

LRI Advisory Opinions Explainer: Elements of International Law

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Issues considered in the Advisory Opinions ✓ means the court made this finding ✗ means the court did not make this finding N/A means the Court did not extensively refer extensively to the issue	ITLOS	IACtHR	ICJ
1. The climate change treaties are not <i>lex specialis</i>	✓	✓	✓
2. States have obligations to adjust legislation as part of their efforts to achieve the goals of the UNFCCC and Paris Agreement support the climate change regime	✓	✓	✓
3. States have binding mitigation obligations	✓	✓	✓
4. States have binding adaptation obligations	✓	✓	✓
5. Developed States have obligations to provide financial assistance to developing States for both mitigation and adaptation	✓	✓	✓
6. States have binding international cooperation obligations	✓	✓	✓
7. The principles of prevention, precaution and transboundary harm inform States' obligations	✓	✓	✓
8. States have a duty to conduct environmental impact assessments	✓	✓	✓

9.	States' obligations are to be viewed with reference to CBDR-RC and equity	✓	✓	✓
10.	Climate change impacts on the enjoyment of human rights	N/A	✓	✓
11.	States have obligations deriving from principles of equality and non-discrimination	N/A	✓	✓
12.	Considered the impacts of climate change on the rights of nature	N/A	✓	N/A
13.	States have obligations to protect and preserve the marine environment / prevent, reduce control pollution of marine environment	✓	✓	✓
14.	Considered the impacts on sea-level rise and maritime entitlements	N/A	✓	✓
15.	Considered the implications of climate change on statehood, nationality, climate refugees	N/A	✓	✓
16.	States have obligations to regulate and legislate actions of non-State actors / private companies	✓	✓	✓
17.	State responsibility applies, including reparations, compensation, satisfaction	✓	✓	✓
18.	Considered the temporal and causal links for attribution of emissions and State responsibility	N/A	N/A	✓

1. Introduction

In 2024 and 2025, the International Tribunal for the Law of the Sea (**ITLOS**), the Inter-American Court of Human Rights (**IACtHR**) and the International Court of Justice (**ICJ**) delivered opinions regarding the legal obligations of States regarding climate change, with somewhat different scopes according to each court's jurisdiction (collectively, **Advisory Opinions**). The Advisory Opinions determine the obligations of States in respect of climate change under various bodies of international law – they are the first of their kind, and likely to be highly influential on State conduct. In addition, these may inform a fourth Advisory Opinion on climate change obligations of African states, which was requested under the [African Court on Human and People's Rights](#) in May 2025. References to courts in this paper are intended to include the ICJ, IACtHR and ITLOS.

Besides contentious jurisdiction where the courts will adjudicate on a legal matter between parties, international courts also have an advisory jurisdiction, which enables them to provide a judicial opinion on legal questions put forward to them. Advisory opinions relate to questions of interpretation or application of the law and provide an authoritative statement of international law and have significant persuasive impact. As such, the interpretations they set hold significant value to be used in subsequent contentious cases and in national and regional litigation, as well in diplomatic efforts.

Very importantly, all three Advisory Opinions were unanimously adopted, supplemented by separate opinions and declarations of judges – that sometimes went further than the courts’ findings – (12 out of 15 judges of the [ICJ](#) did so; 5 out of 21 judges for [ITLOS](#); 4 of 7 judges of the IACtHR; and 3 of them were dissenting in part). This reinforces their strength and persuasive weight when taken forward.

Each court examined the international law applicable to States according to their own jurisdiction and the questions brought before them: the ICJ Advisory Opinion was initiated by law students from the Pacific Islands Students Fighting Climate Change (**PISFCC**) who were supported by Vanuatu in their efforts to mobilise states to request the opinion. This campaign led to the adoption of a UNGA resolution that asked the ICJ to clarify States’ obligations to ensure the protection of the climate system and other parts of the environment from greenhouse gases (**GHGs**) and the legal consequences arising from acts or omissions causing significant harm to the environment. Owing to the broad competence of the ICJ, it can examine various sources and bodies of relevant international law. The request to the ITLOS was made by the Commission of Small Islands States and relates to the obligations under the United Nations Convention on the Law of the Sea (**UNCLOS**) to prevent pollution to the marine environment from GHG emissions and to protect it from the impacts of climate change. Finally, the IACHR Advisory Opinion was requested by Chile and Colombia and concerns the climate emergency and human rights in the context of the Inter-American Convention of Human Rights, determining the obligations of States in terms of substance, process and rights of vulnerable groups and people within the jurisdiction of the Inter-American Convention on Human Rights.

The Advisory Opinions recorded a high number of submissions, with the ICJ receiving 91 written statements, followed by 62 written comments from States and International Organisations. The ITLOS received 34 written statements from States Parties to the UNCLOS and 9 NGO statements. The IACtHR received 33 amicus briefs.

This explainer offers a concise summary of the main points reasoned by each court in their respective opinions. This explainer is supplemented by a separate document for policy- and decision-makers, to guide UNFCCC negotiations and discussions.

2. Scientific basis

All three courts find the IPCC’s reports to constitute the best available science (ICJ, [74]; IACHR, [33]; ITLOS, [208]) and interpreted the IPCC as crystallising the scientific consensus on the anthropogenic GHG emissions (ICJ, [72]; ITLOS, [54]; IACtHR [55]).

The table below shows other points made by the Courts in respect to science, noting that the IACtHR and ITLOS Advisory Opinions emphasise points that are specific to their jurisdictions:

ICJ	ITLOS	IACtHR
- Takes a definitive stance on the scientific temperature goal, referring to States’ obligations to the “ <i>agreed primary temperature goal</i> ” of 1.5°C, rather than 2°C above pre-industrial levels (ICJ, [224]),	- Finds GHG emissions to constitute pollution as defined under Article 1(1)(4) of the UNCLOS [162]-[179]. Article 1(1)(4) lays down three criteria, which the Tribunal found	- Identifies 90 companies that constitute ‘Carbon Majors’ as responsible for 71% of emissions between 1988 and 2017 [54]. - Identifies the contribution to climate change from different

which the ICJ considers was supported by the Glasgow Climate Pact of 2021 (Decision 1/CMA.3, [21]) and the outcome of the First Global Stocktake of 2023 (Decision 1/CMA.5, [2]), where parties resolved to "pursue efforts" and limit global warming to 1.5°C". The Court offers both scientific and legal arguments to support this conclusion: the scientific projections comparing 1.5 and 2 degrees make the case to assume anything over 1.5 degrees would be a breach of various norms of international law; and this is legally endorsed by States COP/CMA decisions, which constitute subsequent agreement under the rules of treaty interpretation (as it is further explained in the delegate's guide to the Advisory Opinions). - Determination of causality in the event of a wrongful act in the context of climate change is based on science. As it will be further explained in the section on state responsibility, the ICJ advances in endorsing the science of 'climate attribution'.	anthropogenic GHG emissions to satisfy: 1) substance or energy; 2) introduced by humans, directly or indirectly, into the marine environment; 3) this introduction must result or be likely to result in deleterious effects. This finding was acknowledged and supported in the ICJ Advisory Opinion [340]. - Gives a significant place to the Subsidiary Body for Scientific and Technological Advice (SBSTA), which the Tribunal considers as the appropriate organisation in establishing appropriate scientific criteria for the formulation of rules and standards for the prevention, reduction and control of marine pollution, as provided in Article 201 of the UNCLOS [318]. Also acknowledges the roles of the IMO and ICAO in setting international rules and standards for purposes of UNCLOS [79-82, 277]	States and regions in the world as highly unequal [60]. - Notes wealth inequality amongst peoples is reflected in the contribution to climate change, where richest segments of the population contribute significantly more than poorest ones [56-63]. - Identifies the impacts of climate change on natural systems and on the rights of peoples noting also that these impacts are highly unequal, affecting more those poorer regions and peoples [100]. - Recognises the right to science as part of the access to information, defining it as an access to best available science and traditional and indigenous knowledge to understand and address climate change [473-484]. - Includes the duty to generate and disseminate reliable, accessible and culturally relevant scientific data, as well as countering climate disinformation in the obligations of States with regards to climate change [486].
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2. Main features of the Climate Change Treaties in the AOs

Lex specialis

Lex specialis is an interpretative principle according to which a more specialised rule overrides the more general rule. Some states had argued that the United Nations Framework Convention on Climate Change (UNFCCC), Kyoto Protocol and the Paris Agreement (together, the **Climate Change Treaties**) are lex specialis and thus displace other rules of international law. The ICJ and ITLOS Advisory Opinions find that the interpretative principle of *lex specialis* does not apply in regard to States' obligations in respect of climate change. This means that the Climate Change Treaties, UNCLOS, other environmental

treaties such as the convention on biodiversity, customary international law and international human rights law, for example, all form part of the most directly relevant applicable law. All of the directly relevant applicable law complements and informs one another. The ITLOS held that the Paris Agreement was not *lex specialis* to the UNCLOS regarding the protection and preservation of the marine environment, instead they complement one another in matters of regulating marine pollution from GHG emissions (ITLOS, [223]-[224]).

The IACtHR does not engage directly with the question of *lex specialis*, reflecting its competence as a human rights tribunal interpreting the American Convention for Human Rights. However, it identifies compliance with norms emerging from international climate law, international environmental law, amongst others as relevant for the fulfilment and interpretation of human rights (IACtHR, [36]-[38]).

The confirmation of the ICJ is increasingly important as the UNFCCC negotiations are becoming more complex, often stalling thereby limiting the progress with some States deciding to remove themselves from this space altogether. The Court's finding means that States' obligations in regard to climate change flow from diverse sources of law, and therefore are applicable to parties and non-parties to the climate change treaties, and are thus broader in scope.

Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC)

The ICJ determines that CBDR-RC is a "core guiding principle" in interpreting and implementing the Climate Change Treaties, which "reflects the need to distribute equitably the burdens of the obligations in respect of climate change, taking into account [...] states' historical and current contributions to cumulative GHG emissions, and their different current capabilities and national circumstances" (ICJ, [148]). When considering the references to CBDR-RC in the Paris Agreement, the ICJ acknowledges that the qualifier "in the light of different national circumstances" adds nuance to the CBDR-RC principle by recognising that "the status of a State as developed or developing is not static", in that a State's obligations depend on an assessment of its current circumstances and opens the possibility to them becoming more onerous over time as a State develops (ICJ, [226]).

The IACtHR also identifies CBDR as a core principle, analysing in detail the historical and current contribution of different states and regions (IACtHR, [56] and following). The Court emphasises its importance when defining mitigation obligations, support for adaptation and financial obligations of developed countries and international cooperation, amongst others. Interestingly, it used the CBDR formulation instead of CBDR-RC, however, this might be an omission and not indicative of a static understanding of CBDR; as the Court also delves into considering current emissions and capabilities as key to set the State mitigation targets.

While the UNCLOS does not refer to CBDR-RC, the ITLOS links the obligation of assistance to developing States under Articles 202 and 203 of UNCLOS to the principle of CBDR-RC in the context of marine pollution from anthropogenic GHG emissions (ITLOS, [326]-[339]).

Cooperation

Both the ICJ and ITLOS find that States party to the UNFCCC have a duty to cooperate in good faith with each other to achieve the underlying objective of the UNFCCC and UNCLOS, with the ICJ noting that "international co-operation is indispensable in the field of climate change" (ICJ, [215]). Cooperation must occur in areas of technology transfer, conservation, scientific and technological

research, and adaptation, for example (ICJ, [214]). The ICJ also elaborates on extensive duties of cooperation present in the Paris Agreement (ICJ, [260]-[267]). This duty to cooperate extends to the substantive obligations, as well as to how negotiations are conducted, requiring a certain degree of good faith from States.

The ITLOS notes that the duty to cooperate as provided for under Article 197 of the UNCLOS is of continuing nature, requiring States to formulate and elaborate rules, standards and recommended practices and procedures, highlighting that “the adoption of a particular treaty, such as the UNFCCC or the Paris Agreement, does not discharge them from its obligation to cooperate” because it necessitates an continuous development and revision of regulatory instruments in light of evolving scientific knowledge (ITLOS, [311]).

The IACtHR emphasises that States have an obligation to cooperate for the fulfilment of their climate obligations – both under the UNFCCC and the Inter-American Convention of Human Rights. However, the IACtHR frames international cooperation under CBDR-RC as underlying the importance of international solidarity (IACtHR, [408]-[409]).

NDCs

The ICJ gives particular attention to States’ obligations in respect of Nationally Determined Contributions (**NDCs**) as a mitigation obligation. The obligations of State parties to prepare, communicate and maintain successive NDCs and to account for and register NDCs are procedural in nature but are all obligations of result and therefore, merely complying with those procedural obligations would be insufficient. The content of a State's NDC is equally important to determine compliance (ICJ, [235-236])

In terms of that content, States have limited discretion in the preparation of NDCs, despite what some States may have suggested (ICJ, [245]). Rather, NDCs must progress – become more demanding – over time and must reflect that State's “highest possible ambition”, which is an obligation of conduct and best efforts (ICJ, [252]-[254]). The “highest possible ambition” of a State party means that the content of their NDC must “be capable of making an adequate contribution to the achievement of the temperature goal” (ICJ, [242]). The IACtHR confirms that States have an obligation to define mitigation targets and maintain an NDC (IACtHR, [322]-[323]) and an obligation to define and maintain adaptation plans (IACtHR, [384]).

Fossil fuels

The ICJ highlights that States have due diligence obligations both in treaty and customary law, as explained in the box below, which requires States to take appropriate action to protect the climate system from GHG emissions (ICJ, [427]). The ICJ expressly states “fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences [and] the provision of fossil fuel subsidies” are activities that may be considered as acts of State and engage its responsibility. In the same vein, it falls under the due diligence of a State to take the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction (ICJ, [428]).

3. Customary international law obligations for climate change and jus cogens

Another source of international law, separate to treaty law, is customary international law. Customary international law encompasses rules of international law derived from State practice and acceptance of those practices as law. Customary international law binds all States. The duties to cooperate, to prevent harm including through regulating private actors behaviour and performing environmental impact assessment (EIA) are part of the corpus of customary international law, which the courts referred to as explained below.

Duty to cooperate

The duty to cooperate does not extend only to the climate change treaties regime (as described above) but it is a rule of customary international law and therefore applies to States' efforts in regard to climate change more broadly. The Court finds that while the duty to cooperate affords States some discretion to determine their means for regulating GHG emissions (ICJ, [306]) and that the duty exists in light of the principle of CBDR-RC, it does not serve as an excuse for States to refrain from cooperating at the required level of due diligence or to present their efforts as entirely voluntary and exempt from scrutiny (ICJ, [305]-[306]; IACtHR, [253]). Above all States must, continuously, "*co-operate to achieve concrete emission reduction targets or a methodology for determining contributions of individual States, including with respect to the fulfilment of any collective temperature goal*" (ICJ, [305]; ITLOS, [311]).

Duty to prevent significant harm

The duty to prevent significant harm to the environment requires the consideration of many factors including assessing the likelihood and severity of potential current and future harm, cumulative effects from multiple actors, available scientific information, international rules and standards, the precautionary approach, risk assessments, environmental impact assessments, notification and consultation processes (ICJ, [275]-[276], [281]-[299]). The ICJ notes that the standard of due diligence required to comply with this duty is stringent [138] and may also become more demanding with new scientific and technological knowledge and be informed by current standards arising from binding and non-binding norms, including COP decisions (ICJ, [283]-[285], [287]). CBDR-RC is relevant to determining the standard but does not override the obligation to take all steps available to protect the climate system (ICJ, [290]-[291]).

The IACtHR goes a step further as it establishes that the obligation to prevent irreversible harm to the climate and environment has a *jus cogens* character. This means that it has a higher legal status than other obligations and that no exception or contradiction by a treaty is applicable. This is the same status as norms that prohibit genocide or torture. The Court reasons that the principle of efficacy, the centrality of the environment for the enjoyment of human rights including life, the broad recognition of environmental principles and norms indicate a consolidation of this obligation (IACtHR, [292]-[293]).

Part of a State's duty to prevent significant harm is the adequate regulation of activities taking place within their jurisdiction or control in view of achieving substantial GHG emission reduction and enhance resilience (ICJ, [276]- [279]). Accordingly, States must regulate the conduct of public and private operators, which must be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation (ICJ, [282]). Amongst other manifestations of the duty to prevent

harm, the three Courts reiterate that obligation to conduct EIAs exists under customary international law (as explicitly noted by the ICJ, [297]; IACtHR, [358] and ITLOS, [355]).

A note on due diligence standards

Several of the obligations considered in the Advisory Opinions are classified as 'due diligence obligations' and compliance with those obligations is subject to meeting the requisite standard of conduct for the relevant obligation. Both treaty obligations and customary law obligations can be due diligence obligations, even though the content of those obligations may differ.

The ICJ, for instance, confirmed that to comply with their mitigation obligations, Article 4 of the UNFCCC requires States parties "to act with due diligence in taking necessary measures to achieve the objectives set out in their NDCs" (ICJ, [252]). The standard of due diligence in this context varies according to the level of scientific knowledge available, risk of harm and urgency (ICJ, [254]). Similarly, the IACtHR, the climate emergency calls for a higher degree of due diligence (*reforzada* or reinforced) and it also makes it dependent on CBDR.

The ITLOS Advisory Opinion holds that States have "specific obligations to take all necessary measures to prevent, reduce and control marine pollution" under UNCLOS (ITLOS, [243]). To comply with this obligation, States must take measures which are determined considering the best available science, relevant international rules and standards contained in climate change treaties, singling out the temperature limit of 1.5°C. The Tribunal also characterises these measures to vary according to States' capabilities and available resources.

Therefore, while the standard of due diligence for this obligation is characterised as stringent or enhanced in all of the Advisory Opinions, States may implement this obligation according to their capacity and in the light of obligations on the part of developed states to take the lead and provide support (ICJ, [290]-[292]; ITLOS, [226]-[228]). However, the Opinions also confirm that all states have certain obligations regardless of their development status (ITLOS, [229]; ICJ, [292]). As noted in Section 0, a range of obligations under customary international law are obligations of conduct requiring States to act with due diligence, including the duty to prevent significant harm.

Relationship between Customary International Law and Treaty Law

As to the relationship between obligations under treaty and customary law, the ICJ confirms that the obligations from the Climate Change Treaties and State practice in implementing those obligations, inform general customary obligations, in the same way that general customary obligations provide guidance for the interpretation of the Climate Change Treaties (ICJ, [313]).

Consequently, the ICJ considers that the customary obligations of a State not party to one or more of the Climate Change Treaties, "finds expression, at least in part" in the actions of States parties to Climate Change Treaties (ICJ, [315]). Therefore, States are obligated to cooperate with the international community, to fulfil their climate change obligations, regardless of their status as a party to any of the Climate Change Treaties (ICJ, [315]). Consequently, if a non-party State does not cooperate with the international community, in an equivalent manner to State parties to the Climate Change Treaties, that non-party State has "*the full burden of demonstrating that its policies and practices are in conformity with its customary obligations*" (ICJ, [315]).

4. Rights-based arguments and the rights of nature

Although both the ICJ and the IACtHR referred to international human rights law to determine the obligations of States in respect of climate change, the analysis of the international human rights regime is much more comprehensive in the IACtHR's opinion. Given its nature as a human rights court and its competence to interpret the American Convention on Human Rights, the IACtHR opinion delivers a comprehensive assessment of States' duties to protect rights under Article 26 of the American Convention (on economic, social, cultural, and environmental rights), with reference to both substantive and procedural rights.

Concerning substantive rights, the IACtHR recognises the right to a safe climate in its individual and collective dimensions which need to be delivered with intra- and inter-generational equity (IACtHR, [269]-[278]). The right to a safe climate entails obligations in relation to adaptation, mitigation and to regulate corporations' behaviour. The IACtHR's opinion also lists more specific adaptation obligations that emerge from the right to life, personal integrity and health that include prioritising vulnerable groups, obligations to guarantee the rights to private and family life, private property and housing and freedom of movement, as well as the right to work and social security, access to food and water and others. Relocations, for example, in the opinion of the Court should only happen when inevitable but States should develop plans for conducting them to ensure other rights are not threatened.

As to procedural rights, the IACtHR warns against the threat that climate change poses to democracy and highlights the importance of adopting decisions on climate action in a participatory, open and inclusive fashion (IACtHR, [468]). The IACtHR finds that the right to science and recognition of local, traditional and indigenous knowledge are fully applicable to climate change decision-making, highlighting the importance of international cooperation to deliver on it. Further, when analysing the right to access to information in the context of the climate emergency, States not only have the obligation to produce and publish information, but also to counter disinformation (IACtHR, [524]).

The ICJ, on the other hand, does not analyse in detail the content of human right obligations in the context of climate change, but acknowledges that the international human rights regime provides obligations relating to the protection of the environment, in the context of climate change. This position is evident in the ICJ's conclusion that international human rights law informs, and is informed by, the obligations under the Climate Change Treaties, other environmental treaties, UNCLOS and customary international law (ICJ, [404]).

Specifically, the ICJ confirms that the effects of climate change "*significantly impair*" the enjoyment of human rights, including the right to life, right to health, right to an adequate standard of living (including access to food, water and housing), the right to privacy, family and home and the rights of women, children and indigenous peoples (ICJ, [376], [379], [380], [381], [382]). Moreover, the ICJ confirms that the right to a clean, healthy and sustainable environment is a "*precondition for the enjoyment of many human rights*", including the right to life, health and the right to an adequate standard of living (ICJ, [393]). Although the ICJ does not expressly indicate if this right exists as a standalone right, judges including Bhandari and Charlesworth affirm in separate Opinions that this is the intended effect of the language in the Court's Opinion. Complemented with the understanding of the ICJ in regard to *lex specialis*, this means international human rights is one of the sources of obligations for States in regard to climate change, and therefore must inform their behaviour, commitments and actions.

Finally, while not talking explicitly of “climate refugees”, the ICJ does mention individuals that ‘seek safety in another country’ or are ‘prevent[ed] them from returning to their own’ (ICJ, [378]). The ICJ confirms that States have obligations under the principle of non-refoulement, which prohibits States from returning individuals to a country where they face a real risk of persecution or other serious and irreparable harm. It finds that the principle should apply where there are substantial grounds to believe the presence of a real risk of irreparable harm to the right to life in breach of Article 6 of the International Covenant on Civil and Political Rights in the case individuals are returned to their country of origin (ICJ, [378]).

Taking a more eco-centric approach, the IACtHR recognises nature and its components as subjects of rights. According to the Court, such rights protect the integrity and functioning of ecosystems is key to preventing irreversible existential harm, which as noted in Section 40, has been established as a *jus cogens* norm (IACtHR, [279]-[286]). The recognition of the rights of nature is not a novelty in the IACtHR case law, nor amongst Latin American countries, where the rights of nature movement began and finds relevant expressions from case law to constitutional recognition. The ICJ, however, does not discuss the rights of nature, as a separate topic. However, this topic is currently being examined by an International Law Association Committee.

5. State responsibility

The second part of the ICJ's opinion answers the question on the responsibility of States that breached their international legal obligations pertaining to climate change. The ICJ does not find any “*clearly expressed lex specialis*” that would exclude the application of the general rules and customary international law on State responsibility, reflected in the International Law Commission's Articles on State Responsibility, dismissing the arguments of some States during the proceedings (ICJ, [413]-[420]) that were pushing for a self-contained climate regime constrained to the climate treaties. The ICJ held that a State incurs liability if it fails to take all measures which were within its power to prevent the significant harm (ICJ, [409]).

Most notably, the ICJ finds that ‘*Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State*’. (ICJ, [427]). This entails that a State's responsibility may be invoked where it fails to regulate polluting industries. Indeed, the Court stresses that the State responsibility is not invoked by the “*emission of GHGs per se, but the breach of conventional and customary obligations [...] pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions*” (ICJ, [427]). Thus, it is the breach of those obligations stated by the Court in its answer to the first question that engages the responsibility of States.

It follows that, when addressing the question of attribution, the ICJ finds, consistent with the scientific developments and conclusions, the shared responsibility and diffuse character of emissions does not preclude the application of the rules on State responsibility, which can address a plurality of injured or responsible States (ICJ, [426], [430]). The ICJ held that it is “*scientifically possible to determine each State's total contribution to global emissions, taking into account both historical and current emissions*” (ICJ, [429]).

Where harm is alleged, science is integral to establishing a causal link between a wrongful conduct and the harm incurred. The ICJ finds that the diffuse nature of climate change does not hinder causation from being established (ICJ, [435]). Instead, it finds that although the causal link between the wrongful actions or omissions of a State and the harm caused by climate change is more tenuous, it is not impossible to establish (ICJ, [348]). It requires the causation to be established: (1) a climate event or trend can be attributed to climate change. The Court finds this element to be established through scientific evidence of anthropogenic climate change (2) the extent of damage caused by climate change can be attributed to a particular State or group of States. This second element must be established 'in concreto', relating to specific claims regarding damage incurred. The IACtHR mentions the possibility of presuming a causal link between GHG emissions and the degradation of the climate system, and between that degradation and the risks it poses to the environment and people (IACtHR, [553]).

The ICJ briefly addresses the legal consequences arising from breaches of obligations in its first question as giving rise to cessation and non-repetition, full reparation, including restitution, compensation and/or satisfaction (ICJ, [445]). However, the ICJ does not expressly specify their content as they depend on an assessment of a specific breach in conjunction with the nature of the harm suffered (ICJ, [445]). Notably, the ICJ notes that the application of the general rules of State responsibility do not differ depending on the category or classification of the State (such as particularly vulnerable, or specially affected) (ICJ, [109]).

The IACtHR endorses a 'fair share' framework to assess State responsibility grounded in the principle of CBDR, and raised issues of equity, for example, by considering circumstances of oil producing countries, or analysing the limited delivery of climate finance. In doing so, it departs from a non-differentiated approach to determining State responsibility, an important distinction from the ICJ's opinion. At the same time, when establishing the obligations applicable to States in the context of the climate crisis, it does not make them conditional on the compliance by other States with their obligations. Particularly when analysing obligations to mitigate, the IACtHR indicates the mitigation goal should be determined with an aim to prevent climate-related damage and to guarantee the right to a healthy environment, and that "this obligation is applied without exception to all [Organization of American States] member states", excluding the possibility to argue non-compliance of other States with this and other international obligations as an extenuating circumstance (IACtHR, [325]).

The ITLOS finds that the scope of the request was limited to primary obligations and does not make findings on State responsibility. However, it clarifies general obligations of which a failure to abide by would engage State responsibility (e.g. ITLOS, [286]).

6. Looking ahead – what next?

The potential repercussions of the three Advisory Opinions are wide-reaching, including inter-State action, influence on international negotiations and impact in the domestic context.

Litigation: inter-states and intra-state

The ICJ confirms that the international rules of State responsibility are applicable to all of States' international law obligations in respect of climate change, including treaty and customary law obligations. In addition, the ICJ finds that all obligations are *erga omnes*, meaning that they are

obligations of collective responsibility and responsibility for breach could be invoked by any State against another.

States may bring action against another State before the ICJ (UNFCCC, art 14(2)(a)) where both States have accepted the jurisdiction of the ICJ, either through a treaty provision or through depositing a declaration of compulsory jurisdiction in accordance with the Statute of the ICJ. To date, 74 States have deposited such a declaration,¹ with many excluding certain types of dispute or disputes where another method of settlement exists.² Whilst only a limited number of developed country or high-emitting States have accepted its jurisdiction, the interpretation of the rules of state responsibility laid down by the ICJ may be highly relevant in disputes across a range of fora including under other multilateral treaty regimes relevant to climate change as well as trade related disputes and investor state arbitration, particularly where states seek to defend their 'right to regulate' so as to effect transition away from fossil fuels in the face of action from investors.

States may also resort to arbitration (UNFCCC, art 14(2)(b)) and conciliation (UNFCCC, art 14(6)). Certain features of conciliation may be better for specific disputes. Because conciliation has never been resorted to, so it remains untested.

Other fora for climate change-related dispute settlement include one of the compulsory dispute settlement mechanisms under the UNCLOS, trade or human rights agreements. Under UNCLOS, State parties have the option to choose the means of dispute settlement concerning the interpretation and application of UNCLOS, including ITLOS, the ICJ or an arbitral tribunal. Alternatively, obligations to cooperate in relation to technology and finance and obligations in relation to human rights can prompt intra-state litigation in trade, investment, intellectual property and human rights jurisdictions, amongst others.

Beyond inter-State disputes, both the ICJ and IACtHR recognised that climate change has an impact on the enjoyment of international human rights. As a result, States may experience an increase in human rights claims concerning climate change at the domestic level, and subsequently before international and regional human rights courts. Similarly, Governments are likely to face more litigation for failing to adopt adequate measures to mitigate and adapt to climate change at domestic courts.

COP and other international negotiations

In our second explainer, we discuss the potential impacts of the advisory opinions on future climate negotiations, including how delegates may use the Advisory Opinions findings in upcoming climate negotiations.

In summary, some of the potential impacts of the Advisory Opinions may include a recognition by the international community of the normative power of COP and CMA decisions, and therefore more robust negotiations and decisions, including drafting of agreements; an evolution of the duty to cooperate; clearer climate finance and ambition targets or goals; and potential changes and redefining of the classifications of States. In the alternative, the recognition by the ICJ of the potential normative

¹ International Court of Justice, *Declarations recognizing the jurisdiction of the Court as compulsory*, accessed on 26 August 2025 via: <https://www.icj-cij.org/declarations>

² See for example the declarations of Australia and the United Kingdom.

status of COP decisions may incite some States to water-down the language and commitments included in decisions, as States become wary of how it may impact their obligations in the future.

The ITLOS AO mentions the work under the International Maritime Organization (IMO), namely the adoption of the 2023 IMO Strategy on Reduction of GHG Emissions from Ships. The Strategy sets out levels of ambition and a pathway for emissions to peak and to reach net-zero by or around 2050 (ICJ, [80]). As the IMO is considered as a competent international organisation under Article 212 on pollution from or through the atmosphere through vessels, States' compliance with the Strategy is important to respect their obligations relating to climate change.

Moreover, the AOs understanding of the climate regime as more extensive than the climate change treaties and their highlighting of other relevant treaties, such as plastics, biodiversity and desertification can inform further synergies and climate-related decisions in those negotiations spaces.

Domestic regulation

States are required to mitigate their GHG emissions, to protect the climate system and prevent human rights violations (ICJ, [200], [207], [230]-[233] and IACtHR, [321]). Further, the ICJ [252] and IACtHR observed that States' obligations extend to regulating the activities of private actors.

Specifically, the ICJ reiterated the international rule that “the conduct of any organ of a State must be regarded as an act of that States” (ICJ, [427]), noting the production and consumption of fossil fuel, the granting of fossil fuel exploration licences, and the provision of fossil fuel subsidies may constitute an internationally wrongful act (ICJ, [427]-[428]). Thus a Ministry, national or regional agency responsible for granting those licences and subsidies thereby engages the responsibility of the State.

Similarly, the IACtHR noted that States must adopt legislative and other measures to prevent human rights violations by State and private companies (IACtHR, [345]). These express references to fossil fuel production and the need to adopt legislative frameworks bring into focus the importance of domestic regulation in fulfilling international obligations.

It is foreseeable that some States may respond in a range of ways including:

- codifying ‘adequate’ emissions reduction targets which are consistent with the Paris Agreement's 1.5 temperature goal;
- introducing new requirements for private actors concerning climate disclosures and emissions reduction; and/or
- accelerating the transition away from fossil fuels including through decisions relating to finance flows;
- including risk assessments of potential liabilities in relation to state responsibility for activities including fossil fuel licensing and production in order to assess the financial risks as well as the climate risks of continuing to fund and permit new production;
- taking steps to mitigate potential investor state proceedings through the inclusion of right-to-regulate and climate carve-out protections in investment treaties and or relying on established principles including legitimate expectation and fair and equitable treatment to defend ongoing claims by investors related to fossil fuel transition
- strengthening domestic EIA requirements;
- strengthening domestic adaptation regulation to ensure enjoyment of human rights in a changing climate;
- adopting national protocols for climate migration as indicated by the IACtHR.