Climate Justice after the ICJ: Authority, Diffusion, and State Responsibility

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The International Court of Justice (ICJ)'s advisory opinion on *Obligations of States in respect of Climate Change* marks a constitutional moment for global climate governance. Requested by a UN General Assembly resolution that was spearheaded by Vanuatu and other climate-vulnerable states, the opinion recognizes that inadequate climate action is not just bad policy – it may breach international law. In unanimous findings, the world court confirmed that states must prevent harm to the climate system and protect people from climate impacts, or risk legal responsibility. These obligations have been in place for decades, and could therefore inform future reparation claims based on historical responsibility. Although advisory opinions do not have binding force *vis-à-vis* particular states in the way ICJ judgments do under Article 59 of the Statute (and Article 94 of the UN Charter), this opinion is an authoritative statement of law that clarifies existing binding obligations. By clarifying the content of those obligations and the consequences of their breach—including cessation and full reparation—the opinion is poised to guide courts, regulators and international organizations on climate policy and negotiations. Moreover, it equips litigants and adjudicators to pursue enforcement in contentious proceedings against major state polluters and, through state regulation and civil liability pathways, against large corporate emitters.

Human Rights at the Heart of Climate Obligations

A striking feature of the ICJ's ruling is its strong human rights framing of climate obligations. The court stressed that a safe, stable climate is indispensable for the enjoyment of fundamental human rights, and explicitly recognized the human right to a clean, healthy and sustainable environment as a right protected under international law. It noted that climate change already endangers rights to life, health, food, water, housing and an adequate standard of living – especially for frontline communities. In its analysis of obligations, the ICJ affirmed that states have longstanding duties under international human rights law to take necessary measures to protect the climate system. These obligations are informed by equity and common but differentiated responsibilities and respective capabilities; a principle the Court recognized as applicable across the board. Breaches of these obligations trigger state responsibility. The Court further made clear that states must use all means at their disposal to prevent activities within their jurisdiction or control from causing significant climate harm—an instruction that, in practice, entails robust regulation of private actors whose emissions and investments drive the risk profile.

Read alongside the Inter-American Court of Human Rights (IACtHR)'s advisory opinion OC-32/25 on the climate emergency and the International Tribunal for the Law of the Sea (ITLOS)'s 2024 advisory opinion, the ICJ's intervention consolidates a transnational legal order in which climate protection is framed as a matter of duty—rooted in environmental treaties, general international law, the law of state responsibility and human rights. At its core, the ICJ situates state obligations within an interlocking set of norms. It affirms that states have legal duties to prevent significant environmental harm, to cooperate internationally and to align their conduct with fundamental rights threatened by climate change—an approach that rejects attempts to narrow applicable law to the *lex specialis* of climate treaties alone. In doing so, the Court's reasoning resonates with the broader human rights jurisprudence that has increasingly treated climate harms as rights-impairing.

The ITLOS opinion complements this picture by clarifying, under the UN Convention on the Law of the Sea, that

anthropogenic greenhouse gases constitute marine "pollution," thereby triggering concrete due diligence obligations to prevent, reduce and control emissions using the best available science. ITLOS also underscores that these duties extend to regulating emissions from private actors, including those engaged in shipping and other sectors with transboundary effects. This articulation of obligations—specific, science-attentive, and extending to the regulation of corporate conduct—sets a baseline that national courts and regulators can transpose into domestic law and global governance.

In the Americas, the IACtHR's Advisory Opinion OC-32/25 confirms that the climate emergency engages a wide spectrum of rights protected by the American Convention and related instruments, and clarifies states' positive duties of prevention, regulation and cooperation to safeguard those rights. The Court's process—its most participatory to date—also exemplifies how judicial fora function as venues for public reason-giving and norm consolidation in conditions of polycentric risk. The synchrony between the IACtHR, ITLOS and the ICJ deepens the "compliance pull" of law by coordinating legal expectations across regimes.

Of all these tribunals, the ICJ—often called the "World Court"—has the broadest reach, and its pronouncement helps harmonize international law. By embracing a rights-based approach, the ICJ has given authoritative weight to the calls of youth, Indigenous peoples, and marginalized groups who have long framed climate change as an urgent justice issue. Communities at the frontlines of the climate crisis can now point to the highest court of the UN affirming their right to a livable climate and the corresponding duty of states to protect that right and to provide redress for violations.

State Responsibility: From Inaction to Wrongful Act

To be clear, the ICJ's opinion matters not because it invents new obligations but because it clarifies how existing ones bite. By reaffirming general duties of prevention and cooperation, and by grounding climate protection explicitly in international human rights law, the Court maps pathways through which omissions and inadequate regulation can crystallize as internationally wrongful acts with attendant consequences. It explicitly stated that climate obligations extend not only to reducing emissions but also to regulating fossil fuel production, consumption, and even subsidies. In doing so, the Court has signaled that ramping up coal, oil, and gas development despite the climate crisis could be unlawful – a profound shift in the legal narrative. Because the underlying obligations have *erga omnes* (or *erga omnes partes*) dimensions, responsibility may be invoked not only by directly injured states but also by non-injured parties seeking cessation and guarantees of non-repetition. In IR terms, these moves demonstrate legalization in motion: increased obligation, precision and (indirect) delegation that reconfigures states' bargaining positions in negotiations and their interests in domestic implementation.

The opinion underscores that states cannot hide behind the global nature of the problem or the actions of others. Under the Paris Agreement, each nation is expected to do its "utmost" and pursue its highest possible ambition to limit warming to 1.5 °C, in line with the treaty's goals. In fact, the ICJ effectively cemented the 1.5 °C limit as the primary temperature goal that states are obliged to strive for. Significantly, the Court made clear that countries are responsible for emissions originating within their jurisdiction or control, even if private companies are the ones burning fossil fuels. A state that fails to exercise due diligence—for example, by not regulating corporate polluters or by granting new oil and gas licenses without restraint—can be held responsible for the resulting climate damage. The ICJ also dismissed the notion that climate harm is too diffuse to attribute to particular states. While causation can be complex, it found that linking specific climate injuries to specific states *is* feasible, especially given advancing science on attribution. In short, the Court confirmed that no state is off the hook: all must take proactive measures to prevent serious climate harm, or face legal consequences.

Those consequences, the ICJ noted, could encompass the "full panoply" of state responsibility remedies. If a country has breached its climate duties—for instance, by failing to meet its own emissions pledges or by permitting destructive levels of pollution—it incurs obligations to cease the offending conduct and make reparations for any injury caused. Such reparations could take different forms, from restoring damaged ecosystems to providing compensation for losses. Calculating climate damage in monetary terms is challenging, as the Court acknowledged, but the principle is now established: those suffering climate-induced loss and damage have a valid legal claim to

seek redress. The opinion also confirms that in appropriate cases a court or tribunal could order performance of the breached obligation itself—for example, adoption of an NDC consistent with legal obligations—underscoring the justiciability of forward-looking climate remedies. Altogether, this marks a turning point, bolstering broader trends in climate litigation worldwide—climate justice is no longer just a moral imperative but a matter of legal accountability.

Importantly, the Court's approach neither displaces the Paris Agreement nor treats it as a ceiling. As ITLOS already made plain under the law of the sea, compliance with climate treaties is a floor; states must still exercise due diligence to prevent significant harm—an autonomous requirement under general international law. The ICJ's opinion positions human rights, prevention, and cooperation as mutually reinforcing sources of obligation rather than substitutes, thereby strengthening the argumentative resources available to litigants, regulators and diplomats alike.

Building on this clarification, enforcement can proceed along several tracks. For example, the widely ratified United Nations Convention on the Law of the Sea (UNCLOS) provides compulsory dispute settlement (ITLOS, ICJ, or arbitration) for disputes concerning interpretation or application of the Convention. The due diligence obligations and enforcement duties clarified by both ITLOS and the ICJ are justiciable obligations that lend themselves to binding relief in contentious cases. For corporate defendants, the opinions fortify states' duties to regulate private actors and to conduct EIAs for activities "either public or private," while domestic courts have shown a growing readiness to translate those duties into standards of care and injunctive relief; together, these developments tighten the net around carbon-intensive business models. Where *erga omnes* or *erga omnes partes* obligations are at stake, non-injured states can seek cessation and assurances of non-repetition, while injured states (or individuals in human rights fora) can pursue full reparations.

Transnational diffusion: from courtrooms to negotiations

As Sébastien Jodoin and I have argued elsewhere, the global spread of rights-based climate litigation reflects transnational practices of collaboration, storytelling and learning, through which legal arguments, evidentiary strategies and remedial theories travel across jurisdictions and fora. These practices have already reshaped national legal opportunity structures—most visibly in Europe and Latin America—and the ICJ's clarification gives them new traction in both domestic and international venues. The advisory opinions of ITLOS and the IACtHR are best seen as nodes in this diffusion process, stabilizing expectations and enabling communities of practice to press for alignment between international commitments and national conduct.

This dynamic is evident in landmark domestic judgments. The Dutch Supreme Court's *Urgenda* decision ordered the state to reduce emissions by at least 25% by 2020 based on human rights-grounded duties of prevention; a ruling that served as a catalyst for similar cases worldwide. Extending this reasoning to corporations, the Hague District Court's *Milieudefensie v. Shell* held a multinational to a 45% reduction by 2030, with appellate proceedings setting aside the reduction order while affirming a standard-of-care framework under Dutch private law and international law. The European Court of Human Rights' Grand Chamber in *KlimaSeniorinnen v. Switzerland* found that insufficient climate action violated the Convention. These rulings illustrate how rights-based frames and due diligence standards migrate across legal orders—and how the ICJ's articulation of obligation can accelerate that migration.

Rights-based approaches have also broadened the field of accountability beyond the state in quasi-judicial proceedings. The Commission on Human Rights of the Philippines' National Inquiry on Climate Change concluded, after a multi-year evidentiary process, that Carbon Major companies have responsibilities to respect human rights in the climate context and that corporate conduct—including obstructing climate policy—can trigger liability under evolving standards. The ICJ's emphasis on regulatory duties and cooperation strengthens the normative architecture within which such findings can be operationalized by regulators, courts and investors.

Implications for diplomacy, policy and practice

In negotiation rooms, the ICJ opinion will matter as an interpretive backstop. It reframes climate commitments as the juridical minimum states must meet to discharge general duties of prevention and to respect and ensure human rights, including the UN General Assembly-recognized right to a clean, healthy and sustainable environment. That

reframing equips vulnerable states and civil society with legal language to press for ambition, finance and technology transfer as components of cooperation rather than charity. It also helps re-anchor "equity" in duties of conduct and due diligence that are sensitive to historical responsibility and capacity yet resistant to strategic delay. While advisory opinions lack the *res judicata* effect associated with judgments, practice shows that they often recalibrate baselines: partial non-compliance with the 2004 *Wall* opinion contrasts with the significant normative and institutional reverberations of the *Chagos* opinion—an experience that underscores how authoritative clarification can structure UN follow-up and subsequent adjudication.

With the world's highest court affirming that causing significant harm to the climate system is, in principle, unlawful, calls to phase out fossil fuels also gain legal and moral force. We can expect increased pressure at UN climate summits for commitments that reflect what the ICJ calls a "stringent standard of due diligence" and use of "all means at [states'] disposal" to cut emissions. The opinion even implicitly addresses laggards like the United States that have at times exited climate accords, making clear that no country can opt out of its fundamental obligations to address climate change. By affirming duties of international cooperation and leadership (especially for developed nations), the ICJ has injected a new sense of legal urgency into the global climate regime—one that negotiators can't easily ignore.

Just as importantly, this ruling is likely to energize climate litigation and grassroots advocacy around the world. Although advisory opinions are not binding, they are often cited by courts and can shape national policies and inspire and guide litigation. We can anticipate a wave of legal challenges invoking the ICJ opinion—for example, suits against governments for approving high-emission projects or for failing to strengthen climate targets. Indeed, the ICJ's words will likely surface in courtrooms from Europe to the Pacific, supporting claims that failing to prevent harm to the climate system is unlawful and violates the rights of the people.

By the same token, governments may become more hesitant to green-light new coal mines or oil fields now that such actions are deemed contrary to states' due diligence obligations and could expose them to liability. Corporate actors, too, are on notice. While the ICJ stopped short of directly addressing businesses, it emphasized that states must regulate private emitters – a signal that big polluters will face greater scrutiny. Former UN human rights chief Mary Robinson, for example, hailed the opinion as a "powerful new tool to protect people from the devastating impacts of the climate crisis – and to deliver justice for the harm [greenhouse gas] emissions have already caused".

For courts and regulators alike, the opinion invites a more integrated approach to risk management and remedy. Judges now have clearer grounds to assess the adequacy of state measures against a due-diligence yardstick, to require regulation of private actors whose activities drive emissions, and—where warranted—to order forms of reparation consistent with established principles of state responsibility. Even where claims falter, as in *Juliana* on redressability, the ICJ's articulation sharpens the legal questions and may influence how separation-of-powers concerns are balanced against the immediacy of risk.

Taken together, these developments indicate a phase shift. The regime complex for climate change has become more coherent, with international courts acting as focal points that coordinate expectations and translate diffuse norms into operational duties. The message is clear: climate destruction is incompatible with international law and human rights. This unprecedented clarification is not a guarantee of rapid decarbonisation or climate justice. But it does alter the strategic terrain: for governments weighing the costs of ambition, for firms mapping transition risk, and for states and communities seeking protection and redress. The law, science and human experience now point in the same direction. The remaining question is not whether states are obliged to act, but how quickly they can align their conduct with those obligations.

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