

LRI Advisory Opinions Explainer: Elements of International Law

Contents

1	Introduction	4
2	Scientific basis	4
3	Main features of the Climate Change Treaties in the AOs	6
4	Customary international law obligations for climate change and jus cogens	7
5	Rights-based arguments and the rights of nature	9
6	State responsibility.....	10
7	Looking ahead – what next?	11

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	✓

What are the legal obligations of States, under international law, regarding climate change? What are the legal consequences for harming the climate system?

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
<p>- 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]), 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 <i>"pursue efforts"</i> 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).</p> <p>- 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'.</p>	<p>- 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 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].</p> <p>- 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]</p>	<p>- Identifies 90 companies that constitute 'Carbon Majors' as responsible for 71% of emissions between 1988 and 2017 [54].</p> <p>- Identifies the contribution to climate change from different States and regions in the world as highly unequal [60].</p> <p>- 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].</p> <p>- 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].</p> <p>- 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].</p> <p>- 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].</p>

3 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 cause by private actors under its jurisdiction (ICJ, [428]).

4 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 4, 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]).

5 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 regards to *lex*

specialis, this means international human rights is one of the sources of obligations for States in regards 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 44, 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.

6 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 are capable of addressing 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]).

7 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

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.

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 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.

Delegate's Guide to the Advisory Opinions

What implications for the UNFCCC negotiations?

1. Introduction

This explainer supplements the first LRI explainer on the international law elements and obligations regarding climate change. It considers the potential impacts of the recent suite of advisory opinions on future negotiations, including how delegates may use the findings of the ICJ, the Inter-American Court of Human Rights (**IACtHR**) and the International Tribunal on the Law of the Sea (**ITLOS**) in upcoming negotiations. It is designed for use by delegates as they prepare for and undertake negotiations under the United Nations Framework Convention on Climate Change (**UNFCCC**) and the Paris Agreement.

All three of the opinions are part of the jurisprudence of their respective courts and tribunal. They each clarify the legal obligations contained in public international law and under their respective jurisdiction. Advisory opinions are thus highly influential when it comes to States' behaviours and future contentious cases as they set out authoritative interpretations of international law.

The three opinions consider States' obligations under the UNFCCC, Kyoto Protocol and the Paris Agreement (**Climate Change Treaties**) and are therefore likely to have some influence on negotiations under them. In particular, the ICJ Advisory Opinion may be extremely pertinent for negotiations, given the ICJ's remarks that in some circumstances COP decisions may constitute subsequent agreement between States parties under the rules laid down in the Vienna Convention on the Law of Treaties (Article 31).

Further, the ICJ confirmed that COP decisions are not only relevant for the interpretation and implementation of Climate Change Treaties but may also have normative power: when they are considered as subsequent agreements or indicate customary international law, as will be further explained below.

COP 30 presents a unique opportunity for States party to the UNFCCC and Paris Agreement to draw upon the findings of the advisory opinions and set the tone for their normative influence in the international community.

2. Normative power of COP and CMA decisions

The ICJ considers that the temperature goal of the Paris Agreement is to "*limit the temperature increase to 1.5°C*", rather than the alternative of "*well below 2°C*" (Article 2(1)(a), Paris Agreement). It bases this finding on the decisions taken by CMA 3 and CMA 5 (ICJ, [224]). The ICJ reasons that the progression of CMA decisions reveals agreement between the State parties on the interpretation of Articles 2 and 4 of the Paris Agreement (ICJ, [224]):

1. **Secondary goal (Paris Agreement):** In the Paris Agreement, the 1.5°C target was positioned as a secondary aspiration, with parties merely "pursuing efforts" toward it while the primary goal remained "well below 2°C".
2. **Scientific legitimisation (CMA 3):** The decision reframed the target by explicitly "recognising" the scientific evidence of IPCC reports demonstrating materially lower climate impacts at 1.5°C versus 2°C. This moved beyond the Paris Agreement's general acknowledgment that 1.5°C "would significantly reduce risks" to establish a clear scientific foundation for prioritising the lower target.
3. **Operational primacy (CMA 5):** The decision completed the transformation by making 1.5°C the explicit benchmark and primary temperature goal against which national climate commitments should be measured. The decision "encourages" comprehensive national action specifically "aligned with limiting global warming to 1.5°C," which effectively establishes 1.5°C as the primary temperature goal for practical policy purposes.

It is well established that COP or CMA decisions are capable of being legally binding on State parties in certain circumstances, the most notable being when they are mandated by the operative text of one of the Climate Change

Treaties. A prominent example of this is Article 4(8) of the Paris Agreement concerning States' obligation to provide in their NDCs information necessary for clarity, transparency and understanding "*in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties*" (emphasis added). The ICJ unsurprisingly acknowledges this, but it also goes further and outlines another way that COP decisions can have normative power: when they are considered as subsequent agreements. The ICJ explains that decisions taken by governing bodies such as the COP, CMA or CMP "*may constitute subsequent agreements under Article 31, paragraph 3 (a), of the Vienna Convention on the Law of Treaties, in so far as such decisions express agreement in substance between the parties regarding the interpretation of the relevant treaty*" (emphasis added) (ICJ, [184]).

The ICJ also confirms that COP decisions are capable of informing States' obligations under customary international law, beyond the Climate Change Treaties. Considering the duty to cooperate, the ICJ finds that compliance with this duty requires States to take into account "*the guidance provided by the COP decisions pertaining to financial transfers, technology transfers and capacity-building*" (ICJ, [218]). Considering the duty to prevent significant harm to the environment, the ICJ finds that "*COP decisions may also be relevant for the identification of customary international law, in so far as they reflect State practice and if they express an opinio juris of States*", though this will be on a case-by-case basis (ICJ, [288]). In practice, this means that COP decisions could have an impact on the obligations under customary international law of States who are not party to the Paris Agreement or UNFCCC, as well as those States who are.

Consequently, States parties are now on notice that decisions taken by the COP, CMA or CMP could have legal consequences even where they are not mandated by a treaty provision. This could motivate a pursue of higher ambition and accountability of previous and upcoming decisions. Conversely, there are also risks of leading to a chilling effect on negotiations and make reaching a consensus on key decisions even harder at future negotiations, of more vague and aspirational language, as States are wary of the binding nature of decisions.³

The IACtHR does not engage directly on the issue of COP decisions' legal value or whether they can have legal consequences even if not mandated by a treaty provision. It does, however, engage with the content of main COP decisions when analysing the relevant legal framework for the climate regime, considering these decisions as part of the regime (IACtHR, [131-144]) and it reaffirms the COP decisions interpretative value. For example, when analysing adaptation obligations as they constitute a useful guide with regard to the content and goals of adaptation plans (IACtHR, [389]).

As for the ITLOS, when considering the scope of the obligation to prevent, reduce and control pollution of the marine environment - specifically the interpretation of 'necessary measures' states must take to fulfil their obligation - the Tribunal refers to COP decisions. It finds that relevant international rules and standards are a way of determining these 'necessary measures', which are found in climate-related treaties and instruments (ITLOS, [214]). The Tribunal narrows in on the temperature goal and timeline for emission pathways as being specifically relevant. Similarly to the ICJ, the ITLOS also finds that the temperature goal was strengthened through successive decisions (ITLOS, [216]). However, unlike the ICJ, it does not make a finding on the legal nature of the COP decisions.

3. An evolving duty to cooperate

The duty to cooperate exists under customary international law as well as the Climate Change Treaties and their decisions, and is a legal obligation in the context of climate change (ICJ, [308]; IACtHR [247], [254]) States not party to the Climate Change Treaties are still obliged to cooperate with the international community, to fulfil their climate change obligations and these obligations exist regardless of the country's status as a State party to any agreement (ICJ, [315]).

According to the ICJ, the duty to cooperate has a special importance in the context of the Paris Agreement temperature goal [305], as it requires States to cooperate, through achieving emissions reduction targets or agreeing on a methodology to achieve the collective temperature goal and for strengthening contributions of individual states. This entails a continuous development to maintain and implement a collective climate policy

³ Christina Voigt, The ICJ and the UN Climate Regime: Clarifying Mitigation Obligations Under the Paris Agreement, *Völkerrechtsblog*, 04.08.2025.

[306]. Importantly, while the duty to cooperate is common to all States, its level may differ depending on CBDR-RC. The Court's spotlight on the special importance of the collective temperature goal could focus some minds at negotiations, not least because repeatedly obstructive behaviour at negotiations may indicate a breach of the customary law obligation to cooperate. In addition, the customary obligations to cooperate and prevent significant harm provides a standard to know whether the Climate Change Treaties require further treaty-based obligations [307].

The IACtHR finds the obligation to cooperate in international law to have special pre-eminence when concerning shared resources, which must be exploited and developed in an equitable and reasonable manner with the rights of other States that have shared jurisdiction [257]. In the context of climate emergency, "the obligation to cooperate must be interpreted in light of the principles of equity and common but differentiated responsibilities" [258]. Hence, cooperation is an obligation that encompasses all measures necessary to respond to climate change. The IACtHR finds that the obligation of cooperation implies *inter alia*:

- financing and economic assistance to the least developed countries to contribute to just transition;
- technical and scientific cooperation involving the communication and sharing of the benefits of progress;
- the undertaking of acts of mitigation, adaptation and remediation that may benefit other States; and
- the establishment of international fora and the elaboration of joint international policies [264].

The duty to cooperate under the United Nations Convention on the Law of the Sea (UNCLOS, art 197) requires States to cooperate by participating meaningfully in the formulation and elaboration "international rules, standards and recommended practices and procedures" for the protection and preservation of the marine environment (ITLOS, [308]). These rules encompass various types of (non-) binding rules, and the obligation is of continuing nature, hence States must show ongoing effort "in the development of new or revised regulatory instruments, in particular in light of the evolution of scientific knowledge" [311].

States must also cooperate to promote studies, undertake research programmes, exchange information and establish appropriate scientific criteria for regulations (UNCLOS, arts 200-201). For that purpose, ITLOS identifies SBSTA as one of the relevant fora for the establishment of appropriate scientific criteria for the formulation of rules and standards for the prevention, reduction and control of marine pollution from anthropogenic GHG emissions [318]. Both obligations of cooperation require States to make a continuous effort and provide a basis for increased ambition in accordance with scientific findings.

Duty to cooperate reflected in COP decisions and COP negotiations

A materialisation of the duty to cooperate entails adopting and implementing decisions and agreements that foster this cooperation in achieving the objectives of the UNFCCC regime. Parties should monitor and assess compliance with obligations that are consistent with the duty to cooperate, such as providing financial assistance, technology transfer and capacity building measures. However, the duty to cooperate does not only apply to what is decided but also to how the negotiations are conducted, highlighting the importance of good faith.

4. States' categorisation – Concept of developed and developing countries is not static

There has been a tension between developed and developing countries under the UNFCCC (previously Annex I and non-annex countries under the Convention) for many years, particularly in relation to developing countries which are now high-emitting and high-income. A recent manifestation of this tension surfaced in the decision on the new collective quantified goal (**NCQG**) at CMA 6, which refers to "*developed countries taking the lead*" in meeting the new finance goal and encourages "*developing country Parties to make contributions*" (decision 1/CMA.6, [8] – [9]). This wording was intensely negotiated, with several developing countries expressing discontent at the absence of a reference to article 9.1 of the Paris Agreement – regarding the financial obligations of developed countries

towards developing ones.⁴ This discontent was revisited in the Bonn negotiations at the meetings of the subsidiary bodies (SB 62) after a proposal for adding an agenda item on 9.1 was widely supported by the developing countries.

Following the ICJ's confirmation that the categorisation of countries as developing or developed is not static [226], negotiations concerning issue-areas in which developed countries have different obligations to developing countries (such as finance, technical assistance and capacity-building), are likely to hit harder stumbling blocks. Developed countries may continue to seek to increasingly include wording which reflects collective and shared efforts, rendering more nuanced the differentiation between the obligations and responsibilities of developed State parties – for example, under Article 9.1 – to provide financial assistance to developing State parties in the Paris Agreement. The Opinions emphasize however that developed countries should continue to take the lead as indicated in the UNFCCC and Paris Agreement [ICJ 247-248]

The IACtHR does not offer an interpretation towards challenging static differentiation. It does, however, emphasise in the larger responsibility and obligations to provide finance and support by developed countries to developing countries and to lead mitigation efforts (IACtHR, [255] and [323]).

Practical Considerations for UNFCCC Negotiation Process

This box fleshes out some elements of the advisory opinions, connecting them to the relevant negotiation streams:

Negotiation stream	Issue or matter	Court/ Tribunal	Relevant section of the advisory opinion
Mitigation	Mitigation targets according to reinforced due diligence	IACtHR	Duty to prevent environmental harm includes an obligation to adopt mitigation measures which is subject to the reinforced due diligence standard [296, 335].
		ICJ	The obligation to “pursue domestic mitigation measures” that aim to achieve the objectives of their NDCs requires States to be proactive and pursue measures that are reasonably capable of achieving the NDCs set by them [253]. The standard of due diligence attaching to this obligation is stringent due to the fact that the best available science indicates that the “[r]isks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming (very high confidence)” [254].
	Fair share approach	IACtHR	Principles of CBDR and inter-intra-generational equity apply. Current and historical emissions, capacity and the state own circumstances need to be considered [327]. The Court highlights the importance of per capita emissions and those derived from consumption and not just production [328]. CBDR also applies to corporations [350]. The ICJ noted that fairness is addressed in the Paris Rule Book in the context of NDCs [248].

⁴ See for example the comments of India and Bolivia (on behalf of the Like-Minded Developing Countries) during the closing plenary of COP29.

Negotiation stream	Issue or matter	Court/ Tribunal	Relevant section of the advisory opinion
	Obligations on developed states (parties to the Paris Agreement) to provide financial resources to developing States, for both mitigation and adaptation	ICJ	The Paris Agreement establishes obligations for developed States to provide financial resources to developing States, for both mitigation and adaptation [264].
	Obligation to adopt an adequate mitigation goal	ICJ	To comply with their mitigation obligations, all parties must take measures, in fulfilment of their obligations under the Paris Agreement, that make an adequate contribution to achieving the collective temperature goal [270].
		IACtHR	Set with an aim to prevent environmental harm and applies to all States. Non-compliance by another state cannot be alleged as an exception. 1.5 degrees should be considered a starting point considering the threats to human rights [325 –326].
	Possible inclusion of language concerning transitioning away from fossil fuels	ICJ	<p>During negotiations at SB62, parties considered the inclusion of agreed language on transitioning away from fossil fuels (decision 1/CMA.5), with some parties suggesting a reference to reflecting equity (decision 1/CMA.5).</p> <p>The ICJ, in its analysis of internationally wrongful acts, considered that failure of a State to take appropriate action, including through continued fossil fuel production, consumption and granting of fossil fuel licenses, could constitute an international wrongful act [427]. This could strengthen the arguments for including language on transitioning away from fossil fuels in a range of decisions, including those concerning the UAE JTWP.</p> <p>In relation to equity, the ICJ confirmed that equity is a general principle of international law [152] with the function of deriving equitable solutions from applicable law [153]. It has this function in relation to the obligations contained in the UNFCCC and Paris Agreement [154].</p>

Negotiation stream	Issue or matter	Court/ Tribunal	Relevant section of the advisory opinion
Adaptation	Global Goal on Adaptation (indicators)	ITLOS	States are required to implement measures to protect and preserve the marine environment in relation to climate change impacts and ocean acidification that include resilience and adaptation actions as described in the climate change treaties, according to Article 192 of the Convention [391].
	Adaptation plan	IACtHR	Obligation to define and update an adaptation plan is legally binding [384].
		ICJ	Parties to the Paris Agreement have legally binding obligations to undertake adaptation planning actions pursuant to Article 7, paragraph 9.
	International cooperation for adaptation	IACtHR	The UNFCCC highlights the international community's obligation to cooperate to adapt to climate change.
		ICJ	The obligation found in Article 4(1) of the UNFCCC to cooperate for adaptation is binding on parties.
	Threat on human rights	IACtHR	The Court identifies in detail the risks to human rights posed by failure to adapt, including life, health, property, housing, access to water and food, freedom of movement.
	Adaptation obligations complement mitigation obligations, and are assessed against due diligence	ICJ	<p>The fulfilment of adaptation obligations of parties is to be assessed against a standard of due diligence [258].</p> <p>The adaptation obligations under the Paris Agreement complement the mitigation obligations in preventing and reducing the harmful consequences of climate change [259].</p>
	Obligations on developed states (parties to the Paris Agreement) to provide financial resources to developing States, for both mitigation and adaptation	ICJ	The Paris Agreement establishes obligations for developed States to provide financial resources to developing States, for both mitigation and adaptation [264].

Negotiation stream	Issue or matter	Court/ Tribunal	Relevant section of the advisory opinion
Capacity-building	General	ITLOS	<p>The obligation of assistance (UNCLOS, art 202) has 3 categories of measures [para 332-335]: (1) capacity building purposes; (2) assistance to minimise effects of major incidents; (3) assistance in relation to preparation of environmental impact assessments.</p>
	Obligations of cooperation and assistance under the UNFCCC or the Paris Agreement, include capacity building actions	ICJ	<p>Good faith co-operation in this context entails taking into account the guidance provided by the COP decisions pertaining to financial transfers, technology transfers and capacity-building [218].</p> <p>The Paris Agreement contains provisions requiring developed States parties to provide support – in the form of financial resources (see Article 9), technology transfers (see Article 10) and capacity-building actions (see Article 11) – to developing States parties with respect to their mitigation and adaptation responsibilities. These provisions reflect a duty to co-operate [227].</p>
Capacity building / Finance / technology		ITLOS	<p>Assistance must be provided to developing States in their efforts to address marine pollution from anthropogenic GHG emissions [339].</p> <p>The Tribunal notes a wide range of assistance mechanisms enables developing states to address marine environmental pollution from GHG emissions, in accordance with Arts 202 and 203 of the UNCLOS, saying these mechanisms coexist with those of the UNFCCC, inter alia, ‘Article 4, para. 3; Article 5, para. (b); Article 6, para. (a)(iv)) and the Paris Agreement (e.g., in Articles 9, 10 and 11) for supporting capacity-building, technical development and transfer, and the financial capabilities of developing States’ (para 329).</p> <p>The Tribunal clearly identifies developing and least developed states, which are most affected by the effects of GHG emissions on the marine environment to be the recipient of such assistance [330]. This assistance is to be made directly or through the competent international organisations in areas including inter alia capacity-building, scientific expertise, and technology transfer as pursuant to art 202 of UNCLOS. According to art 203 UNCLOS, these states should also receive preferential treatment for funding and technical assistance.</p>

Negotiation stream	Issue or matter	Court/ Tribunal	Relevant section of the advisory opinion
UAE just transition work programme	Human rights	IACtHR	States must ensure a just transition for peoples and ecosystems [341]. Consider Human Rights violations that might take place in the energy transition, especially when extracting rare minerals [342].
	Human rights	ICJ	While the ICJ did not address the concept of just transition in its opinion, it did find that climate change " <i>may significantly impair</i> " the enjoyment of certain human rights [376]. In its analysis, the Court referred to the preamble of the Paris Agreement which refers to climate change as a common concern of humankind and calls on Parties to consider their obligations on human rights in addressing climate change. This same paragraph of the Paris Agreement preamble is recalled in decision 3/CMA.5 establishing the UAE just transition work programme.
Matters relating to the global stocktake	Defining NDCs according to the GST outcomes	ICJ	<p>The ICJ reiterated that States have the "<i>procedural [...] obligation of result</i>" to prepare, communicate and maintain NDCs [234], that represent the "<i>highest possible ambition</i>" and, when taken together, "<i>are capable of achieving</i>" the 1.5°C temperature goal ([240]-[245]).</p> <p>This echoes Article 14(3) of the Paris Agreement that provides for the outcome of the Global Stocktake to inform Parties in updating and enhancing their current NDCs, bearing in mind that the next global stocktake will be completed in 2028, with the cycle commencing in 2026.</p>
International cooperation	Implications for other international law forum	IACtHR	States must review their commercial and investment agreements and dispute resolution mechanisms as to ensure they do not restrict their effort in regard to climate change and human rights.
	Customary and treaty nature of the cooperation obligation	ICJ	<p>Obligations to cooperate exist for States both under conventional international law, including Articles 7, 9 and 12 of the Paris Agreement, and customary international law. These coexisting obligations inform each other and the customary duty to co-operate reinforces the treaty-based co-operation obligations under the Paris Agreement [261].</p> <p>Cooperation between States is governed by the principle of good faith, be it under a treaty or under the customary duty to co-operate [303]. Good faith cooperation would entail taking into account the guidance provided by the COP decisions pertaining</p>

Negotiation stream	Issue or matter	Court/ Tribunal	Relevant section of the advisory opinion
			to financial transfers, technology transfers and capacity-building [218].
	Content of cooperation obligations and good faith	ICJ	<p>The duty to cooperate is an obligation of conduct, the fulfilment of which is assessed against a standard of due diligence [218].</p> <p>States are free to select the means of cooperating, as long as such means are consistent with the obligations of good faith and due diligence [262].</p> <p>While States are not required to conclude treaties, they are required to make good faith efforts to arrive at appropriate forms of collective action [304].</p> <p>States must 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 [305].</p>
	No cooperation from a non-party State	ICJ	If a non-party State does not co-operate in such a way, it has the full burden of demonstrating that its policies and practices are in conformity with its customary obligations [315].
Loss and damage	Climate migration	IACtHR	Human displacement should only occur when inevitable and States have an obligation to establish a legal framework for planned relocation processes [429].
	Non-refoulement	ICJ	States have obligations under the principle of non-refoulement where there are substantial grounds for believing that there is a real risk of irreparable harm to the right to life in breach of Article 6 of the ICCPR if individuals are returned to their country of origin in circumstances where people have left their country due to climate change impacts [378].
Loss and damage	Loss & Damage Fund	ICJ	<p>The ICJ's analysis on the duty to cooperate, both enshrined in the UNFCCC and Paris Agreement and as a customary law obligation may create an opportunity to transition the Loss & Damage Fund, which could move from a voluntary scheme to instead require mandatory contributions from developed states.</p> <p>For cooperation under the UNFCCC and Paris Agreement, see (for example) [140] and following, [178], [183], [215] to [218], [227] and [255].</p>

Negotiation stream	Issue or matter	Court/ Tribunal	Relevant section of the advisory opinion
			For cooperation as a duty under customary international law, see (for example) [301] and following, particular [304] and [305].
Gender and climate change		ICJ	<p>In accordance with Article 7, paragraph 5 of the Paris Agreement, adaptation action should follow a country-driven, gender-responsive, participatory and fully transparency approach [255].</p> <p>In consideration of international human rights obligations, the Court confirmed that "climate change may also impair the enjoyment of the rights of women" amongst other vulnerable groups [382] and parties to the Paris Agreement should, in taking action on climate change, promote and consider gender equality.</p>