

# ICJ Advisory Opinion - Obligations of States in Respect of Climate Change

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# Introduction

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On July 23, 2025, the International Court of Justice (ICJ) issued a landmark advisory opinion clarifying the obligations of states regarding climate change, emphasising that these obligations are legal, substantive, and enforceable.



## Context and Framing

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- In a proceeding “*unlike any that have previously come before the court*”, the ICJ acknowledged that the “*self-inflicted*” problem of climate change “*requires the contribution of all fields of human knowledge, whether law, science, economics or any other*” to develop a complete solution.
- The court characterised climate change as “*an existential problem of planetary proportions that imperils all forms of life and the very health of our planet*”.



# A Decision Grounded in Science

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- The court concluded the the Intergovernmental Panel on Climate Change (IPCC's) reports “*constitute the best available science on the causes, nature and consequences of climate change*”
- The court relied on the IPCC's findings to conclude that “*it is scientifically established that the increase in concentration of GHGs in the atmosphere is primarily due to human activities*”
- This conclusion makes clear the court's findings apply not just to fossil fuel emissions, but all emissions-emitting activities and industries. Human-caused climate change is therefore “*already affecting many weather and climate extremes in every region across the globe*” and there is “*a rapidly closing window of opportunity to secure a liveable and sustainable future for all*”



# States Obligations under International Law

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The primary questions put to the court asked what states' legal obligations under international law are: (a) *“to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for states and for present and future generations?”*; and (b) *“What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment...”*.



# Sources of International Law

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The Charter of the United Nations;

United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement (together, the Climate Change Regime);

The United Nations Convention on the Law of the Sea (UNCLOS);

Other multilateral environmental treaties;

Customary international law;

International human rights law; and

Other guiding interpretative principles such as common but differentiated responsibilities and respective capabilities (CBDR-RC).



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# The ICJ's Overview of the Climate Change Regime (1)

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**The Temperature Goal:** *“Accordingly, the Court considers the 1.5°C threshold to be the parties’ agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement. The Court adds that this interpretation is consistent with Article 4, paragraph 1, of the Paris Agreement, which requires that mitigation measures be based on the ‘best available science’.”* [§224]

**NDC’s are not just a tick box exercise:** a state’s Nationally Determined Contribution (NDC) must be capable of making an adequate contribution to the achievement of the temperature goal, and there is limited discretion afforded to states in preparing NDCs. In turn, states also have stringent due diligence obligations (best efforts) to take domestic measures to achieve the objectives of their NDCs. Other than the preparation and submission of NDCs, states’ obligations in respect of implementing measures to achieve their NDC commitments are obligations of conduct.



## The ICJ's Overview of the Climate Change Regime (2)

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- **Adaptation and mitigation measures are inherently linked:** Adaptation measures are a core objective of the Paris Agreement. It is therefore incumbent upon states to enact appropriate measures (eg implementing national adaptation plans) that are capable of “*enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change*”. The court stressed that adaptation obligations are inherently linked to states’ mitigation obligations, whereby “*greater levels of mitigation can reduce the need for additional adaptation efforts*”
- **Financial assistance and technology obligations need further clarification:** The court observed that the Paris Agreement “*does not specify the amount or level of financial support that must be provided*”. Parties must implement their financial assistance obligations “*in a manner and at a level that allows for the achievement of the objectives listed in Article 2*”. The court, however, did not provide further clarification as to the level of financial commitment required to meet such obligation.



# The ICJ's Overview of the Climate Change Regime (3)

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**Common but differentiated responsibilities and respective capabilities are a core guiding principle:** CBDR-RC is an interpretative principle for obligations within the Regime which “*reflects the need to distribute equitably the burdens of the obligations in respect of climate change, taking into account, inter alia, states’ historical and current contributions to cumulative GHG emissions, and their different current capabilities and national circumstances, including their economic and social development*”. The court clarified that CBDR-RC “*guides the interpretation of obligations under international environmental law beyond its express articulation in different treaties*” but “*does not establish new obligations*”. The court concluded the principle of CBDR-RC therefore informs the standard of due diligence applicable to states.

Importantly, when considering the references to CBDR-RC in the Climate Change Regime, it was acknowledged that “*the status of a state as developed or developing is not static*”, meaning a state’s climate obligations may increase over time, in line with its level of development.



# Customary International Law

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- **The duty to prevent significant harm to the environment:** In relation to the duty to prevent significant harm, the court confirmed that this obligation is applicable to the climate system, and addressed it in two parts: (a) the risk of harm; and (b) the due diligence standard.
- **The duty to cooperate:** The court found that the customary legal obligation, to cooperate, in good faith, for the protection of the environment that “*reinforces the treaty based co-operation obligations under the Paris Agreement*”. Whilst the duty does afford states some discretion to determine their means for regulating GHG emissions, it does not serve as an excuse for states to (i) refrain from cooperating with the required level of due diligence or (ii) present their efforts as entirely voluntary and exempt from scrutiny.



# Human Rights

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- **Climate change affects human rights:** The court says a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, health and adequate standard of living, including access to water, food and housing. This is an affirmation of the UN General Assembly's statement in 2022. Further, people cannot fully enjoy their human rights without the protection of the climate system, echoing the IACHR.
- **Future generations must be taken into account:** States have to take due regard of the interests of future generations and the long-term implications of their actions when making climate policies.



# State Responsibility

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- **Breach of Obligations:** *“the most significant primary obligation for states in relation to climate change is the obligation to prevent significant harm to the climate system and other parts of the environment ... which applies to all states, including those that are not parties to one or more of the climate change treaties”*. This also applies to regulation of the private state actors. Here, the court determined that a state only incurs liability if it fails to take all measures which were within its power to prevent the significant harm, and that this must be assessed on a case-by-case basis.
- **Attribution:** The court confirmed that, despite the cumulative impact of GHG emissions on climate change, it is scientifically possible to determine the contribution of each state on a historical and current basis, and that the rules on state responsibility are capable of addressing a plurality of injured or responsible states. However, any exercise of attribution would need to be undertaken on the facts of the particular case. While multiple states have contributed to climate change, increasing the difficulty of *“whether and to what extent an individual state’s breach of an obligation identified in question (a) has caused significant harm to the climate system”*, the court considered that the rules on state responsibility are capable of addressing such a situation
- **Causation:** Causation of damage is not a requirement for the determination of state responsibility, but causation is relevant in determining reparation. The court’s existing standard for determining causation, which requires the existence of *“a sufficiently direct and certain causal nexus”* between the wrongful act and the alleged damage, is applicable to wrongful acts and damage related to the obligations. The court considered that the causal link between the wrongful act or omission and the harm might be *“more tenuous”* compared to local pollution, but that *“this does not mean that the identification of a causal link is impossible in the climate change context”*. The court stressed that the *“causal link must be established in each case through an in concreto assessment while taking into account the aforementioned elements outlined by the court”*.



# Some Observations from the Court and Potential Implications

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•**Fossil fuels cannot be swept under the rug:** The court says a state's failure to take appropriate action to protect the climate system from greenhouse gas emissions, including through the production and consumption of fossil fuels, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies, "may constitute an international wrongful act which is attributable to that state".

•**Rising seas doesn't mean nations cease to exist:** The court concluded that nations should maintain their statehood and maritime boundaries even if their land disappears underwater, echoing a recent report on sea-level rise by the International Law Commission (ITLOS).

•**Countries may have to accept climate refugees:** People who have to seek safety in another country due to climate change cannot be sent back if there are good grounds for believing that there is a real risk of irreparable harm to their right to live, says the court. This was a point raised in submissions by the

## Some Limits

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- The Advisory Opinion is not legally binding, but has some legal currency and may be persuasive; and
- The court recognised that international law has an “*important but ultimately limited role*” in the context of climate change: “*“A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other”*”



# Thank you

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