

Delegate's Guide to the Advisory Opinions

What implications for the UNFCCC negotiations?

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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.¹

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

¹ Christina Voigt, The ICJ and the UN Climate Regime: Clarifying Mitigation Obligations Under the Paris Agreement, *Völkerrechtsblog*, 04.08.2025.

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 [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.² 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

² See for example the comments of India and Bolivia (on behalf of the Like-Minded Developing Countries) during the closing plenary of COP29.

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].
	Obligations on developed states (parties to the Paris	ICJ	The Paris Agreement establishes obligations for developed States to provide

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	Agreement) to provide financial resources to developing States, for both mitigation and adaptation		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	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). 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. 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

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			obligations contained in the UNFCCC and Paris Agreement [154].
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	The fulfilment of adaptation obligations of parties is to be assessed against a standard of due diligence [258]. The adaptation obligations under the Paris Agreement complement the mitigation obligations in preventing and reducing the harmful consequences of climate change [259].
	Obligations on developed states (parties to the Paris Agreement) to	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
	provide financial resources to developing States, for both mitigation and adaptation		
Capacity-building	General	ITLOS	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.
	Obligations of cooperation and assistance under the UNFCCC or the Paris Agreement, include capacity building actions	ICJ	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]. 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].
Capacity building / Finance / technology		ITLOS	Assistance must be provided to developing States in their efforts to address marine pollution from anthropogenic GHG emissions [339]. 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

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			(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). 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.
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	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]).

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			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.
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	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 cooperate reinforces the treaty-based cooperation obligations under the Paris Agreement [261]. Cooperation between States is governed by the principle of good faith, be it under a treaty or under the customary duty to cooperate [303]. Good faith cooperation would entail taking into account the guidance provided by the COP decisions pertaining to financial transfers, technology transfers and capacity-building [218].
	Content of cooperation obligations and good faith	ICJ	The duty to cooperate is an obligation of conduct, the fulfilment of which is assessed against a standard of due diligence [218]. 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]. 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]. States must co-operate to achieve concrete emission reduction targets or a

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			methodology for determining contributions of individual States, including with respect to the fulfilment of any collective temperature goal [305].
	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	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. For cooperation under the UNFCCC and Paris Agreement, see (for example) [140] and following, [178], [183], [215] to [218], [227] and [255]. For cooperation as a duty under customary international law, see (for example) [301] and following, particular [304] and [305].
Gender and climate change		ICJ	In accordance with Article 7, paragraph 5 of the Paris Agreement, adaptation action should follow a country-driven, gender-

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			responsive, participatory and fully transparency approach [255]. 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.