

Legal Imperatives to Survive the Climate Crisis: Forethoughts on the ICJ Advisory Opinion

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Abstract

On July 23, 2025, the International Court of Justice provided its Advisory Opinion on “The Obligations of States in Respect of Climate Change.” Requested by the UN General Assembly in 2023 (*vide* Resolution 77/276), the unanimous ruling is a landmark that will guide decision-making under International Law for decades to come as States cope with the impact’s environmental degradation amidst rapidly warming temperatures. The Court characterized this growing crisis as “an existential problem of planetary proportions.” The Opinion for the first time makes clear that International Law addressed the entirety of the planet, and is a holistic body of treaty obligations and customary law duties. The Human Right to the environment girds these duties. A stringent duty of due diligence is required to fulfill these substantive duties. While States will vary as they apply principles of law, including sustainable development, to observe their due diligence, none are exempt from doing their utmost to protect. Failures to do so have legal consequences under customary laws of State Responsibility. The Advisory Opinion applies to, and will guide decision-making under all multilateral environmental agreements (MEAs). To fulfill stringent due diligence, States are to implement national and international laws for environmental impact assessment (EIA), and other laws requiring use of Nature Based Solutions that protect biodiversity. The Opinion makes clear that States must discontinue reliance of fossil fuels. The Court’s Opinion reflects the law set forth in the submissions of the International Union for the Conservation of Nature (IUCN). As States apply stringent due diligence, and national courts address legal claims regarding climate change, the Opinion will drive the progressive development of international climate law, from the *lex lata* expressed in the Opinion to the *lex ferenda* needed to protect all States and the planet.

Keywords

international climate change law, ICJ advisory opinion on climate, existential problem, stringent due diligence, state responsibility for breach of climate duties, IUCN climate law leadership, progressive development of climate law

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Introduction

Crises shape International Law. The rules that sovereign states observed governing their relationships before 1945 radically changed with the adoption of the United Nations (UN) Charter, and the end of imperial rule in colonies. Today’s ongoing climate crisis, characterized accurately as “an existential problem of planetary proportions that imperils all forms of life and the very health of our planet,”¹ is similarly transformative. This crisis precipitates the emergence of new inter-national rules that guide state conduct. The UN General Assembly (UNGA) singularly recognized the legal dynamics of this crisis by requesting an Advisory Opinion on the climate crisis from the International Court of Justice (ICJ).²

Humans have the knowledge and technologies to contain the climate crisis and adapt to changing living conditions.³

Together, international law and national legal systems can, but do not yet, guide and mandate an end to the conduct that destroys the environment. Governments continue to cause and exacerbate the crisis, oblivious to imperiling civilization.⁴ The ICJ alerts governments – and the fossil fuel industry – to the “legal consequences”⁵ of their self-induced blindness. This Advisory Opinion in respect of Climate

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Change informs the UNGA, and the global community in all fields of endeavor, that actions imperiling the climate are unlawful. To respect International Law, state conduct will need to change, and will do so perhaps in unpredictable ways. Before examining four spheres of change that this Opinion inaugurates, it is useful to recall the context in which the UNGA made its request for an Advisory Opinion.⁶

Clarifying the Integrity of International Law for Earth's Natural Systems

In its landmark Opinion given on July 23, 2025, the ICJ parsed international legal provisions regarding Earth's climate. The Court unanimously concluded by observing, that "International Law...has an important but ultimately limited role in resolving this problem. 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. Above all, a lasting and complete solution requires human will and wisdom - at the individual, social and political levels - to change our habits, comforts and current way of life in order to secure a future for ourselves and those yet to come."⁷

Before July 23, 2025, nations continuously debated when or how international law requires protecting the Earth's natural systems. They invoked legal *uncertainty* to justify deferring actions to safeguard the environment, whether about reducing reliance fossil fuels, or halting loss of natural habitats, or stopping their pollution of the oceans. Since environmental laws emerged in the 1970s, nations together have very rarely taken decisive, collective action to cease behavior harming the environment. When faced with reality that their use of chlorofluorocarbons (CFCs) had ruptured Earth's stratospheric ozone layer, nations ceased to manufacture and use of most ozone depleting substances.⁸ They saved whales by suspending most hunting of great whales at sea.⁹ Under most environmental agreements, however, States have agreed to make only modest changes, largely continuing business as usual.¹⁰

Although most States acknowledged their duty to protect the environment,¹¹ they still embrace economic practices that incrementally harm Earth's natural systems. States gradually created the field of international environmental law, through negotiating treaties on many topics.¹² In 1987, the UN World Commission on Environment and Development documented the world's environmental crises in *Our Common Future*, calling for "sustainable" development and recommending the further elaboration of environmental laws.¹³ States agreed to successive new environmental agreements, supported maturing work of the UN Environment Programme (UNEP), and the

celebrated success of the 1992 Rio Earth Summit.¹⁴ This cooperation led in 2015 to universal agreement for adopting the UN Sustainable Development Goals (SDGs).¹⁵ Despite these advances, however, all nations today experience unprecedented, and worsening environmental degradation.¹⁶ In diplomatic meetings, they still profess to be unsure about when or how their legal obligations require them to safeguard life on Earth. Protecting Earth has hardly been a security priority for most States.

According to the Intergovernmental Panel on Climate Change (IPCC), States are increasingly aware that they all alike depend upon Earth's "global system consisting of five major components: the atmosphere, the hydrosphere, the cryosphere, the lithosphere, and the biosphere, and the interactions between them."¹⁷ All States require Earth's natural systems to exist. They have taken nature for granted, at their peril. Since 1948, the International Union for the Conservation of Nature (IUCN), has been warning governments that their conduct is degrading nature jeopardizes human wellbeing.¹⁸ Extinction is irreversible.

Unsustainable Development Imperils life on Earth

Nations now experience conditions that no longer sustain their "habits, comforts and current way of life."¹⁹ An overwhelming body of evidence documents irreversible degradation of Earth's life-support systems: current reports from the United Nations Environment Program (UNEP),²⁰ the IPCC,²¹ and the World Meteorological Organization (WMO),²² and others such as the IUCN.²³ Biodiversity is in catastrophic decline and there is an 80 per cent likelihood that by 2030 Earth's ambient climate temperature will exceed the cap of 1.5°C, which nations pledged to honor in 2015.²⁴ Japan notes trends toward a 2°C increase temperature, in line with the Paris Agreement expectations, and approaching surface temperatures of 4°C by the 2100.²⁵ With these temperatures, there will be lethal heat and humidity, vast losses of flora and fauna, food shortages, collapse of marine ecosystems, forced migrations, and unpredictable "tipping" points radically altering habits for people and nature.²⁶ UN Secretary General António Guterres has called on nations to change course, remarking "We are playing Russian roulette with our planet. We need an exit ramp off the highway to climate hell, and the truth is we have control of the wheel."²⁷

A legal road map to that exit ramp now exists. On July 23, 2025, the ICJ clarified the legal duties that oblige States to safeguard Earth's life-support systems.²⁸ States are duty bound to prevent significant harm to the environment,²⁹ and to cooperate for protection of the environment.³⁰ The Court ruled that all States are obligated to do their utmost to limit global warming to 1.5°C, and also to protect the oceans and biosphere, while respecting the

human right to the environment.³¹ States now begin a new, more intense debate: how and when to revise their national laws and policies to comply with their legal obligations.

Although national governments can no longer claim legal uncertainty as a basis for delaying a phase-out of fossil fuels use, ending pollution, or degrading habitats, will they nonetheless still continue to defer taking needed actions? Political pressure to do so domestically is mounting as climate-induced harms mount, in the wake of unprecedented floods and droughts, wildfires and sea level rise. As disasters occur, governments increasingly experience cause to regret not preparing for these impacts.³² It is becoming politically expedient to address these climate change.

In 1992, US Secretary of State James Baker welcomed the UN Framework Convention on Climate Change (UNFCCC), endorsing such climate change measures via “a no-regrets policy.”³³ He urged a prudent approach of mitigating and adapting to climate change when doing so was already legally authorized, rather than waiting for the climate science to be definitive. Unfortunately, successive governments in the United States of America, and elsewhere, largely have ignored this approach, deferring their legal obligations under the UNFCCC. A generation has passed. In 2015, the UNGA unanimously adopted the 2030 Agenda for Sustainable Development,³⁴ and pledged to cap global warming at 1.5° by 2035.³⁵ It appears that the 1.5°C cap on global warming will have been exceeded, and the SDGs will not have been attained. States have squandered the time that was available to avert world-wide environmental harm.³⁶

Time-Lags Between Acknowledging A Duty and Acting

Before considering broadly how States can adhere to the legal norms set forth in the ICJ Advisory Opinion, it is instructive to recall how States have avoided taking decisive actions in their conferences of the parties for the UNFCCC and other multilateral environment agreements. States had agreed to clear duties in the UN Framework Convention on Climate Change in 1992, which entered into force in 1994.³⁷ Since then, States chose to take formal decisions by consensus, so that unless all States agreed, no decision could be taken. This precluded taking decisive action, even when the evidence justified doing so, and the UNFCCC rules are clear.

It is evident that States have been unwilling to act since doing so imperils their short-term economic benefits. States found that it was expedient to push difficult decisions off into the future. This pattern of behavior has been evident at least since 1992. Discounting the dangers, States with oil dependent economies proactively sought to defend their economies. To win agreement adopting *Agenda 21*

at the 1992 Earth Summit, every reference (but one³⁸) to the oil commodity was stricken from the text. No reforms to the petroleum economy were endorsed.

In order to bypass the consensus-driven inaction under the UNFCCC, France sought to rally agreement in the UN General Assembly on a new “Pact for the Environment.” States with economies invested in fossil fuels opposed negotiations on a proposed “Pact.”³⁹ They later supported convening the UNFCCC Conferences of the Parties for COP28 in Dubai and for COP29 in Baku, adroitly avoiding public pressure to take decisions to phase out use of fossil fuels. For a time, these States proactively also argued that international environmental law was too fragmented to provide a legal basis for requiring action about environmental problems.⁴⁰

Concerned at recurring failures address the gathering climate crisis, many jurists recommended that the UN General Assembly request an Advisory Opinion from the International Court of Justice. The UNGA’s Rules of Procedure provide for formal voting (yes, no, abstain).⁴¹ The precedent for such a resolution was the Advisory Opinion on nuclear weapons.⁴² In a campaign that continued for five years, a coalition of young jurists persuaded Vanuatu to negotiate a draft resolution for adoption by the UNGA, requesting an Advisory Opinion on the International Law obligations of States in respect of Climate Change.⁴³ It took another two years for the Court to rule that States are obligated to do their utmost to protect Earth and prevent significant harm to the environment.

It is entirely likely that yet another generation will pass before most States act effectively to meet their obligations to protect the Earth from breaching the 1.5°C temperature cap, or to attain the SDGs. If – as is likely – the 2°C threshold will be breached, States will be under enormous domestic pressure to contain the damage by scrubbing Greenhouse Gases from Earth’s atmosphere, seeking to return to a level as close to 1.5°C as possible.⁴⁴ This may be a task for three or more future generations. Meanwhile, attaining the “future” guided by the SDGs, as the UN General Assembly still calls for today, will be inevitably postponed.⁴⁵ During this lag time in compliance, the mounting harm will inevitably be accompanied by extensive violations of Human Rights.⁴⁶

Legal Obligations of States in Respect of Climate Change

The legal road map to the exit ramp can avert this unwanted future. The ICJ’s Advisory Opinion on the *Obligations of States in Respect of Climate Change* is a landmark.⁴⁷ Treatises will provide commentary on the Court’s profound analysis. The Opinion will guide States throughout the coming years of the climate crisis. This essay provides an

initial overview of the Opinion and identifies sectors in which intergovernmental decision-making will initially respond to the Court's rulings.

The Opinion gives the community of nations, and humans across the Earth, and their progeny,⁴⁸ certainty regarding rights to a clean, healthy and sustainable environment⁴⁹ and clarity to the obligations that each sovereign state owes toward all, *erga omnes*, for the entire international community.⁵⁰ Immediately after this ruling was given on July 23rd it hailed at once alike by those who led negotiations on climate disruption, and by those campaigning for climate change mitigation and adaption. Many jurists at once celebrated the ruling, and their assessments reflect a remarkable unanimity.⁵¹ Christina Voigt welcomed the Court's finding under the Paris Agreement that States' Nationally Determined Contributions shall reflect the highest possible ambition, and States may not claim that doing so is voluntary or discretionary.⁵² Christina Figueres, UNFCCC Executive Secretary (2010–16), said, “this Advisory Opinion gives legal wings to countless efforts already underway—and to many more to come. We now walk forward not just with moral clarity, but with judicial affirmation.”⁵³ Viewing the video recording of the President of the Court, Judge Iwasawa Yuji, reading the *unanimous* opinion, is an experience everyone should wish to have, and can.⁵⁴

The Court rejected arguments favoring continued reliance on fossil fuels, such as those of the Organization of Petroleum Exporting Countries (OPEC).⁵⁵ Parties arguing for treating climate law as a separate body of rules, *a lex specialis*, that allowed States to make their own decisions about using fossil fuels, failed to win their case.⁵⁶ The Court's decision also effectively sets aside past diplomatic maneuvers, in drafting Sustainable Development Goal 13 in 2015,⁵⁷ that restricted the UN General Assembly's consideration of climate change in the context of the SDGs. States whose arguments lost have largely declined to comment on the Opinion.

The Advisory Opinion clarifies International Law in four fundamental respects:

First, Earth is “One,” and the Duty to Protect Applies to the Entirety of Earth

All Earth's natural systems are interrelated and States have duties to protect the entirety of Earth. The IPCC documented this reality since 1988, and has shared its peer-reviewed reports with all nations.⁵⁸ As authorized by Articles 50 and 62(1) of the ICJ Statute, the Court met with the leaders of the IPCC in November of 2024, before oral arguments.⁵⁹ The Court ably reviews applicable climate science.⁶⁰

The Opinion addresses each State's conduct for the Earth's entire climate system: “the totality of the atmosphere, hydrosphere, biosphere, and geosphere and their

interactions.”⁶¹ This totality is both the accepted scientific⁶² and legal⁶³ definition for the “climate.” Any international law addressed to one part of this all-embracing natural system relates to other parts. When some Parties argued that the treaties should be segregated by sector, and climate agreements being specific should supersede other agreements on biodiversity, desertification, or the marine environment, the Court rejected this line of reasoning. Guided by the 1969 Vienna Convention on the Law of Treaties,⁶⁴ the Court read together the environmental agreements with climate treaties.⁶⁵ For example, the Court finds that duties under the Biodiversity Convention “are relevant to protection of the climate system, and in particular to the preservation of the biosphere as one of its components, as they are aimed at the conservation and sustainable use of biological diversity, and the prevention of adverse effects thereon.”⁶⁶ Obligations relative to climate exist under all environmental treaties.⁶⁷ In like vein, the UN Convention on the Law of the Sea (UNCLOS) holds significant climate change duties for States, and the since the discharge of Greenhouse gases is gravely polluting the marine environment, States have a duty to cease such pollution⁶⁸ and to cooperate on issues of sea level rise,⁶⁹ and the “serious phenomenon” of the loss of homelands for small island states and others. The “duty to cooperate” is not a matter of choice, but a legal obligation.⁷⁰

The Court recognized the Human Right to the Environment as a “precondition for the enjoyment of many human rights”⁷¹ that States must take into account in “implementing their obligations” under climate and environmental treaties, and under customary law.⁷² The Court acknowledged the references to “harmony with nature” in the Rio Declaration on Environment and Development,⁷³ but did not examine the later UNGA Resolutions regarding harmony with nature,⁷⁴ which have provided the basis for the UNGA's modest deliberations on rights of nature.⁷⁵

In 1987, the Brundtland Commission in its report (*Our Common Future*) stated that “The Earth is one but the world is not.” With the ICJ's Opinion of 2025, the legal world of States, guided by international laws on protecting the one Earth, is also now *one*.⁷⁶

Second, the Stringent Duty of Due Diligence is Mandatory

The Court makes clear that States are obliged under customary International Law to prevent harm to the environment and cooperate with each other in doing so.⁷⁷ The Court identified due diligence as the required standard of conduct, that determines if these duties are being met.⁷⁸ All available means are to be deployed, including a set of national laws, administrative agencies, and enforcement systems.⁷⁹ Where the science is clear, and the threat of

harm evident, the “the standard of due diligence will be more demanding for all States.”⁸⁰ Given the circumstances of climate change, the Court finds that the “standard of due diligence for preventing significant harm to the climate system is stringent.”⁸¹

Due diligence requires each State to maximize the use of environmental impact assessments (EIA).⁸² This is already a customary law duty, and nearly every State has enacted a national law authorizing EIA. EIA also facilitates States in notifying each other and consulting about significant harm to the environment.⁸³ EIA facilitates a case by case analysis of what may constitute significant harm, and its use will evolve over time.⁸⁴ States have the duty under International Law to use their national EIA procedures rigorously.⁸⁵

With respect to the duty States have to cooperate with each other, the Court was explicit: “Climate change is a common concern. Co-operation is not a matter of choice for States but is a pressing need and a “legal obligation”⁸⁶ to attain “equitable solutions.”⁸⁷

Third, International Principles of Law Will Guide States in Differentiated Contexts

The Court recognized that States will apply principles of international law for guiding “the interpretation and application of the most directly relevant legal rules”⁸⁸ under treaties and customary law. These principles are (a) sustainable development, (b) common but differentiated responsibilities and respective capabilities (CBDR-RC), (c) equity, (d) intergenerational equity, and (e) the precautionary approach or principle.⁸⁹ Scholarly literature extensively evaluates each of these principles.⁹⁰ Principles of International Environmental Law, such as equity, have an experiential heritage that enables States to tailor applying stringent due diligence in varied circumstances.

The ICJ examines CBDR-RC at length, finding that all States have the duty to address climate change and the CBDR-RC “cannot justify undue delay or a general exemption from the obligations to exercise due diligence.”⁹¹ The Court did not elaborate on other principles. Some, such as the principle of sustainable development, will require such elaboration.

In her Separate Opinion, Judge Xue Hanqin expands on the principle of sustainable development. She concurs that climate change poses an “unprecedented challenge and threat to all States.”⁹² Judge Xue notes that assessing compliance with due diligence duties “needs to applied together with substantive obligations.”⁹³ To align often disparate States in fulfilling their duties regarding climate challenges, the Principle of sustainable Development can provide unifying motivations. Since 1992, Sustainable Development has been central to all international environmental decision-making.⁹⁴ Integrating sustainable development and climate

goals will foster the integrated and holistic approach both within each State’s “country-driven” context and within a global agenda.⁹⁵

Judge Xue’s assessment that agreement on the Agenda to attain the SDGs is unifying force that can unite States in “synergy of the global response to climate change and the SDGs.” Considering all SDGs will allow for some variation, as in applying the stringent standard for due diligence to a State’s Nationally Determined Commitments (NDCs), in order to accommodate duties to meet the SDGs within each country.⁹⁶ Attaining the SDGs is a factor in determining what is the utmost a State can do to meet its duties in respect of climate change.⁹⁷ This has implications for international co-operation, including “climate finance and transfer of technology from developed countries.”⁹⁸ Others have termed these harmonization considerations as the quest for a “just transition” and “climate justice.”⁹⁹

National laws that fulfill the Sustainable Development Goals will be read *in pari materia* with climate change obligations. Thus, laws protecting biological sinks – such as wetlands – under SDG 15, are a priority also for meeting climate change obligations. Stringent due diligence will require restoring wetlands, to foster ecological resilience. In like vein, national laws mandating “ecological civilization” (ecological restoration, environmental management and “green” development), as in China’s Constitution, will be read harmoniously with measures for meeting duties for climate change.¹⁰⁰ Governing under norms of Ecological Civilization, or comparable commitments for attaining the SDGs within a country,¹⁰¹ might accelerate steps for climate change mitigation and adaptation. As has been noted, “many of the 17 goals are difficult to reconcile,”¹⁰² and thus national climate decisions will need to do so by prioritizing duties of due diligence, and by recourse to applying equity and other Principles.

Fourth, There are Legal Consequences

The breach of either the substantive duties, or the due diligence duties of conduct, constitutes an *internationally wrongful act* entailing the responsibility of the State. States are under a continuing duty and a breach does not excuse fulfilling the legal obligation. The breach of duties to prevent significant harm to the environment and under climate change treaties and other agreements, are to be “determined by the well-established rules on State Responsibility under customary international law.”¹⁰³ These are codified by the International Law Commission.¹⁰⁴ The Court reviews the customary remedies,¹⁰⁵ noting that questions of attribution¹⁰⁶ and causation¹⁰⁷ require concrete factual analysis.

Because the duties are *erga omnes*, any State may allege a breach on behalf of the international community.¹⁰⁸ Because the harms associated with climate change are

many and varied, it is likely that claims of breach will be made in very specific contexts. For example, a State that allows destruction of wetlands and peat, which are sinks for large volumes of GHGs, would be violating both climate duties and biodiversity duties. Rather than seeking compensatory damages, a claim of breach would seek prevention of harm by agreed measures protecting and restoring wetlands and peat.¹⁰⁹ The breach would first be presented for consultation and negotiations to seek cessation of the breach. Mediation or arbitration could be agreed. Meanwhile other plaintiffs could seek remedies under national law in national courts. Failing a settlement, internationally claims could be presented to regional tribunals and international courts with jurisdiction. There are many possible litigation scenarios.¹¹⁰

The most immediate legal consequence of the ICJ's Advisory Opinion is to provide a legal foundation (a) for States to open negotiations with other States about breaches and (b) for individuals and non-governmental organizations to initiate national and sub-national legal proceeding alleging violations of human rights, of environmental laws and of climate change rules.¹¹¹ There will also be recourse to legislative, administrative and judicial authorities to curb and seek to end the extraction, refining, distribution, consumption and economic subsidies for fossil fuels.¹¹² A State may violate its stringent due diligence duties "by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction."¹¹³

Anticipating Future Legal Developments

The ICJ Advisory Opinion will feature in all future international decision-making. Four sectors can be initially noted.

- (A) **First**, the UNGA will reference and adhere to the Opinion's clarifications in its resolutions and on-going decision-making. The Advisory opinion will be reflected in the work of the UN Environment Assembly (UNEA), and in the deliberations of all UN agencies. UN programs and policies may not depart from the clearly stated provisions of the Opinion. The Eightieth Session of the UNGA in autumn of 2025 will receive the Advisory Opinion and debate it. The 2025 Climate Summit in the Trusteeship Council Hall will reflect the Opinion.¹¹⁴ Over time, it is likely that the UNGA will articulate a higher normative threshold, such as from "common concern" to "planetary concern".¹¹⁵
- (B) **Second**, the ICJ's clear exposition of the duty under International Law to protect the environment provides a fundamental norm by which to interpret existing multilateral environmental agreements,

and indeed *all* international agreements. This norm also guides on-going treaty negotiations, such as the deliberations for an international agreement to curb plastics pollution.¹¹⁶ States will urge each other to do their utmost under all agreements relevant to climate change, not only those cited in the Advisory Opinion. Decisions to requiring States to do their utmost in all climate-related contexts will break the 30-year stalemate in action under the climate change treaties.¹¹⁷

- (C) **Third**, national environmental laws exist in most nations, but are weakly implemented. What IUCN identifies as "Nature Based Solutions"¹¹⁸ will be deployed to attain sustainable development goals and climate mitigation goals.¹¹⁹ Such laws require capacity building to be fully implemented and enforced. The Opinion raises the need for governments to adhere to norms of the "Environmental Rule of Law."¹²⁰ Legal action at national and sub-national levels will be urged to expand and respect parks and other protected areas, to enforce pollution abatement laws, to protect watersheds, to sustainably manage renewable forests and grasslands, to protect the marine environment, to protect habitat for species, and manage sinks to offset GHG emissions that cannot immediately be ended.¹²¹ There are climate-related duties for local authorities, and governments at all levels in federations.

Most important will be action to build the capacity at all levels of government to undertake environmental impact assessments.¹²² EIA procedure exist world-wide at national and sub-national levels of government. Most governments give little priority to EIA, considering that is may slow -down development projects. EIA is both fundamental to sustainable development, and to climate mitigation and adaptation. The Court's rulings on EIA position it as central to stringent due diligence.¹²³ In many States, judicial oversight to enforce EIA procedures will be needed.

- (D) **Fourth**, as IUCN notes in its written Response to Questions from Judge Sarah Cleveland, stringent due diligence "requires States to redirect public financial flows within their control away from fossil fuels."¹²⁴ States legally may no longer apply International Investment Laws that encourage fossil fuel exploration and development. Moreover, fossil fuel interests may no longer lawfully invoke investor-state dispute settlement (ISDS) procedures to challenge a nation's climate-related regulations. In her Separate Declaration,¹²⁵ Judge Cleveland notes that the Intergovernmental Panel on Climate Change's reported in 2022 that States invoked ISDS to

undermine climate regulation, leading to “regulatory chill.” Subsidies could be redirected to finance climate change mitigation and adaptation.¹²⁶ In 2016, the Group of 7 industrialized States agreed to remove fossil fuel subsidies by 2025. This has not happened, and States have increased subsidies by 15 per cent since 2016, to a total of \$1.36 trillion in 2023.¹²⁷

IUCN & the ICJ Advisory Opinion

The nearly 100 parties before the ICJ ably presented their interests to the Court. Only one advocated primarily for the natural systems of the Earth: The International Union for the Conservation of Nature (IUCN). When IUCN delivered the final oral argument before the Court on December 13, 2024,¹²⁸ IUCN’s Director General Grethel Aguilar, an environmental jurist, noted that IUCN is “unique” among the parties.¹²⁹ IUCN concurred with the IPCC Sixth Assessment Report. Aguilar welcomed the Court’s Opinion as both a “moral and legal imperative.” She stressed that the “the law is not yet moving at the same pace as the escalation of the climate change crisis.” To enable humans to shape our own destinies, she kindly requested “the Court to consider and incorporate our position into its opinion.” Christina Voigt, chair of IUCN’s World Commission on Environmental Law, then presented the substance of IUCN’s written submissions.¹³⁰ All States must do their utmost, with harmonizing all their duties under the Climate treaties and Paris Agreement, the Law of the Sea, and other agreements, and Human Rights. “These are obligations of stringent due diligence.”¹³¹ She articulated the duties under customary International Law, for stringent due diligence.¹³² Her colleague, Francesco Sindico, then reviewed the customary law of State Responsibility. He noted that notwithstanding an unlawful breach, there is always a continuing duty to fulfill the obligations.¹³³

It is remarkable that IUCN arguments to the Court are aligned substantially with the ICJ Advisory Opinion. IUCN hailed the Opinion.¹³⁴ The clarity of the Advisory Opinion has great force. All States need to assess how best to discharge its stringent due diligence obligations. Brazil, host for the COP30 in Belem, has restored a set of stricter climate rules.¹³⁵ China welcomed the ruling: “It is of positive significance to maintaining and advancing international climate cooperation.”¹³⁶ Because, as the Advisory Opinion makes clear, all international environmental agreements contain duties important in coping with climate change, the rulings of the Advisory Opinion will extend far beyond COP30. It serves little to dwell on the recalcitrance of some States to not at once embrace this Advisory Opinion. Measured diplomatic and legal

avenues exist to confront their unlawful conduct. In due course, they will come to prefer cooperation to isolation and suffering. The application of the Advisory Opinion extends well beyond both the 80th Session of the UN General Assembly or COP30. No State today is in full compliance with the legal duties set forth in the Advisory Opinion.¹³⁷ States will come to re-dedicate themselves to stringent due diligence. This will take time, but the legal road map is clear.

Conclusion: *Lex Lata* to *Lex Ferenda* - The Urgency of Cooperation

The climate crisis propels State and non-State actors alike to reshape international law. The ICJ’s Advisory Opinion states the law as it is today, *lex lata*, but the dynamic, progressive effect of stringent due diligence will drive international law into realizing *lex ferenda*, the law as it should exist in order for States are to cope with the climate crisis and respect Human Rights. The Opinion upends the legal framework for “business as usual.”

While legal duties for climate change are clear, debates will flourish about how to apply the governing norms. Resolving contested arguments on due diligence will generate renewed cooperation in good faith among States, and indeed among all human institutions.¹³⁸ Innovations will emerge from negotiating disputes about how and how quickly a State should adhere to the legal duties set forth in the 2025 ICJ Advisory Opinion.¹³⁹ The future will not reflect the past, and the conditions on this road map to the off-ramp are little understood. As today’s climate crises become tomorrow’s emergencies, the human instinct to cooperate offers hope that wisdom embodied in this Advisory Opinion will prevail.

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Notes

1. International Court of Justice, *Obligations of States In Respect of Climate Change*, Advisory Opinion: Case 187, (The Hague July 23, 2025), at paragraph 456, <https://www.icj-cij.org/case/187/advisory-opinions> [herein cited as Opinion, with the relevant paragraph number cited].
2. UN, General Assembly resolution 77/276 (March 29, 2023); <https://digitallibrary.un.org/record/4008332?v=pdf>
3. UNEP, *Making Peace with Nature: A scientific blueprint to tackle the climate, biodiversity and pollution emergencies*;

- (February 18, 2021); Making Peace With Nature | UNEP - UN Environment Program; Also see, James Hansen, *Storms of My Grandchildren: The Truth about the Coming Climate Catastrophe and Our Last Chance to Save Humanity* (2010).
4. The volume of Greenhouse Gas emissions has continued to increase annually, as have the ambient surface temperatures and temperatures in the oceans. See <https://www.unep.org/resources/making-peace-nature>, and International Energy Agency (IEA) at <https://www.iea.org/data-and-statistics/data-tools/greenhouse-gas-emissions-from-energy-data-explorer>.
 5. Opinion at paras. 104–111.
 6. The Court's review of the General Context for the UNGA Resolution requesting the Advisory Opinion focused more narrowly on these issues. Opinion paras. 50–71.
 7. Opinion, paras 84–87.
 8. Vienna Convention on Protection of the Stratospheric Ozone Layer, and Montreal Protocol and Kigali Protocol; <https://www.unep.org/ozonaction/who-we-are/about-montreal-protocol>.
 9. International Convention for the Regulation of Whaling, which stopped most whaling in 1986; <https://iwc.int/commission>. States continually fail to end trade in most species threatened with extinction, avoiding change in deliberations under the Convention on the International Trade in Endangered Species (CITES); <https://cites.org/eng>.
 10. For analysis of most international agreements in Nicholas A. Robinson and Lal Kurukulasuriya, *Training Manual on International Environmental Law* (2006); <http://digitalcommons.pace.edu/lawfaculty/791/>.
 11. The 1972 Stockholm Declaration on the Human Environment widely acknowledged that States has a duty to protect the environment beyond their national boundaries; see *Report of the United Nations Conference on the Human Environment* (Stockholm, June 5–16, 1972) (A/CONF. 48/14/rev. 1); <https://docs.un.org/en/A/CONF.48/14/Rev.1>.
 12. Robinson & Lal Kurukulasuriya (2006), n. 10. It takes on average 10–20 years to negotiate and adopt a specific treat, and another 20 years for governments to amend national laws in accordance with new treaties.
 13. UN, *Our Common Future: Report of the UN World Commission on Environment and Development* (1987); <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>. The Appendix to this report sets forth recommendations for new environmental laws. IUCN's environmental law program collaborated with the WCED Secretariat on the preparation of this appendix. Barbara J. Lausche, *Weaving A Web of Environmental Law* (2008); <https://www.iucnael.org/en/academy-publications/7-weaving-a-web-of-environmental-law>.
 14. UN, *Report of the United Nations Conference on Environment and Development* (Rio de Janeiro, Brazil, 3–14 June 1992), producing Agenda 21 and the Rio Declaration on Environment and Development (UN A/ Conf.51, 26, rev. 1); <https://www.un.org/en/conferences/environment/rio1992>.
 15. UN (2015), *Transforming our world: the 2030 Agenda for Sustainable Development*, General Assembly resolution 70/1 of September 25, 2015; A/RES/70/1 Transforming our world: the 2030 Agenda for Sustainable Development. Also see, Narinder Kakar, Vesselin Popovski and Nicholas A. Robinson, *Fulfilling the Sustainable Development Goals* (2022).
 16. UNEP, Global Environmental Outlook (GEO-7), *Summary for Policymakers Review and Approval Meeting* (Nairobi, Kenya, 27–31 October 2025); <https://www.unep.org/geo/>.
 17. Intergovernmental Panel on Climate Change, *Climate Change 2023: Synthesis Report* (2023) at https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf; cited by the Opinion in para. 75.
 18. IUCN was founded in 1948 in France; <https://iucn.org/about-iucn/about-iucn>; see Nicholas A. Robinson, 'IUCN as Catalyst for A Law of the Biosphere: Acting Globally and Locally,' (2005) 35 *Environmental Law* 249 (Lewis & Clark School of Law); <https://law.lclark.edu/live/files/234-35-2toc>. Its unique Statutes provide for membership by States, ministries within States, and international and national non-governmental organizations, and Indigenous Peoples organizations.
 19. Opinion, para. 456.
 20. UNEP GEO-7, n.16.
 21. IPCC (2023), n.17.
 22. WMO (2025), *Global Annual to Decadal Climate Update (2025-2029)*. It reports that there is an 86% chance that at least one of next five years will be more than 1.5°C above the 1850–1900 average and a 70% chance that 5-year average warming for 2025–2029 will be more than 1.5 °C; <https://wmo.int/files/wmo-global-annual-decadal-climate-update-2025-2029>.
 23. IUCN Red Lists, at <https://www.iucnredlist.org/en>; Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES); <https://www.ipbes.net/global-assessment>. A volume of academic studies, e.g. in *Nature*, <https://www.nature.com/> and other peer reviewed journals.
 24. UNFCCC (2015), *Paris Agreement*; https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf.
 25. Japan Ministry of Education, Sports, Science and Technology (MEXT) and Japan Meteorological Agency (JMA), 'Climate Change in Japan 2025' (March 2025); https://www.data.jma.go.jp/cpdinfo/ccj/2025/pdf/cc2025_gaiyo_en.pdf.
 26. UN, 'Comparing climate impacts at 1.5°C, 2°C, 3°C and 4°C' (April 25, 2023); <https://unclimatesummit.org/comparing-climate-impacts-at-1-5c-2c-3c-and-4c/>.
 27. UN News, 'There is an Exit off 'the Highway to Climate Hell' UN Secretary-General Antonio Guterres (June 05, 2024); <https://news.un.org/en/story/2024/06/1150661>.
 28. ICJ (2025), n.1.
 29. Opinion paras. 132–139.
 30. Opinion paras. 140–142.

31. Opinion paras. 143–145.
32. As disasters recur, international cooperation to assist with immediate recovery has expanded. However, the UN Sendai Framework for Disaster Risk Reduction reflects weak national capacity; see <https://www.undrr.org/our-work/our-impact>.
33. George H.W. Bush, ‘Message to the Senate Transmitting the United Nations Framework Convention on Climate Change’ (September 9, 2008); <https://bush41library.tamu.edu/archives/public-papers/4774>. The “non-regrets” approach has been elaborated since Baker initially advanced this approach. See <https://www.circlesofclimate.org/>.
34. The 2030 Agenda for Sustainable Development, adopted by the UN General Assembly, at <https://sdgs.un.org/2030agenda>, provided for attaining the UN SDGs by 2030. States prepared national plans to meet this objective, e.g. Switzerland at <https://www.are.admin.ch/sds>. The UN Statistical Commission has been monitoring Indicators that measure attaining the SDGs. Most are far from being attained by the 2030 target. See <https://unstats.un.org/UNSDWebsite/undatacommons/sdgs>. The Court ruled that the principle of sustainable development guides the interpretation of treaties and customary international law. Opinion para. 147.
35. In the Paris Agreement’s first Global Stocktake in 2023, States agreed to align their Nationally Determined Contributions (NDCs) to maintain a 1.5°C temperature. This target requires States to increase their 2030 mitigation plans, and to submit 1.5°C-aligned NDCs for 2035. These national action will not be attained by 2025 and COP30. See <https://climateanalytics.org/publications/15c-aligned-2030-and-2035-ghg-emissions-targets>.
36. Nicholas A. Robinson, ‘Depleting Time Itself: The Plight of Today’s Human Environment’ (2021) 51 *Environmental Policy and Law* 361, at <https://journals.sagepub.com/doi/pdf/10.3233/EPL-219016>.
37. Opinion, paras. 196–218.
38. The UN Member States overlooked removing the reference in the Transportation sector; see Nicholas A. Robinson (editor), *Agenda 12 and the UNCED Agreements, travaux préparatoires* for the UNCED (Oceana Publications, 1993, 6 volumes). This edition also reports the cost estimates for implementing Agenda 21, which were also stricken from the final text.
39. One measure of how modest the progress has been is seen in the limited scope for decision-making evidenced in the Report of the International Union for the Conservation of Nature (IUCN) to the 28th Conference of the Parties to the UNFCCC; see <https://iucn.org/wp-content/uploads/2024/02/IUCN@COP28-Report-Final.pdf>.
40. States chose to justify their non-compliance with norms of international environmental law by arguing that the field was too fragmented to permit implementation. They contended, without offering evidence that International Environmental Law being deficient due to “gaps” in its coverage. Inability of States to agree by consensus in taking prompt action for climate change mitigation, as required by the UNFCCC, prompted France in 2017, led by Laurant Fabius, Chair of the UNFCCC COP21, and the Club des Jurists in Paris, to urging that States adopt a holistic “Pact for the Environment.” States opposing such a process in the UN General Assembly won adoption of a resolution requesting a report from the UN Secretary General on fragmentation in international environmental law. That report, dated Nov. 30, 2018, and prepared pursuant to General Assembly resolution 72/277, was entitled. “Gaps in international environmental law and environment-related instruments: towards a Global Pact for the Environment : report of the Secretary-General”; available at: <https://digitallibrary.un.org/record/1655544?v=pdf>; <https://wedocs.unep.org/bitstream/handle/20.500.11822/27070/SGGaps.pdf?sequence=3>. On December 10, 2018, it was subjected to a review at the UN before 90 delegates, organized by the Missions of France and Senegal and the IUCN World Commission on Environmental Law, the International Council of Environmental Law, and the International Group of Experts for the Pact; see <https://onu.delegfrance.org/Gaps-in-international-law-and-environment>. The review found that the international and regional agreements on the environment were in fact harmonious in their provisions; see IUCN WCEL/ICEL, ‘Note on the Secretary-General’s Report’ available at <https://www.pace.edu/sites/default/files/2024-09/law-note-un.pdf>. The global pact sought by treaty to achieve substantially the same understanding of State obligations to address climate change as the Advisory Opinion of the UN ICJ has provided. See, <https://globalpactenvironment.org/en/>. For a history of the Pact, see Maria Antonia Tigre, *Gaps In International Environmental Law: Towards A Pact for the Environment* (Environmental Law Institute); https://www.eli.org/sites/default/files/book_pdfs/gaps_frontmatter_0.pdf.
41. UN, *Rules of Procedure of the General Assembly*; https://www.un.org/ola/en/content/GA_RulesOfProcedure.
42. ICJ (1996), Advisory Opinion: *Legality of the Threat or Use of Nuclear Weapons*; at <https://www.icj-cij.org/case/95>.
43. The history appears in the annotations to Natalia Urzola, et al., ‘State Responsibility for Disrupting Earth’s Climate System: Anticipating the ICJ Advisory Opinion’ (2025) 55 *ELR* 10073; <https://www.elr.info/articles/elr-articles/state-responsibility-disrupting-earths-climate-system-anticipating-icj>.
44. Schleussner, CF., Ganti, G., Lejeune, Q. et al., ‘Overconfidence in climate overshoot’ (2024) 634 *Nature* 366–373. <https://doi.org/10.1038/s41586-024-08020-9>. It is uncertain that conditions can be returned to the 1.5°C conditions.
45. UN (2024), The Pact for the Future, General Assembly resolution 79/1 of September 22, 2024; Document Viewer The Pact along with its annexes; The Global Digital Compact and the Declaration on Future Generations appended as Annex I and II to the Pact, were adopted by consensus, despite a last-minute proposal for an amendment by some countries, including Russia, Iran, the Democratic People’s

- Republic of Korea (DPRK) and Syria; see <https://news.un.org/en/story/2024/09/1154671>.
46. Inter-American Court of Human Rights, Advisory Opinion on the Climate Emergency (July 3, 2025); <https://jurisprudencia.corteidh.or.cr/es/vid/1084981967>. English translation available at: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2025/20250703_18528_decision-2.pdf. The ICJ Advisory Opinion does not expand on Human Rights aspects, leaving that to future legal evolution. The ICJ's opinion recognizes the right to a clean, healthy and sustainable environment as foundational: "the human right to a clean, healthy and sustainable environment is ... inherent in the enjoyment of other human rights" (Opinion para. 393). In his separate Opinion, Judge Bhandhari noted "With respect to the right to a clean, healthy and sustainable environment, it remains unclear whether the Court ultimately affirmed the existence of this right as a distinct norm of customary international law. In my view, the Court's characterization of the right as 'inherent' in the enjoyment of other human rights does not sufficiently clarify its normative status or the precise nature of its relationship to other established rights." (para. 3).
 47. ICJ (2025), Advisory Opinion (Case 187), n.1. The citations to this Opinion appear as numbered paragraphs.
 48. *Future Generations* are acknowledged within "intergenerational equity," which is deemed an interpretive principle and part Equity (Opinion para. 157). The Court observed that that "Due regard for the interests of future generations and the long-term implications of conduct are equitable considerations that need to be taken into account where States contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law" (Opinion para. 157). the ICJ.
 49. UN (2022), General Assembly resolution 76/ 300 of July 28, 2022; Document Viewer. Also see, 'UN General Assembly declares access to clean and healthy environment a universal human right' July 28, 2022; <https://news.un.org/en/story/2022/07/1123482>.
 50. *Erga omnes* was recognized in the International Court of Justice's decision in the *Barcelona Traction* case (*Belgium v Spain*) (Second Phase) ICJ Rep 1970 [at paragraph 33].
 51. Cymie Payne, 'Unpacking the ICJ's Recent Opinion on Climate Change' *Environmental Law Institute Vibrant Environment Blog* (July 25, 2025); <https://www.eli.org/vibrant-environment-blog/unpacking-icjs-recent-opinion-climate-change>; Maria Antonia Tigre, Maxim Bönnemann, and Antoine De Spiegeleir, 'The ICJ's Advisory Opinion on Climate Change: An Introduction' (2025) Blog Series, Sabin Center for Climate Change Law, Columbia University, July 24, 2025; <https://blogs.law.columbia.edu/climatechange/2025/07/24/the-icjs-advisory-opinion-on-climate-change-an-introduction/>; Manleen Dugal, 'ICJ Advisory Opinion: The World's Top Court Has Spoken Unequivocally on States' Climate Change Obligations' (2025) Earth.Org, July 25, 2025; <https://earth.org/icj-advisory-opinion-the-worlds-top-court-has-spoken-unequivocally-on-states-climate-change-obligations/>; Multiple Authors, 'ICJ: What the World Court's Landmark Opinion Means for Climate Change' (July 25, 2025) International Policy, Carbon Brief; <https://www.carbonbrief.org/icj-what-the-world-courts-landmark-opinion-means-for-climate-change/>; Bhargabi Bharadwaj, 'The ICJ's climate ruling: Is inaction on climate change now a legal liability?' (2025) Comment, Chatham House, August 1, 2025; <https://www.chathamhouse.org/2025/08/icjs-climate-ruling-inaction-climate-change-now-legal-liability>; Jutta Brunnée, 'The Advisory Opinion on Obligations of States in Respect of Climate Change: Harm Prevention under Customary International Law' (2025) *Völkerrechtsblog*, August 6, 2025; doi:10.17176/20250806-122343-0; and Jannika Jahn & Nele Suchantke, 'From Carbon Sovereignty to Trusteeship of the Climate Commons: The ICJ Advisory Opinion on Climate Change' (2025) *Völkerrechtsblog*, August 18, 2025; doi: 10.17176/20250819-122333-0.
 52. Christina Voigt, 'he ICJ and the UN Climate Regime: Clarifying Mitigation Obligations Under the Paris Agreement' (2023) *Völkerrechtsblog*, August 4, 2025; doi: 10.17176/20250805-122408-0.
 53. Christiana Figueres, 'What I'm outraged and optimistic about this week' (n.d.); globaloptimismimpact.cmail20.com/t/y-e-qjigdy-hjdrydiih-e/.
 54. UN ICJ Video on July 23, 2025 at <https://www.icj-cij.org/multimedia/205634>; and UN Web TV on line at: <https://webtv.un.org/en/asset/k1c/k1cg72yf19>.
 55. ICJ (2025), n.1, Written statement of the Petroleum Exporting Countries, Document Number 187-20240319-WRI-03-00-EN; <https://www.icj-cij.org/node/204369>.
 56. See Opinion, paras. 162–171. This argument was made, for example, in the written submission of the United States (<https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-06-00-en.pdf>), contending that climate change treaties constitute *lex specialis* and therefore render other rules of international law inapplicable (Opinion paras. 162–171).
 57. UN (2015), General Assembly resolution 70/1 of September 25, 2015: SDG 13: "Take Urgent action to combat climate change and its impacts." With the agreed annotation acknowledging that the primary international intergovernmental forum for climate change decisions is the UNFCCC climate agreement (where consensus decision-making is the norm), not under decisions on all the SDGs in the UN General Assembly (where majority vote is the norm). The asterix and note is in the roster of the SDGs that is appended to the resolution; see https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf.
 58. IPCC (n.d.), History — IPCC. In 1926, the Soviet scientist, Vladimir Vernadsky, had identified the biosphere, in which living systems were a geological force; see *The Biosphere* (1926).

59. Opinion, para. 74; see ICJ Press Release, 'The Court Meets with scientists of the Intergovernmental Panel on Climate Change', (2024) No 2024/75, November 26, 2024; <https://www.icj-cij.org/sites/default/files/case-related/187/187-2024-1126-pre-01-00-en.pdf>.
60. Opinion, paras. 72–87.
61. Opinion, para. 76.
62. IPCC (2023), Sixth Assessment Report; Opinion at para 75.
63. UNFCCC), Article I, Para. 3, Opinion at para 75.
64. Opinion at para 311. Article 31(C) (3) "There shall be taken into account, together with the context:... any rules of international law applicable in the relations between the parties." UN, *Vienna Convention on the Law of Treaties* (1969); https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.
65. Opinion paras. 316–317.
66. Opinion, para. 330.
67. Opinion, paras. 316–335.
68. Opinion, paras. 336–365.
69. Opinion, paras. 355–365.
70. Opinion, para. 365.
71. Opinion para. 393.
72. Opinion para. 404.
73. Opinion, para. 388.
74. UN, *Harmony with Nature* (n.d.); *Harmony With Nature*; <http://harmonywithnatureun.org/>.
75. See the critique of the Court for not discussing rights of nature: Jedd Oddermatt, 'What the Court Didn't Say: The ICJ's Climate Opinion and the Politics of Judicial Restraint' (2025) Columbia Sabin Center for Climate Change Law Blog, July 30, 2025; <https://blogs.law.columbia.edu/climatechange/2025/07/30/what-the-court-didnt-say-the-icjs-climate-opinion-and-the-politics-of-judicial-restraint/>: "In comparison with the advisory opinion of the Inter-American Court of Human Rights (IACtHR) on the climate emergency and human right, the ICJ opinion does not view Nature as a holder of rights. In its opinion, the IACtHR found that the right to a healthy environment "is about protecting nature not only because of the effects that its degradation could cause on other rights of individuals, but also because of its vital interdependence with the other organisms that make life on the planet possible" (para. 273). The ICJ presented a view of Nature as being apart from human life, as something that impacts and is impacted by human behavior. Although issues about anthropocentric bias of human laws is not central to the Questions posed by the UN General Assembly, the ICJ could have offered some guidance relating to the emerging Right of Nature.
76. The quote from *Our Common Future* is at page 27. This legal recognition comes 53 years after the 1972 Stockholm Conference on the Human Environment, and the book commissioned for that Conference, René Dubos and Barbara Ward (1972), *Only One Earth*; see <https://www.ebsco.com/research-starters/history/ward-and-dubos-publish-only-one-earth>. 1972 was also the year the photo of Earth from space was released by NASA; <https://svs.gsfc.nasa.gov/30613>.
77. Opinion, para. 271.
78. Opinion, para. 280.
79. Opinion, para 281, citing with favor the Advisory Opinion of the International Tribunal for the Law of the Sea (ITLOS), Case 31, May 21, 2024; ITLOS Climate Change Advisory Opinion, *ITLOS Reports 2024*, p. 89, para. 235; https://itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf; Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC).
80. Opinion, paras. 283 and 138.
81. Opinion, para. 138.
82. Opinion, paras. 297–298.
83. Opinion, para. 299.
84. Opinion, para. 300.
85. The ITLOS Advisory Opinion similarly holds that EIA is to be fully undertaken, under Article 205 of UNCLOS; ITLOS Climate Change Advisory Opinion, n.79.
86. Opinion, para. 308.
87. Opinion, para. 365.
88. Opinion, para. 161.
89. Opinion, paras. 146–161.
90. See, e.g., Bharat H. Desai, *Institutionalizing International Environmental Law* (Ardsey, New York: Transnational Publishers, 2003) (now Brill Nijhoff); Institutionalizing International Environmental Law | Brill; Phillipe Sands and Jacqueline Peel (2018), *Principles of International Environmental Law* (4th edition), Cambridge: Cambridge University Press; Principles of International Environmental Law | Cambridge.
91. Opinion, para. 292.
92. XUE Separate Opinion para. 16.
93. XUE Separate Opinion para. 44.
94. XUE Separate Opinion, paras 19–50.
95. XUE Separate Opinion, para. 49–50.
96. XUE Separate Opinion, para. 47.
97. Narinder Kakar and Anna Shostya (eds), *Pathways to Sustainable Development: Implementing the Pact for the Future* (Cheltenham: Edward Elgar; Pathways To Sustainable Development, 2025).
98. XUE Separate Opinion, para. 47.
99. University of California, 'What is Climate Justice?' (n.d.) Center for Climate Justice; <https://centerclimatejustice.universityofcalifornia.edu/what-is-climate-justice/>.
100. See, Bin Xuw, Bin Han, Hongqing Guo, Hong Yang, Heiko Thomas and Stefan Strückrad, 'Understanding Ecological Civilization in China: From Context to Science', (2023) 52 *Ambio* 1895–1909, Royal Swedish Academy of Science 2023; <https://doi.1007/s13280-023-01907-2>.
101. See UN *Legal Guide for the Sustainable Development Goals* at <https://sdgs.un.org/partnerships/legal-guide-sustainable-development-goals>.
102. Bin Xuw, et al., Op. cit., supra note 94, at p. 1906.

103. Opinion, para. 420.
104. International Law Commission, *Responsibility of States for Internationally Wrongful Acts*; Annex to annex to General Assembly resolution 56/83 of 12 December 2001; Responsibility of States for Internationally Wrongful Acts (2001); https://legal.un.org/ilc/summaries/9_6.shtml.
105. Opinion paras. 446–455.
106. Opinion paras. 425–432.
107. Opinion paras. 433–438.
108. Opinion paras. 349–443.
109. Restoration of ecosystems unleashes their *resilience*, which in turn furthers climate mitigation and adaptation. This biological asset is reflected as an emergent legal principle also; see, generally, Nicholas A. Robinson, ‘The Resilience Principle’ (2014) 5 *IUCN Acad. Envtl. L. eJournal* 19. <http://digitalcommons.pace.edu/lawfaculty/953/>.
110. Judge Dalveer Bhandhari’s Separate Opinion proposes establishment of claims commissions and other ways to systematically address claims. Also see the variety of climate litigations underway in the databases of Columbia University Law School’s Sabinn Center for Climate Change Law, at <https://climate.law.columbia.edu/>.
111. Opinion paras. 104–111.
112. Opinion para 427.
113. Opinion para. 428.
114. UN, *Climate Summit* (September 24, 2025); General Assembly High-level Week 2025 | United Nations.
115. Bharat H. Desai, ‘Regulating Global Climate Change: From Common Concern to Planetary Concern’ (2022) 52 *Environmental Policy and Law* (EPL) 331–347; DOI 10.3233/EPL-21905; Bharat H Desai, Ed., *Regulating Global Climate Change: From Common Concern to Planetary Concern* (Amsterdam: IOS Press, 2023); *Regulating Global Climate Change* | IOS Press.
116. The intergovernmental negotiating committee to prepare on a legally binding instrument on plastic pollution, including in the marine environment, concluded on August 15, 2025, without reaching consensus on a text. Its resumed sessions will need to conform to the ICJ Advisory Opinion. States with oil resources have used consensus decision-making to block progress; see IUCN ‘Plastics Treaty Negotiations End Without Agreement in Geneva – Yet Many Countries and Stakeholders Remain Strongly Engaged to End Plastic Pollution’ (August 15, 2025); Plastics Treaty negotiations end without agreement in Geneva – yet many countries and stakeholders remain strongly engaged to end plastic pollution | IUCN.
117. For example, decisions to safeguard and restore wetlands under both the 1992 Convention on Biological Diversity (<https://www.cbd.int/>) and the 1971 Ramsar Convention to Protect Wetlands of International Importance (<https://www.ramsar.org/>), will preserve carbon sinks.
118. <https://iucn.org/our-work/nature-based-solutions>.
119. Opinion, para. 232, on carbon sinks.
120. IUCN, World Declaration on the Environmental Rule of Law (April 26–29, 2016); [world_declaration_on_the_environmental_rule_of_law_final_2017-3-17.pdf](https://www.iucn.org/sites/default/files/world_declaration_on_the_environmental_rule_of_law_final_2017-3-17.pdf).
121. Opinion, paras. 214, 232.
122. Opinion, paras. 135, 272, 296, 299. The ICJ also noted the ITLOS Advisory Opinion findings on the duty to undertake EIA, under UNCLOS Article 206; see, n.79.
123. Opinion, paras. 295–298.
124. IUCN, Written Reply (December 20, 2024) in Response to questions from Judges Cleveland and Aurescu, para.9; <https://www.icj-cij.org/sites/default/files/case-related/187/187-20241220-oth-30-00-en.pdf>.
125. Cleveland Separate Opinion, paras. 21–22.
126. Opinion, paras. 263–264.
127. Euro News, ‘Fossil Fuel Subsidies: G7 Nations Ignore Targets and Increase Taxpayer Funding To Record Levels’ (April, 02, 2025); Fossil fuel subsidies: G7 nations ignore targets and increase taxpayer funding to record levels | Euro News.
128. Verbatim Record, December 13, 2024, at 3:00 pm at the Peace Palace, pp. 28–39.
129. IUCN Opening Remarks, para. 2, “IUCN as “the international authority on the status of the natural world and measures needed to protect it,” and is “formed by 1,400 Members – among them States, governmental and non-governmental organizations – and is supported by 17,000 experts from around the world.”.
130. IUCN, *Written Statement of IUCN* (March 19, 2024); Prepared by the IUCN World Commission on Environmental Law. WCEL Chair, Christina Voigt, led the preparation of the IUCN’s presentations to the ICJ; see Written statement of the International Union for Conservation of Nature (IUCN).
131. Verbatim transcript, Oral Presentation, para. 22, p. 28 at <https://www.icj-cij.org/sites/default/files/case-related/187/187-20241213-ora-02-00-bi.pdf>.
132. Id. para 48 and 50.
133. Id., para 4. Sindico noted “History will mark this as the day this Court provided clarity in addressing the most urgent and defining challenge of our time.” Para. 8.
134. IUCN, ‘IUCN welcomes International Court of Justice’s historic climate change Advisory Opinion’ (2025) Press Release, July 23, 2025; IUCN welcomes International Court of Justice’s historic climate change Advisory Opinion - Press release | IUCN.
135. Fabiano Maisonave, ‘Brazil Restores Stricter climate Goals’ (*AP News*, September 17, 2023); Brazil restores stricter climate goals | AP News.
136. PRC Ministry of Foreign Affairs, Spokesperson Guo Jiakun’s Regular Press Conference (July 24, 2025); Foreign Ministry Spokesperson Guo Jiakun’s Regular Press Conference on July 24, 2025 | Ministry of Foreign Affairs of the People’s Republic of China. The Chinese Statement noted: “China took an active part in this advisory opinion. As the biggest major developing country, China has

been a staunch doer in and important contributor to green development. China is actively and prudently working towards its goals on carbon peak and carbon neutrality. We will make the world's biggest cut in carbon emission intensity and move from carbon peak to carbon neutrality in the shortest time frame ever seen in history. In the meantime, China's quality and low-cost clean energy technologies and products have significantly cut the costs for global green and low-carbon transition. China has also provided as much assistance as we can to fellow developing countries through the channel of South-South cooperation."

137. Opinion, para. 150. With respect to State contributions to climate change, the Court noted: "on one end of the spectrum are the most developed States which have contributed significantly to the overall amount of GHG emissions since the Industrial Revolution, and which have resources and the technical capacity to implement wide-ranging emission reductions. On the other end are those least developed States that have contributed only minimally to historical emissions and have only a limited capacity to transform their economies. In between are States that have progressed considerably in their development since the conclusion of the UNFCCC in 1992, in line with that instrument's expectation

that 'the share of global emissions originating in developing countries will grow to meet their social and development needs' (UNFCCC, third preambular paragraph), and some of which now contribute significantly to global GHG emissions and possess the capacity to engage in meaningful mitigation and adaptation efforts, as well as other States with significant resources and technical capabilities to contribute to addressing global climate change."

138. See the discussion of cooperation in Nicholas A. Robinson, 'Evolved Norms: A Canon for the Anthropocene' in Christina Voigt (ed), *Rule of Law for Nature* (Cambridge, 2013), 46; *Rule of Law for Nature*.
139. The debates make space for new approaches to international law for the protecting the environment, such as those in C. Voigt (2013), *Rule of Law for Nature*, or those being explored through Ecological Civilization in China (*Chinese Journal of Environmental Law*, Vol. 4 (2) 2020 or through concepts of ecological law [Klaus Bosselman and Pru Taylor (eds), *Ecological Approaches to Environmental Law* (Edward Elgar, 2017); *Ecological Approaches to Environmental Law*], or in the shared relationships of Indigenous Peoples [Robin Wall Kimmerer, *Braiding Sweetgrass* (Penguin, 2020)].