, the continued provision of fossil fuel subsidies, and the failure to implement mitigation, adaptation, or transition measures. In particular, the ICJ opined that:

- *On the applicable rules on State responsibility:* The Climate Change Treaties do not create special rules to be applied to breaches of these treaties, nor do they address issues of liability or compensation of parties for loss and damage. Therefore, the customary international law rules on State responsibility apply to States' breaches of their international law obligations to protect the climate system against GHG emissions.
- *On attribution of actions and omissions to States:* Failure of a State to take appropriate action to protect the climate system from GHG emissions may constitute an international wrongful act attributable to that State. Further, States have an obligation (under the Climate Change Treaties and/or customary international law) to regulate the activities of private actors as a matter of due diligence. The rules on State responsibility under customary international law are capable of addressing a situation where there exists a plurality of injured or responsible States. While climate change is caused by cumulative GHG emissions from a variety of actors, since it is scientifically possible to determine each State's total contribution to global emissions, attribution of harm to individual States is feasible in principle and will need to be established on the facts.

- *On causation*: Causation of damage is not necessary to determine a State's responsibility for an internationally wrongful act, however it must be established to seek reparation. The applicable standard for causation is that there must be a "*sufficiently direct and certain causal nexus*" between the wrongful act and the injury suffered by the applicant. The Court concluded that the identification of a causal link between the wrongful actions or omissions of a State and the harm arising from climate change must be established in each case through an assessment based on the specific facts and circumstances of a particular case and considering two elements:
 - *First*, whether a particular climate event can be attributed to anthropogenic climate change. This is a question of science.
 - *Second*, whether the damage caused by climate change can be attributed to a particular State. This must be established on the facts in each case.
- *On the erga omnes nature of States' legal obligations regarding climate change*: All States have a common interest in protecting the climate system from the adverse effects of GHG emissions, therefore the legal obligations of States in this regard are *erga omnes partes* (i.e., owed to all States). When these legal obligations are breached, any State may bring proceedings against the offending State.
- *On the range of legal consequences available*: The full range of legal consequences against States available in international law are in principle available in the context of breach of legal obligations to protect the climate system. The available legal consequences include requiring the offending State to: (i) perform its duties; (ii) cease the breaching conduct and not repeat it; and (iii) make reparation for the damage caused by the internationally wrongful act through restitution (re-establishing the previous situation) where possible, compensation, and/or satisfaction (such as an expression of regret). Reparation in the form of

compensation may be difficult to calculate in the climate change context due to a degree of uncertainty about the damage caused,¹ but compensation may still be awarded in a global sum with reference to the evidence available and taking into account equitable considerations.

Implications

The ICJ's Advisory Opinion is likely to have far-ranging consequences for both sovereign States, and corporate business entities.

For States

- *The principle of common but differentiated responsibilities and respective capabilities ("CBDRRC")*: The ICJ upheld the principle of CBDRRC as a key principle guiding the interpretation of obligations under international environmental law. This principle reflects the need to equitably distribute the burdens of the obligations in relation to climate change among States, based on a number of factors. Relevant factors include States' historical and current contributions to GHG emissions, their different current capabilities, and their national circumstances including their economic and social development. Crucially, this principle acknowledges the historical responsibility of developed States for climate change, and that the measures that can be expected from all States to address climate change are not the same. Sovereign states should note that this finding on CBDRRC is likely to form a basis for pursuing greater climate action from developed States with: (i) the greatest historical and current contributions to GHG emissions; and (ii) the resources to combat climate change.

The ICJ also highlighted that in between the most developed countries and the least developed countries, there are States that have progressed in their development significantly since the UNFCCC in 1992. The ICJ noted that these States will have a commensurately increased obligation to engage in meaningful mitigation and adaptation efforts. While the ICJ

¹ Note however that attribution science is progressing. See for instance C Callahan and J Mankin, Carbon majors and

the scientific case for climate liability, *Nature* (23 April 2025).

did not name any specific States, sovereign States should note that this will likely include countries in the Middle East and Asian States like China and India.

- *The duty to regulate GHG emissions, and in particular – fossil fuel activities:* The ICJ’s Advisory Opinion made clear that while it dealt with the legal obligations of *States* in international law, not those of private actors, States have an obligation to regulate the GHG emitting activities of public and private actors within their jurisdiction. This includes an obligation for States to put into place measures which achieve the deep, rapid and sustained reduction of GHG emissions necessary to protect the climate system. Citing the 2024 ITLOS Advisory Opinion on Climate Change, the ICJ opines that States must create a national system to regulate GHG emissions, including legislation, administrative procedures, enforcement mechanisms and monitoring. It is possible that the scope of these measures may also include changes to the framework for private law claims and remedies (such as under tort law, or in relation to class action claims) to meaningfully facilitate climate action litigation.

The ICJ particularly noted that the Intergovernmental Panel on Climate Change’s (“IPCC”) had found the combustion of fossil fuels to be the largest source of CO₂. Therefore, a State’s failure to exercise due diligence and regulate the exploration and exploitation of fossil fuels, implement policies to transition away from fossil fuels, and mitigate the GHG emissions from fossil fuels may constitute an international wrongful act for which a State is liable in international law.

- *Investment treaty claims:* The ICJ’s Advisory Opinion unequivocally recognised that States have legally binding obligations to protect the climate system from the adverse impacts of GHG emissions. States may therefore need to enact domestic laws to comply with their climate change-related obligations under international law. States which face investment treaty claims from private investors arising out of measures taken by those States to reduce emissions, may

be able to rely on the ICJ’s Advisory Opinion as a defence, arguing that they were required to take such action under international law.

For Corporations

- *Impact on climate litigation:* The ICJ’s Advisory Opinion is likely to impact ongoing and future climate litigation, even against private actors such as corporations. The ICJ’s Advisory Opinion – in particular, the ICJ’s reliance on the IPCC Reports as the “*best available science*” on the causes, nature and consequences of climate change – is likely to give comfort to courts that climate risk is not speculative or non-justiciable. The ICJ’s findings that legal obligations to protect the climate from GHG emissions arise across a broad range of areas (law of the sea, international human rights law) will also likely give potential claimants a wider set of avenues to bring claims.
- *Impact on viability of future fossil fuel projects:* Businesses can expect potentially more stringent regulation of activities which result in the emissions of GHG, especially fossil fuel projects, in light of the ICJ’s clarification of the legal obligation of States to regulate such activities with due diligence. This may also result in States imposing stricter reporting standards under securities law in relation to GHG-emitting activities.
- *Pressure from investors to align with international climate goals:* While the ICJ’s Advisory Opinion is not legally binding and applies to States, not private actors, it is a persuasive statement of law and carries moral weight. It is possible that the ICJ’s Advisory Opinion may spur further pressure from investors on corporations to align with international climate goals, and be transparent about compliance with these goals.

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