

From Opinion to Action

The ICJ Advisory Opinion
on climate change and its implications
for equity-based multilateral climate
action and international cooperation

Vicente Paolo B. Yu III

TWN

Third World Network

From Opinion to Action

The ICJ Advisory Opinion on
climate change and its implications
for equity-based multilateral climate action
and international cooperation

Vicente Paolo B. Yu III

TWN

Third World Network

**From Opinion to Action:
The ICJ Advisory Opinion on Climate Change and Its
Implications for Equity-Based Multilateral Climate Action
and International Cooperation**

Published in 2026 by
Third World Network Bhd (198701004592 (163262-P))
131 Jalan Macalister
10400 Penang
Malaysia
twn.my

The contents of this publication may be republished or reused for free for non-commercial purposes, except where otherwise noted. This publication is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

Cover design: Lim Jee Yuan
Cover photo: Moussi Simon Brice (CC BY-SA 4.0)

Contents

Reflections on the 20 May 2026 UN General Assembly Resolution on the ICJ Advisory Opinion on Climate Change	1
I. Background: From a Pacific Youth Initiative to the ICJ Advisory Opinion	2
II. The Road to the Follow-Up UNGA Resolution: Negotiating Dynamics and Contested Issues	3
III. Voting Record	5
IV. Significance of the Resolution	7
V. Implications for Developing Countries	8
VI. Key Points on CBDR-RC, Loss and Damage, and State Responsibility: Companion Papers	14
The ICJ Advisory Opinion, Equity and CBDR-RC	14
The ICJ Advisory Opinion, Loss and Damage, and State Responsibility	16
VII. Next Steps	20
VIII. Conclusion	21
Endnotes	22
 The Principle of Common But Differentiated Responsibilities and Respective Capabilities under the ICJ Advisory Opinion on International Law Obligations in Respect of Climate Change	 24
Executive Summary	25
I. Introduction	27
II. Highlights of the ICJ's Conclusions in Its Advisory Opinion	27
III. The ICJ's Interpretation and Application of the Principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC)	28
IV. Conclusion	45
Endnotes	50

Understanding the Applicability of the ICJ’s Advisory Opinion to Climate-Change-Caused Loss and Damage	53
I. Introduction: Landmark ICJ Recognition of Climate-Change-Caused Loss and Damage	54
II. International Law Obligations in Respect of Climate Change	55
III. Common But Differentiated Responsibilities and the Duty to Cooperate as Integrated Foundational Principles of International Climate Change Legal Obligations	59
IV. Breach of Obligations Giving Rise to State Responsibility	65
V. Breaches and Remedies, Including on Loss and Damage	68
VI. Conclusion: Implications of the ICJ Advisory Opinion for Remedies in Respect of Climate-Change-Related Loss and Damage	71
Endnotes	80

**Reflections on the 20 May 2026 UN General
Assembly Resolution on the ICJ Advisory Opinion
on Climate Change**

I. Background: From a Pacific Youth Initiative to the ICJ Advisory Opinion

The process leading to the United Nations General Assembly (UNGA) resolution adopted on 20 May 2026¹ began with a Vanuatu-led initiative to request an advisory opinion from the International Court of Justice on the obligations of States in respect of climate change. In March 2023, the General Assembly adopted resolution 77/276² by consensus, requesting the ICJ to clarify States' obligations under international law in relation to climate change. The resolution was remarkable for the breadth of its support, having been co-sponsored by more than 130 governments, and for the fact that it was adopted without a vote against it.

The initiative was strongly shaped by Pacific island leadership, youth advocacy, and the mobilization of climate-vulnerable States and civil society. Vanuatu played the central diplomatic role, but the effort also drew heavily from the earlier work of Pacific Island Students Fighting Climate Change and the broader World's Youth for Climate Justice movement and was supported by a broad number of developing and developed countries that joined in as co-sponsors of the 2023 and 2026 resolutions. The advisory proceedings that followed were unprecedented in scale, with nearly a hundred States participating, tens of thousands of pages of written submissions, and two weeks of oral hearings before the Court. For many States and organizations, including some appearing before the Court for the first time, the process became a major global platform for articulating climate justice claims in legal terms.

On 23 July 2025, the ICJ delivered its Advisory Opinion.³ The Court clarified that States' climate-related obligations arise not only under the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, but also from the broader corpus of international law, including customary international law, the duty to prevent significant transboundary harm, human rights law, the law of the sea,

and the duty to cooperate. The Court characterized climate change as an urgent and existential threat and confirmed that States have binding duties to protect the climate system from significant harm, reduce greenhouse gas emissions, and cooperate internationally.

The opinion also made clear that breaches of these obligations may entail legal responsibility, including cessation of wrongful conduct, guarantees of non-repetition, and, where the applicable conditions are met, full reparation. Although ICJ advisory opinions are not binding in the same way as judgments in contentious cases, they carry substantial legal, moral, and political authority. The opinion was therefore immediately understood as likely to influence climate litigation, national policymaking, and international climate negotiations.

II. The Road to the Follow-Up UNGA Resolution: Negotiating Dynamics and Contested Issues

Following the Advisory Opinion, Vanuatu and a cross-regional core group of States began work in late 2025 on a follow-up General Assembly resolution. Public reporting identified the core group as including Vanuatu, the Netherlands, Kenya, Sierra Leone, Singapore, Barbados, the Marshall Islands, Micronesia, Palau, Jamaica, the Philippines, and Burkina Faso.

A zero draft⁴ was circulated on 6 February 2026, followed by several informal consultations thereon open to all UN Member States in New York, with additional paragraph-focused small group meetings also taking place, from February to May 2026. A revised draft was initially expected in early March, but the process took longer than anticipated. The final text was released on 1 May 2026, the same day Vanuatu formally invited States to make known by 4 May 2026 their willingness to be indicated as co-sponsors of the resolution, and announced that the resolution would be tabled for action in the General Assembly on 20 May 2026.⁵

The purpose of the resolution was to welcome and give political effect to the ICJ Advisory Opinion. It sought to reaffirm that international law applies to State conduct in relation to climate change and to translate the Court's legal clarification into a framework for coordinated multilateral follow-up. The draft aimed to affirm the ICJ's findings, call on States to align their policies with their international legal obligations, and request the UN Secretary-General to submit a report by 2027 on advancing implementation and compliance in light of the Advisory Opinion.

The resolution was non-binding, as most General Assembly resolutions are, but politically and legally significant. Supporters framed it as a way to move the Advisory Opinion from legal clarification into political follow-up, while maintaining a distinction between legal obligations and policy commitments. The text was also designed to avoid creating a parallel climate regime, instead reinforcing the relevance of the ICJ opinion to the UNFCCC, the Paris Agreement, the wider UN system, and national implementation.

The negotiations around the resolution reflected both the strength of support for the ICJ opinion and the sensitivity of its implications. Most developing countries that are particularly vulnerable to the adverse effects of climate change, many developed countries, youth movements, Indigenous peoples' organizations, and environmental justice advocates viewed the resolution as an opportunity to anchor climate action more firmly in international law, equity, human rights, and accountability. At the same time, a smaller number but politically significant group of States expressed concern about the potential implications of the Advisory Opinion and the follow-up resolution to their economies, State liability, responsibility for reparations, phasing out of potentially socially and economically sensitive fossil fuel subsidies, and their domestic regulatory and policy space.

The United States was the most visible source of opposition. Reports indicated that Washington circulated a diplomatic cable urging States not to support the resolution and pressing Vanuatu to withdraw the

draft. The United States argued that the resolution risked turning the Advisory Opinion into a basis for claims of international legal obligations that it considered misguided, and later objected to what it characterized as alarmist language and inappropriate political demands related to fossil fuels.⁶

The final text reflected the attempts of the co-sponsors of the resolution to respond to the concerns raised by various States. Some textual formulations reportedly included in earlier drafts, including language related to fossil fuel subsidies, national climate plans, compensation, and a proposed international register of loss and damage, were amended or deleted to preserve broad support. In the final days before the vote, several delegations reportedly tabled late amendment proposals. Vanuatu opposed these, warning that they could reopen a carefully negotiated package and weaken the resolution's alignment with the Advisory Opinion.

III. Voting Record

The resolution was adopted by an overwhelming majority on 20 May 2026.⁷

Vote	Number	Notes
In favour	141	Broad cross-regional majority, including many developing and developed countries from Africa, Asia and the Pacific, Europe, Latin America and the Caribbean, North America, and Oceania
Against	8	Belarus, Iran, Israel, Liberia, Russia, Saudi Arabia, United States, Yemen
Abstentions	28	Notable abstentions include Turkiye and Ethiopia, which will be playing key roles in the UNFCCC process as the incoming COP31 President in 2026 (Turkiye) and COP32 President in 2027 (Ethiopia)

The vote exceeded the two-thirds threshold required for significant General Assembly resolutions and demonstrated broad support across regions for anchoring climate action in international law and multilateral cooperation. Generally, the States that voted in favour framed the resolution less as the creation of new obligations and more as a political affirmation of the ICJ Advisory Opinion, the rule of law, and the need for stronger multilateral cooperative climate action; that is, the “yes” vote was generally driven by a combination of support for the ICJ and international law, solidarity with climate-vulnerable States, climate justice and human rights concerns, the desire to strengthen implementation of existing climate-change-related obligations under the UNFCCC and Paris Agreement, and recognition of small island and low-lying coastal States’ concerns on sea-level rise. Indeed, many supportive States were clear in stating their views that the resolution should reinforce, rather than replace or duplicate, the UNFCCC and Paris Agreement framework.⁸

The States voting against the resolution reflected a combination of concerns that the resolution would elevate a non-binding advisory opinion into a continuing UN political process; broaden climate obligations beyond the multilaterally negotiated and agreed UNFCCC/Paris Agreement framework; create new bases for international legal accountability by providing grounds for future claims for State responsibility and reparations; and constrain national energy policy space in light of the importance of fossil fuels in their economies. The United States, for example, opposed the resolution on the basis, according to its explanation of vote posted on its UN Mission’s website on 20 May 2026, that it did not support the advisory opinion process and objected to language and follow-up mechanisms it considered duplicative of, or intrusive into, existing climate frameworks.⁹ The US had already previously withdrawn its membership and participation in both the Paris Agreement (which took effect on 27 January 2026) and the UNFCCC (following US notification of withdrawal in early January 2026, with such withdrawal to take effect in early 2027).¹⁰

The 28 abstentions reflected a more complex set of concerns. Some abstaining States may have had reservations about legal framing, historical responsibility, finance, reparations, or the future use of the Advisory Opinion in litigation and international negotiations. Others may have abstained for diplomatic or geopolitical reasons. The abstentions should not be read as opposition to the ICJ Advisory Opinion or to climate action as such, but rather appear to reflect various and varied concerns that the resolution may have overreached procedurally or substantively, insufficiently protected or even diluted the UNFCCC/Paris Agreement consensus-based multilateral framework, inadequately reflected the principles of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC), or created legal, economic and policy implications for States that had not been fully multilaterally negotiated and adopted.¹¹ Türkiye's and Ethiopia's abstentions are politically notable given their roles as incoming hosts of the 31st Conference of the Parties to the UNFCCC (COP31) in November 2026 (Türkiye) and COP32 in 2027 (Ethiopia).

IV. Significance of the Resolution

The adoption of the resolution marked an important moment in the post-ICJ Advisory Opinion phase. It did not create new binding legal obligations, but it strengthened the political authority of the Court's findings and signalled that a large majority of States support treating climate change as a matter of legal responsibility, not merely voluntary cooperation or optional diplomacy.

The resolution is significant in several respects.

First, it reaffirmed that existing international law already provides a framework for addressing climate change. This includes climate treaties, human rights law, customary international law, the law of the sea, and general principles relating to prevention of harm, cooperation, and State responsibility.

Second, it helped move the Advisory Opinion from the judicial sphere back into the universal political body of the United Nations. This is important because advisory opinions do not implement themselves. The resolution provides a political pathway for follow-up, including through the Secretary-General's report due in 2027.

Third, it reinforced the central role of universal multilateralism. At a time when climate governance is increasingly fragmented through unilateral trade measures, green industrial policies, carbon markets, private standards, critical minerals partnerships, and plurilateral initiatives, the UNGA process reaffirmed the value of the United Nations as a forum where all States can participate in clarifying legal obligations and cooperative pathways.

Fourth, it strengthened the normative basis for climate justice claims, including those related to equity, loss and damage, finance, technology transfer, human rights, and the duty to cooperate. For developing countries, the resolution can be used to argue that climate obligations must be implemented fairly and in light of common but differentiated responsibilities, respective capabilities, historical responsibility, national circumstances, and the need for support.

V. Implications for Developing Countries

The resolution demonstrates both the possibilities and the limits of constructive multilateralism. On the one hand, it shows that developing country States that are particularly vulnerable to the adverse effect of climate change, whether small or large, geopolitically or economically significant or not, working through the General Assembly and supported by national and global youth and civil society movements, can mobilize international law and political legitimacy even in a fractured geopolitical environment. The vote showed that a large majority of States are prepared to recognize the relevance of international law to climate action and to support follow-up to the ICJ Advisory Opinion.

On the other hand, the negotiations revealed continuing resistance around the most politically sensitive implications of the opinion: fossil fuel phase-out, subsidies, legal responsibility, reparations, damage registers, compensation, and compliance. The softening of some language suggests that broad support was achieved partly through careful calibration of the text.

The adoption of the UN General Assembly resolution by a large majority of Member States is a significant political achievement, but it should be understood as reinforcing, rather than substituting for, the UNFCCC as the primary consensus-based intergovernmental negotiating forum on climate change. The UNFCCC and its Paris Agreement remain the central legal architecture through which States define, negotiate, and implement their collective climate commitments. The strength of that architecture lies precisely in its universality and in the principle of consensus, which ensures that all countries – including the most vulnerable, the least responsible, and those with the least capacity – have an equal voice in shaping the rules and cooperative arrangements that govern global climate action. The UNGA resolution does not, and was not designed to, displace this framework. On the contrary, it derives much of its authority from the ICJ Advisory Opinion's own reaffirmation that the climate change treaties are binding, mutually supportive instruments, and that the duty to cooperate must be exercised through sustained multilateral engagement.

The General Assembly's endorsement of the ICJ Advisory Opinion gives political weight to the view that climate action is grounded in international legal obligations, including the duty to cooperate, equity, CBDR-RC, and the provision of means of implementation. However, the operationalization of these principles must continue to take place through the UNFCCC and the Paris Agreement, where all Parties participate in a process specifically designed to balance ambition, differentiation, national circumstances, and support. The resolution's call for the Secretary-General to report by 2027 on advancing compliance should therefore be read as a mechanism to

strengthen multilateral engagement and legal accountability, not as the creation of a parallel track that bypasses the deliberative and consensus-based processes of the UNFCCC. In this sense, the UNGA resolution should serve as legal and political reinforcement for the UNFCCC process, not as an alternative negotiating pathway.

At the same time, the voting outcome should not be interpreted as a licence to use the General Assembly's majority-based voting mechanism as a shortcut around the harder work of building genuine consensus on climate action. The success of the resolution – carried by 141 votes – may tempt some actors, particularly those favouring plurilateral approaches, “coalitions of the willing”, or club-based models of climate governance, to view the UNGA as a more convenient arena for driving global climate policy than the consensus-bound UNFCCC process. That temptation should be resisted. Majority voting in the General Assembly can clarify legal principles, express broad political will, and help establish political and legal norms, but it cannot manufacture the shared ownership, trust, differentiated commitments, and implementation cooperation that durable climate action requires.

Approaches that seek to advance climate ambition by working around or isolating some countries rather than by engaging them risk fragmenting the multilateral system, hardening geopolitical divisions, and undermining the legitimacy of the very legal framework that the resolution was designed to strengthen. The ICJ Advisory Opinion and the UNGA resolution derive much of their legitimacy from their relationship to the wider UN system and from their potential to strengthen universal cooperation. They should not be used to normalize the bypassing of the UNFCCC, nor to create parallel political tracks through which some States set climate expectations for others without the negotiated balance of equity, CBDR-RC, finance, technology transfer, adaptation, loss and damage, just transition, and response measures that the UNFCCC and Paris Agreement require.

The lesson of the resolution is therefore not that climate justice can be advanced simply by outvoting the resistant. Rather, it is that a large and diverse majority of States are prepared to affirm the rule of law on climate change and the legal foundations for stronger collective action. Converting that affirmation into effective implementation still depends on the slow, inclusive, and often frustrating work of consensus-building within the UNFCCC and Paris Agreement – work that remains irreplaceable. The legitimacy of the ICJ Advisory Opinion and the UNGA resolution will be strongest if they help Parties return to the UNFCCC with greater seriousness, accountability, and good faith, rather than encouraging efforts to bypass the consensus-based forum where the climate regime's commitments must ultimately be interpreted, negotiated, and implemented.

For developing countries, the strategic challenge is to use the resolution to strengthen, rather than displace, the UNFCCC and Paris Agreement. The Advisory Opinion and the UNGA resolution should support equity, CBDR-RC, finance, technology transfer, capacity-building, adaptation, loss and damage, just transition, and the duty to cooperate. They should not be used to justify unilateral trade measures, green conditionalities, or externally imposed transition pathways that shift the burden of adjustment onto developing countries.

Five points are important to highlight in this context vis-à-vis the Advisory Opinion:

1. It centres climate change as a matter of international legal obligation. The opinion clarifies that States' duties to address climate change arise not only from the UNFCCC and the Paris Agreement, but also from the broader corpus of international law, including customary international law, the duty to prevent significant transboundary harm, human rights law, the law of the sea, and principles of international cooperation. This strengthens the legal foundations of climate action. For constructive multilateralism, this is significant because it

provides a legal floor for climate diplomacy. It does not replace the UNFCCC or the Paris Agreement, but it helps clarify the minimum legal expectations within which political negotiations should take place.

2. It strengthens equity and CBDR-RC as foundational operational principles in the international climate change regime. These principles have long been central to the UNFCCC and Paris Agreement. The Advisory Opinion and the UNGA follow-up process create an opportunity to insist that equity and CBDR-RC must shape how legal obligations are interpreted and implemented. All States have climate-related obligations, but those obligations are not identical in content, scale, timing, or means of implementation. Historical responsibility, current capabilities, development needs, poverty eradication, energy access, and national circumstances remain central to any fair assessment of what States are required to do. This would strengthen the case for developed countries to lead in mitigation, provide finance, transfer technology, support adaptation, address loss and damage, and create an enabling international economic environment.
3. It reaffirms multilateralism as the way through which the duty to cooperate can be made operational. This is especially significant at a time when climate governance is increasingly fragmented. Climate policy is being shaped not only in the UNFCCC, but also through trade measures, including unilateral ones, investment rules, green industrial policy, plurilateral clubs, private standards, carbon markets, critical minerals partnerships, and supply-chain conditionalities. The ICJ-UNGA process reaffirms the value of universal multilateralism as the legitimate space for clarifying common obligations, differentiated responsibilities, and cooperative pathways. Climate measures must be designed and implemented in ways that are consistent with international law, including the principles of equity, the right to development, and the obligation

to avoid unjustifiable or disguised restrictions on international trade.

4. It advances loss and damage as a key pillar of the international climate change regime. It strengthens the legal and normative basis for understanding climate harm not merely as a humanitarian problem, but as an issue of responsibility, remedy, and reparation under international law. It supports the argument that loss and damage finance should not be treated as voluntary charity or discretionary aid. Rather, it should be understood as part of a broader system of international cooperation, responsibility, and remedy for climate-related loss and damage suffered by developing countries and vulnerable communities that contributed least to the climate crisis.
5. It strengthens the case for the provision of the means of implementation, such as finance and technology transfer, as an operationalization of the duty to cooperate and as the gateway for greater climate ambition. The Advisory Opinion and the UNGA resolution together can provide an important platform for reinvigorating the means-of-implementation agenda. If climate obligations are legal obligations, then support obligations must also be treated seriously. They can be used to reinforce the legal and political centrality of climate finance, technology transfer, capacity-building, and international cooperation.

Both the Advisory Opinion and the UNGA resolution help anchor the climate challenge firmly within a rules-based international order by clarifying obligations, strengthening accountability, and reinforcing the legal foundations for collective action. It bears recalling that international law retains its authority where States uphold it – and fulfils its promise where States choose to act – together.

VI. Key Points on CBDR-RC, Loss and Damage, and State Responsibility: Companion Papers

The two companion papers in this publication provide deeper legal analysis of issues arising from the ICJ Advisory Opinion that are relevant to the UNGA resolution and its follow-up. Taken together, they explain how the Advisory Opinion may shape subsequent multilateral engagement, climate litigation, national policymaking, and the interpretation of States' climate-related obligations. The first paper focuses on the principle of CBDR-RC, while the second examines the Advisory Opinion's implications for loss and damage, State responsibility, and remedies.

The ICJ Advisory Opinion, Equity and CBDR-RC

The companion paper on CBDR-RC emphasizes that the Advisory Opinion reaffirms CBDR-RC as a cardinal, equity-based principle of international climate law. The principle is not merely a political aspiration; it is legally relevant to the interpretation of both the climate change treaties and customary international law. While CBDR-RC does not create a separate set of new obligations, it shapes the interpretation, content, and standard of performance of existing obligations. The Court applied the principle substantively, procedurally, and equitably: it informs the content of treaty obligations, the applicable due diligence standard, and the equitable distribution of burdens among States with different levels of development, historical responsibility, capacity, and national circumstances.

A central point of the paper is that equity, historical responsibility, current capabilities, development status, poverty eradication, sustainable development, and national circumstances are not peripheral considerations. They are legally relevant factors in assessing whether States have complied with their climate-related obligations. The Advisory Opinion therefore strengthens the view that climate obligations cannot be interpreted in an abstract or

uniform manner detached from the structural inequalities that define the climate crisis.

The paper further stresses that differentiation remains a legal and structural feature of the climate regime. Developed countries – particularly those listed in Annexes I and II of the UNFCCC and Annex B of the Kyoto Protocol – continue to carry heightened legal obligations. These include taking the lead in mitigation and providing financial resources, technology transfer, capacity-building, and other forms of support to developing countries. The ICJ confirmed that the obligation of developed countries to provide climate finance under Article 9 of the Paris Agreement is legally binding, reflected in the use of the mandatory term “shall”, and that this obligation continues the earlier obligation under Article 4.3 of the UNFCCC. The level of finance required may be evaluated in light of both the capacity of developed States and the needs of developing States.

The Paris Agreement’s formulation of CBDR-RC “in the light of different national circumstances” adds a dynamic and contextual dimension to the principle, recognizing that development status and national circumstances may evolve over time. However, the paper stresses that this phrase does not erase the Annex-based differentiation established under the UNFCCC and Kyoto Protocol. Rather, the Paris Agreement must be read as adding nuance to, not replacing, the existing structure of differentiation. There is no formal multilateral mechanism under the climate treaties through which a developing country can be externally reclassified as a developed country or made subject to developed country obligations. Developing countries therefore retain the ability to self-assess and self-ascribe their development status and to set their ambition under their nationally determined contributions (NDCs) in good faith, consistent with CBDR-RC, due diligence, progression, sustainable development, and their national circumstances.

A key implication is that the due diligence standard applies differently across States. All Paris Agreement Parties must prepare, communicate, maintain, and progressively enhance their NDCs, and these must reflect their highest possible ambition in relation to the Paris temperature goals. However, the standard for assessing whether a State has exercised due diligence varies depending on historical contributions to cumulative greenhouse gas emissions, national circumstances, level of development, capacity, and support received. Developed countries face a more demanding standard because of their historical contributions, greater capabilities, and treaty-based obligations to provide support. Developing countries remain bound to act, but their obligations are calibrated according to their development needs, national capacities, and the extent to which finance, technology transfer, and capacity-building support are actually provided.

This provides developing countries with a strong legal basis to insist that enhanced climate ambition must be matched by the full, effective, predictable, and adequate delivery of means of implementation. It also supports the defence of policy space for sustainable development, poverty eradication, energy access, resilience, and economic transformation. In this sense, the Advisory Opinion reinforces the proposition that developing country obligations are not identical to developed country obligations; they are nationally determined, context-sensitive, and support-contingent obligations of conduct, to be assessed in light of equity and CBDR-RC.

The ICJ Advisory Opinion, Loss and Damage, and State Responsibility

The companion paper on loss and damage and State responsibility highlights that the Advisory Opinion marks a watershed moment by recognizing climate-change-caused loss and damage and situating it within the general law of State responsibility. The Court acknowledged that loss and damage arise from the adverse effects of climate change and that the risks and projected harms escalate with

every increment of global warming. This recognition is significant because it places loss and damage not only within the cooperative mechanisms of the Paris Agreement, but also within the broader framework of international legal responsibility.

The paper stresses that Article 8 of the Paris Agreement remains cooperative and facilitative and does not itself address liability or compensation. However, the ICJ did not treat Article 8 as a *lex specialis* (special law) that excludes the application of general rules on State responsibility. Accordingly, responsibility for breaches of climate treaty obligations and customary international law obligations, including in relation to loss and damage, is to be assessed under the well-established customary rules of State responsibility.

The Advisory Opinion makes clear that the internationally wrongful act is not greenhouse gas emissions as such. Rather, the wrongful act is the breach of applicable treaty or customary obligations relating to the protection of the climate system and other parts of the environment from significant harm. Such breaches may include failures to exercise due diligence; failures to prepare, communicate, maintain, or implement NDCs; failures to adopt or enforce domestic mitigation and adaptation measures; failures to conduct environmental impact assessments; failures to regulate public and private actors; failures to prevent significant transboundary harm; and failures to cooperate in good faith, including on finance, technology transfer, adaptation, and loss and damage.

The paper also emphasizes the Court's treatment of private actors. State responsibility may arise not because emissions by private actors are automatically attributable to the State, but because the State has its own due diligence obligation to regulate activities within its jurisdiction or control. This includes obligations to adopt legislation, administrative procedures, enforcement mechanisms, monitoring systems, and other measures capable of limiting emissions and preventing significant harm. The Advisory Opinion therefore has

implications for State conduct relating to fossil fuel production, consumption, licensing, subsidies, and regulation of corporate actors.

The remedial consequences of breach are also significant. A State responsible for an internationally wrongful act remains under a continuing duty to perform the obligation breached. It may also be required to cease the wrongful conduct, provide assurances and guarantees of non-repetition, and make full reparation where the conditions for reparation are met. Full reparation may include restitution, compensation, and satisfaction. For injured or specially affected States seeking compensation, causation and injury must be established, but the Advisory Opinion provides an important legal framework for doing so.

On causation, the companion paper highlights the Court's flexible two-stage approach. The first stage concerns whether a climatic event or harm can be attributed to anthropogenic climate change, which may often be addressed through scientific evidence, including findings by the Intergovernmental Panel on Climate Change (IPCC) and event-attribution science linking cumulative emissions to heatwaves, flooding, droughts, sea-level rise, and other harms. The second stage requires an *in concreto* assessment of the causal link between particular State conduct or emissions and the specific damage suffered by an injured State. While this remains legally and evidentially complex, the Court's approach confirms that climate harm is not inherently non-justiciable and provides a coherent roadmap for future claims.

The paper further underscores the collective enforcement dimension of the Advisory Opinion. Climate-related obligations are obligations *erga omnes* and *erga omnes partes*. This means that even States not specially injured may invoke responsibility for breaches of collective obligations, at least to seek cessation, guarantees of non-repetition, and continued performance of obligations in the interest of injured States or beneficiaries. Injured or specially affected States may seek full reparation where the applicable conditions are met.

CBDR-RC and equity are also integrated into the remedial framework. Developed countries, because of their historical responsibility, greater capacity, and specific treaty obligations, are subject to a more stringent standard of due diligence and bear heightened duties of cooperation, finance, and technology transfer. Failure by developed countries to fulfil these support obligations may itself constitute an internationally wrongful act, even without proof of specific damage to another State, thereby creating a legal basis for claims seeking cessation, guarantees of non-repetition, and performance of obligations. For developing countries, by contrast, the assessment of compliance and responsibility must remain context-sensitive and contingent on national circumstances, capacity, development needs, and the extent of support actually received.

Taken together, the two companion papers show that the Advisory Opinion strengthens both the equity architecture and the accountability architecture of international climate law. CBDR-RC ensures that obligations are interpreted and applied fairly, in light of historical responsibility, capabilities, development needs, and support. The law of State responsibility ensures that breaches of climate-related obligations may have legal consequences, including cessation, non-repetition, and reparation. This reinforces the view that loss and damage is not merely a matter of voluntary cooperation, humanitarian assistance, or political solidarity, but part of a broader legal architecture of responsibility, remedy, and accountability.

For developing countries, the combined implications are important. The Advisory Opinion provides a legal basis to continue to insist and stress that climate action, both under the UNFCCC/Paris Agreement framework and under other relevant international law, must be supported by finance, technology transfer, capacity-building, and an enabling international economic environment. It also strengthens arguments that developed countries' failures to mitigate adequately, regulate emissions, cooperate, and provide support may give rise to legal responsibility. At the same time, it safeguards the differentiated and nationally determined character of developing country

obligations by ensuring that their compliance is assessed in light of CBDR-RC, equity, capacity, and support received.

In this sense, the Advisory Opinion does not simply intensify climate obligations in the abstract. It clarifies that climate obligations must be implemented through a framework of international fairness, multilateral cooperation, and legal and political accountability and remedy. It strengthens the legal foundations for ambitious climate action but also reinforces the principle that ambition must be equitable, supported, and consistent with sustainable development.

VII. Next Steps

The next important step will be the preparation of the UN Secretary-General's report in 2027 on how to "advance compliance" with States' obligations in relation to the ICJ Advisory Opinion. That report could become a key reference point for future General Assembly discussions, UNFCCC negotiations, national policymaking, and climate litigation.

The resolution is also likely to strengthen the use of the Advisory Opinion in domestic and international courts, in arguments concerning State responsibility, due diligence, human rights, protection of the climate system, fossil fuel regulation, adaptation, loss and damage, and intergenerational equity. It may also influence discussions in other multilateral forums, including the UNFCCC, the WTO, UNCTAD, WHO, the human rights system, and international financial institutions. For example, it is highly likely that there will be States and other stakeholders that will push to have both the Advisory Opinion and the resolution or their substantive contents explicitly referred to in future UNFCCC decision texts, a move that could still be politically contentious in the UNFCCC context.

In practical terms, the resolution opens a new phase of legal and political contestation over how climate obligations should be implemented fairly. Its ultimate significance will depend on whether

States use it to deepen international cooperation, deliver finance and technology, support developing countries that are particularly vulnerable to the adverse effects of climate change, and strengthen accountability under the UNFCCC/Paris Agreement framework and other relevant international law, or whether it becomes another arena for geopolitical division.

VIII. Conclusion

The UN General Assembly resolution adopted on 20 May 2026 represents a major multilateral political endorsement of the ICJ Advisory Opinion on climate change. It confirms that the opinion is not merely a judicial statement, but part of a broader multilateral process to clarify, strengthen, and operationalize climate-related obligations under international law.

Its adoption by 141 votes in favour, against eight opposed and 28 abstentions, demonstrates broad international support for grounding climate action in law, justice, cooperation, and accountability. At the same time, the opposition and abstentions show that the most consequential questions – e.g., the role of fossil fuels in the global and national energy mix, historical responsibility, climate finance, reparations for loss and damage, and the distribution of transition burdens – remain deeply contested politically between States.

The resolution's importance therefore lies not only in welcoming the Advisory Opinion, but in opening a new phase for constructive multilateralism. It provides a political and legal opportunity to rebuild trust in international law, strengthen the UN system's response to climate change – especially through effective implementation of the UNFCCC and Paris Agreement – and insist that climate action must be urgent, legally grounded, equitable, and supported.

Endnotes

- ¹ The resolution was adopted at the 80th session of the General Assembly and will carry the symbol A/RES/80/[number], but as of 21 May 2026 the formal document has not yet been processed and posted to the UN Digital Library (this typically takes days to weeks after adoption). The current “L.65” draft that was voted upon and adopted by the General Assembly can be found here: <https://docs.un.org/en/A/80/L.65>. Once the adopted text with the official resolution number is available, it will appear at: UN Digital Library (search 80th session resolutions): https://digitallibrary.un.org/search?ln=en&cc=Voting%20Data&p=&f=&rm=&sf=year&so=d&rg=50&c=Voting%20Data&fct_2=General%20Assembly; see also UN press coverage of the adoption (UN News): <https://news.un.org/en/story/2026/05/1167561>
- ² UNGA Resolution 77/276 (29 March 2023), Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change, at <https://digitallibrary.un.org/record/4008332>; https://digitallibrary.un.org/record/4008332/files/A_RES_77_276-EN.pdf
- ³ ICJ Advisory Opinion (23 July 2025), Obligations of States in Respect of Climate Change – ICJ Case No. 187, at <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>; the summary can be found here: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-sum-01-00-en.pdf>
- ⁴ The zero draft was circulated by the Government of Vanuatu directly to UN Member States and shared informally ahead of consultations on 13 and 17 February 2026. It was not formally issued with a public UN document symbol at that stage. See, e.g., Climate Home News citing the text, at <https://www.climatechangenews.com/2026/02/09/vanuatu-pushes-new-un-resolution-demanding-full-climate-compensation/>; and World’s Youth for Climate Justice on the background and timeline of the draft, at <https://www.wy4cj.org/unga-resolution>
- ⁵ For an account of the negotiations leading to the adoption of the resolution, see, e.g., Wewerinke-Singh, M (2026), From Opinion to Action: The General Assembly Votes to Operationalize the ICJ’s Climate Advisory Opinion (EJIL:Talk!, 22 May 2026), at <https://www.ejiltalk.org/from-opinion-to-action-the-general-assembly-votes-to-operationalize-the-icjs-climate-advisory-opinion/>
- ⁶ Rowlands, L (2026), US pressures Vanuatu at UN over ICJ’s landmark climate change ruling (Al Jazeera, 14 February 2026), at <https://www.aljazeera.com/news/2026/2/14/us-pressures-vanuatu-at-un-over-icjs-landmark-climate-change-ruling>; Amiri, F et al., Trump administration urges nations to call for the withdrawal of a UN climate proposal (AP News, 13 February 2026), at <https://apnews.com/article/un-resolution-climate-international-court-justice-trump-31f4164aebd2b7bf8b9b4d1c89af9f50>; *The Guardian* (2026), UN

backs historic climate crisis ruling, despite US attempts to stop resolution (21 May 2026), at <https://www.theguardian.com/environment/2026/may/21/un-vote-support-icj-world-court-climate-change-opinion>

⁷ The official voting record for the 20 May 2026 plenary is contained in the meeting record of the 80th session General Assembly plenary at which the vote was taken. It will be formally published as part of the Official Records of the General Assembly (GAOR), 80th session. The vote breakdown (141 in favour, 8 against – Belarus, Iran, Israel, Liberia, Russia, Saudi Arabia, United States, Yemen – and 28 abstentions) is confirmed in the UN News report at <https://news.un.org/en/story/2026/05/1167561>

⁸ See, e.g., the explanations of vote of the European Union, at https://www.eeas.europa.eu/delegations/un-new-york/eu-statement-un-general-assembly-resolution-advisory-opinion-international-court-justice-obligations_en; New Zealand, at <https://www.mfat.govt.nz/en/media-and-resources/new-zealand-explanation-of-vote-on-un-general-assembly-resolution-on-icj-climate-change-advisory-opinion>; Philippines, at <https://www.facebook.com/PHMissionNY/posts/-ph-welcomes-the-adoption-of-the-un-general-assembly-resolution-on-the-advisory-/1418389720325775/>; China, at <https://www.facebook.com/chineseembassyinvanuatu/posts/on-20-may-2026-china-voted-in-favour-of-the-un-general-assembly-resolution-on-th/1024942716879669/>

⁹ See the explanation of vote of the United States, at <https://usun.usmission.gov/explanation-of-vote-on-a-un-general-assembly-resolution-entitled-advisory-opinion-of-the-international-court-of-justice-on-the-obligations-of-states-in-respect-of-climate-change>

¹⁰ See White House (2025), Putting America First in International Environmental Agreements (20 January 2025), at <https://www.whitehouse.gov/presidential-actions/2025/01/putting-america-first-in-international-environmental-agreements/>; White House (2026), Memorandum for the Heads of Executive Departments and Agencies: Withdrawing the United States from International Organizations, Conventions, and Treaties that Are Contrary to the Interests of the United States (7 January 2026), at <https://www.whitehouse.gov/presidential-actions/2026/01/withdrawing-the-united-states-from-international-organizations-conventions-and-treaties-that-are-contrary-to-the-interests-of-the-united-states/>

¹¹ See, e.g., the explanations of vote of South Africa, at <https://dirco.gov.za/explanatory-note-on-the-united-nations-general-assembly-unga-resolution-international-court-of-justice-icj-advisory-opinion-on-the-obligations-of-states-in-respect-of-climate-change/>; India, at <https://www.thehindu.com/news/national/india-abstains-on-unga-resolution-on-icj-climate-opinion/article71005299.ece>

**The Principle of Common But Differentiated
Responsibilities and Respective Capabilities under
the ICJ Advisory Opinion on International Law
Obligations in Respect of Climate Change**

Executive Summary

On 23 July 2025, the International Court of Justice (ICJ) issued its Advisory Opinion on Obligations of States in Respect of Climate Change (requested by UNGA Resolution 77/276, March 2023). The Court confirmed that States have binding climate obligations under multilateral treaties (UNFCCC, Kyoto Protocol, Paris Agreement), customary international law, and related regimes (e.g., biodiversity, desertification, human rights law). Breaches constitute internationally wrongful acts, triggering duties of continuing performance of the obligation breached, cessation of the action in breach, no repetition thereof, and reparation.

The principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) is a cardinal principle of the climate regime, guiding interpretation of treaties and customary law. It embodies equity by considering historical emissions, capacities, and national circumstances. There continue to be differentiated obligations in relation to climate change: developed countries (listed under Annexes I and II of the UNFCCC, and Annex B of the Kyoto Protocol) have heightened obligations – lead in mitigation, provide finance, technology transfer, and capacity building to developing countries – developing countries have common obligations but their level of action is shaped by capacity, support received, and national circumstances. The phrase “in the light of different national circumstances” with respect to CBDR-RC in the Paris Agreement recognizes that development status is dynamic but does not erase existing Annex-based differentiation. This implies that the due diligence standard applied by the ICJ applies differently to developed and developing countries. Developed countries face a more demanding standard in mitigation, adaptation, and support; developing States’ obligations are calibrated to capacity and support received. Customary international law duties to prevent transboundary harm and to cooperate also apply to climate change, with CBDR-RC informing the level of effort expected from each State.

Differentiation of obligations based on development status under the climate change regime is both list-based and contextual. Under the UNFCCC and Kyoto Protocol, “developed” is defined by Annexes; the Paris Agreement adds a self-assessed and self-ascribed element without formal reclassification processes. Under the Paris Agreement, developing countries self-assess and self-determine their own NDC ambition in good faith, consistent with CBDR-RC and due diligence; there is no mechanism for externally reclassifying them as “developed”, although the ICJ made clear that all Parties must enhance NDC ambition over time, with historical responsibility and capacity shaping expectations as far as developing countries are concerned.

For developing countries, the Advisory Opinion affirms differentiation as a legal and not voluntary feature of climate law and the basis for obligations and consequent demands for finance, technology, and capacity building from developed countries. Developing countries retain the right to define their climate change action ambition in line with their development needs and capacity, without automatic escalation of obligations unless self-assigned. In affirming differentiation, the ICJ recognizes sustainable development as a guiding principle for interpreting climate obligations, linking climate action with poverty eradication and economic growth priorities of developing countries.

The ICJ reaffirmed CBDR-RC as a binding, equity-based principle central to treaty and customary climate law. Developed countries carry greater legal duties, while developing countries’ actions are nationally determined within this framework. The Advisory Opinion strengthens the legal foundation for differentiation, sustainable development integration, and developed country support obligations – providing a strong basis for developing countries’ positions in negotiations and implementation.

I. Introduction

On 23 July 2025, the International Court of Justice (ICJ) delivered its Advisory Opinion on Obligations of States in Respect of Climate Change (AO),¹ pursuant to the request of the United Nations General Assembly for such an advisory opinion under its resolution 77/276 of March 2023.

The proceedings before the ICJ in relation to the AO highlighted the varying approaches taken by States with respect to such obligations under international law. These proceedings gave the ICJ a significant opportunity to clarify the state of international law with respect to the obligations of States to address and combat climate change, the legal bases for and the actions to be undertaken by States in fulfilment of such obligations, and the legal relationship between such climate-change-related obligations and other State obligations under international law, such as those relating to human rights and customary law, including the right to development.

II. Highlights of the ICJ's Conclusions in Its Advisory Opinion

In its AO, the ICJ unanimously opined that States carry binding obligations in respect to climate change under international law, grounded in multilateral climate treaties (UNFCCC, Kyoto Protocol, Paris Agreement),² customary international law,³ and other relevant international law regimes such as the ozone layer treaties,⁴ the UN Convention on the Law of the Sea,⁵ the biodiversity convention,⁶ the desertification convention,⁷ and international human rights law.⁸ In doing so, the ICJ clearly held that the climate change treaties do not constitute *lex specialis* that would exclude other rules of international law being made applicable to climate change obligations.⁹

The ICJ also unanimously opined that a breach by a State of these climate-change-related international law obligations “constitutes an internationally wrongful act entailing the responsibility of that State. The State responsible is under a continuing duty to perform the obligation breached. The legal consequences resulting from the commission of an internationally wrongful act may include the obligations of: (a) cessation of the wrongful actions or omissions, if they are continuing; (b) providing assurances and guarantees of non-repetition of wrongful actions or omissions, if circumstances so require; and (c) full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and injury.”¹⁰

III. The ICJ’s Interpretation and Application of the Principle of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC)

For many developing countries and observers, of particular interest are the ICJ’s views with respect to the interpretation and application of the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) in regard to international climate-change-related obligations. How would the ICJ’s treatment of this principle affect developing countries’ obligations under international law in respect of climate change, especially in relation to their obligations under the climate change treaties? The AO discussed this in several paragraphs, notably within the broader analysis of applicable law and State obligations under climate treaties and customary international law.

As a Foundational Principle

The ICJ characterized CBDR-RC as “a core guiding principle for the implementation of the climate change treaties” and said that it “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 [greenhouse gas] emissions, and their different current capabilities and national circumstances, including their economic and social development”. It noted that the principle “is a manifestation of the principle of equity ... and guides the interpretation of obligations under international environmental law beyond its express articulation in different treaties The principle of common but differentiated responsibilities and respective capabilities does not establish new obligations but is relevant for the interpretation of treaties and the determination of rules of customary law relating to the environment.”¹² The ICJ stressed that the principle is a “cardinal principle of the climate change treaty framework, which is incorporated in several provisions of the climate change treaties”.¹³

In its analysis of the obligations of States under the climate change treaties, the ICJ looked at various treaty provisions from the perspective of the application of CBDR-RC.¹⁴

Under the UNFCCC, there are common legally binding mitigation obligations applicable to all UNFCCC Parties and specific legally binding mitigation obligations of Annex I Parties;¹⁵ common obligations relating to adaptation and specific obligations for Annex II Parties on adaptation assistance;¹⁶ a common obligation with respect to cooperation in different areas¹⁷ and certain obligations for developed countries listed in Annex II of the UNFCCC “to provide financial assistance, technology transfers and other forms of support to developing country parties, especially those countries that are particularly vulnerable to the adverse effects of climate change, to assist them in meeting their commitments under the UNFCCC”.¹⁸

The Kyoto Protocol itself “concretized certain obligations under the UNFCCC by requiring quantified emission reduction commitments for Annex I parties listed in Annex B of the Protocol”.¹⁹

With respect to the Paris Agreement, the ICJ noted in particular that Article 2 of the Agreement states that “[t]his Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances”, and that “[t]here are several references to the principle of common but differentiated responsibilities and respective capabilities in the Agreement, indicating the key role that the principle plays in the interpretation of the provisions of the Agreement However, it is observed that this principle, which also features in the Framework Convention and COP decisions, has been formulated differently in the Paris Agreement through the addition of the phrase ‘in the light of different national circumstances’. In the view of the Court, the additional phrase does not change the core of the principle of common but differentiated responsibilities and respective capabilities; rather, it adds nuance to the principle by recognizing that the status of a State as developed or developing is not static. It depends on an assessment of the current circumstances of the State concerned. The use of the terms ‘will be implemented to reflect’ in Article 2 generates an expectation that the Paris Agreement will be implemented by the parties in a manner that will reflect their common but differentiated responsibilities and respective capabilities in the light of different national circumstances.”²⁰ The ICJ further noted that “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.”²¹

The ICJ then applied the principle of CBDR-RC to the common obligation of all Paris Agreement Parties to prepare and communicate

NDCs by stating that “consistent with the varying character of due diligence and the principle of common but differentiated responsibilities and respective capabilities, the standard to be applied when assessing the NDCs of different parties will vary depending, *inter alia*, on historical contributions to cumulative GHG emissions, and the level of development and national circumstances of the party in question. ... due diligence ‘calls for an assessment *in concreto*’ and may vary depending on the circumstances of the State in question and its capacity to influence the salient acts or events There thus exists a link between the concept of due diligence and the principle of common but differentiated responsibilities and respective capabilities in light of different national circumstances”²² The ICJ highlighted that Article 4.4 of the Paris Agreement confirms the application of CBDR-RC to NDCs, under which “developed country parties ‘should continue taking the lead by undertaking economy-wide absolute emission reduction targets’, whereas developing country parties are expected to ‘continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances’”.²³

The ICJ also gave its views with respect to other differentiated obligations of developed countries under the Paris Agreement. For example, the ICJ observed that the Paris Agreement “establishes obligations for developed States to provide financial resources to developing States, for both mitigation and adaptation” (and referred to Articles 4.5 and 9 of the Paris Agreement), and stressed that Article 9 of the Paris Agreement provides that “[d]eveloped country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation’. The use of the term ‘shall’ to introduce the obligation indicates the legally binding character of that provision. Moreover, the phrase ‘in continuation of their existing obligations under the Convention’ is to be interpreted as a restatement of the obligation of developed country parties to provide financial resources to developing country parties, as stipulated in Article 4, paragraph 3, of the Framework

Convention.”²⁴ The ICJ noted that the level of climate finance to be provided by developed countries “can be evaluated on the basis of several factors, including the capacity of developed States and the needs of developing States”.²⁵

The ICJ’s discourse on this point shows that developed countries have a legal obligation to support developing countries (e.g., via finance and technology) precisely because of differences in capacities and development status. This obligation to cooperate is shaped by what is feasible and expected from States based on their level of development, giving rise to the implication that developed countries are expected to do more (e.g., “take the lead” in mitigation and to provide support to developing countries), while developing countries’ obligations and actions are shaped by their need for support and their limited capacity to act due to resource constraints.

In relation to the duty to prevent significant transboundary environmental harm under customary international law,²⁶ the ICJ held that this principle of international law “also applies to the climate system”.²⁷ In this connection, the ICJ also held that States have the “duty to prevent significant harm to the environment by acting with due diligence ... a standard of conduct whose content in a specific situation derives from various elements, including the circumstances of the State concerned, and which may evolve over time”.²⁸

To fulfil this duty, a State must act with due diligence²⁹ to “use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State”.³⁰ These means include rules and measures to reduce GHG emissions or undertake adaptation and must regulate the conduct of public and private actors within the States’ jurisdiction or control accompanied by effecting enforcement and monitoring mechanisms to ensure implementation.³¹ Due diligence would also require States “to actively pursue the scientific information necessary for them to assess the probability and seriousness of harm, in conformity with the common but differentiated

responsibilities and respective capabilities principle”,³² and take into consideration relevant international rules and standards.³³

The ICJ stressed that the customary international law obligation of a State “‘to use all the means at its disposal’ to prevent significant harm to the environment ... implies that the capabilities of a State are a key factor, as reflected in the principle of common but differentiated responsibilities and respective capabilities, for the determination of the applicable standard of due diligence in a particular situation. In the view of the Court, when determining the appropriate measures to be adopted by a State, the principle of common but differentiated responsibilities and respective capabilities must be taken into account.”³⁴ The ICJ noted that the principle of CBDR-RC “is implicit in many rules of international environmental law”.³⁵

In applying the principle of CBDR-RC to the customary international law obligation to prevent significant transboundary environmental harm as it applies to climate change, the ICJ said that “[w]hile developed States, in the context of climate change, must take more demanding measures to prevent environmental harm and must satisfy a more demanding standard of conduct, the standard required in each case ultimately depends on the specific situation of each State, namely ‘all the means at its disposal’ The difference between the respective capabilities of States, as one of the factors which determines the diligence required, cannot therefore merely result from a distinction between developed and developing countries, but must also depend on their respective national circumstances. The multifactorial and evolutive character of the due diligence standard entails that, as States develop economically and their capacity increases, so too are the requirements of diligence heightened. Finally, the reference to available means and capabilities cannot justify undue delay or a general exemption from the obligation to exercise due diligence.”³⁶

The ICJ also opined that the duty of States to cooperate for the protection of the environment constitutes a customary norm of

international law.³⁷ It held that “the specific character of climate change requires States to take individual measures in co-operation with other States. ... The duty to co-operate requires sustained and continuous forms of co-operation, of which treaties and their coordinated forms of implementation are a principal expression.”³⁸ Under this duty to cooperate with respect to climate change, the principle of CBDR-RC is applicable, as the ICJ noted in stating that “the duty to co-operate leaves States some discretion in determining the means for regulating their GHG emissions. ... The duty to co-operate is founded on the recognition of the interdependence of States, requiring more than the transfer of finance or technology, in particular efforts by States to continuously develop, maintain and implement a collective climate policy that is based on an equitable distribution of burdens and in accordance with the principle of common but differentiated responsibilities and respective capabilities.”³⁹

Based on its discourse on and application of the principle of CBDR-RC to the interpretation of the climate change treaties and customary law in relation to climate change, the ICJ shows that this principle is a foundational norm in international law as applied to climate change. It is applied:

- Substantively: in shaping and interpreting treaty obligations (e.g., on mitigation, adaptation, support).
- Procedurally: in evaluating standards like due diligence.
- Equitably: recognizing the developmental asymmetries between States.

Development Status As a Key Element of CBDR-RC

The ICJ’s approach to the principle of CBDR-RC shows that development status is embedded into the legal logic of how obligations are created, assessed and implemented with respect to international law in relation to climate change, including the climate change treaties and customary international law. The ICJ explicitly

affirms that the development status of States is a legally relevant factor in:

- Determining the stringency and scope of due diligence obligations arising from the various treaty and customary law obligations of conduct and result;
- Shaping the form and content of NDCs under the Paris Agreement;
- Defining the responsibilities of developed countries to provide support to developing countries under the UNFCCC and its Paris Agreement.

For the ICJ, “the compliance of parties with their obligations of conduct under the Paris Agreement is assessed on the basis of whether the party in question exercised due diligence and employed best efforts by using all the means at its disposal in the performance of that obligation”.⁴⁰ For example, with respect to the obligation to prepare and communicate NDCs under the Paris Agreement, the ICJ noted that “the discretion of parties in the preparation of their NDCs is limited. As such, in the exercise of their discretion, parties are obliged to exercise due diligence and ensure that their NDCs fulfil their obligations under the Paris Agreement ...”,⁴¹ with the ICJ further clarifying that “[i]n the current context, because of the seriousness of the threat posed by climate change, the standard of due diligence to be applied in preparing the NDCs is stringent ... each party has to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement”.⁴²

In doing so, the ICJ makes clear that the development status of States is not static and may evolve over time in accordance with changes in their national circumstances, including economic and technological progress. This dynamic character must be taken into account when assessing States’ capabilities and responsibilities under international environmental law, including the application of due diligence

standards with respect to the implementation of States' obligations in respect to climate change.⁴³

Identifying Developing and Developed Countries under the Multilateral Climate Change Regime

The ICJ sees development status and its linkage to historical contributions to cumulative GHG emissions as falling within a spectrum (from least developed to developed).⁴⁴ In the ICJ's words, "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."⁴⁵

Under the UNFCCC and its Paris Agreement, there are broadly two main categories of States categorized according to their development status, to wit: developing countries and developed countries.⁴⁶ Among developing countries, there are further sub-categorizations such as least developed countries and small island developing States.⁴⁷

Under the UNFCCC, a textual list-based approach was taken under which the category of "developed countries" is generally understood as referring to the States that are listed in Annexes I and II thereof,⁴⁸ with all other countries not so listed then being generally considered

as “developing countries”.⁴⁹ This textual list-based approach was also adopted in Annex B of the Kyoto Protocol.⁵⁰

But the Paris Agreement did not use such an approach to explicitly define which countries are “developed” and which are “developing”, relying instead on the general understanding and use of the terms “developed countries” and “developing countries” under the UNFCCC and the Kyoto Protocol to create the needed “developed country” and “developing country” distinctions among Parties under the Paris Agreement.

The lack of a listing in the Paris Agreement that explicitly identifies the countries to which developed country obligations apply therefore does not mean a lack of differentiation between States under the Agreement, because it does not erase the prior categorizations under the UNFCCC and the Kyoto Protocol. Indeed, as the ICJ has pointed out, these treaties co-exist and are mutually supportive, with the Kyoto Protocol and Paris Agreement providing more detail to the general provisions of the UNFCCC.

The Paris Agreement should hence be read as adding a self-assessment and self-ascription model with respect to development status for developing countries, while not negating the existing multilateral textual list-based ascription of developed country status to those countries listed in Annexes I or II of the UNFCCC.

This is important because the ICJ makes a distinction between how the UNFCCC applies the principle of CBDR-RC and how it is applied under the Paris Agreement. The ICJ observed that “this principle, which also features in the Framework Convention and COP decisions, has been formulated differently in the Paris Agreement through the addition of the phrase ‘in the light of different national circumstances’. In the view of the Court, the additional phrase does not change the core of the principle of common but differentiated responsibilities and respective capabilities; rather, it adds nuance to the principle by recognizing that the status of a State as developed or

developing is not static. It depends on an assessment of the current circumstances of the State concerned.”⁵¹

It means that in the interpretation and application of the principle of CBDR-RC under the Paris Agreement, there is now a more dynamic and contextual approach under which an assessment would have to be made with respect to the circumstances of the Party concerned for purposes of saying whether the Party is a developed or a developing country, in addition to the textual list-based approach of identifying developed countries under the UNFCCC.

However, there is no formal or official mechanism or process under the Paris Agreement under which a developing country – i.e., a Party that is not listed under Annex I or II of the UNFCCC or Annex B of the Kyoto Protocol – could be multilaterally assessed and categorized as a “developed country”.

This means therefore that as far as development status categorization is concerned for purposes of the assumption and implementation of obligations in relation to climate change under the climate change treaties, States have to continue to rely on approaches that currently exist under these treaties, i.e., the textual list-based approach of the UNFCCC and Kyoto Protocol as extended to the Paris Agreement, to determine that “developed countries” under the Paris Agreement are the “developed countries” referred to in Annexes I and II of the UNFCCC and Annex B of the Kyoto Protocol.

The ICJ points us in this direction when it stated with respect to the interrelationship between the three climate change treaties (the UNFCCC, Kyoto Protocol, and Paris Agreement) that “there is no incompatibility ... they are mutually supportive, with the Kyoto Protocol and Paris Agreement providing greater specification to the general obligations contained in the UNFCCC ... the subsequent decisions by the parties – including decisions adopting protocols and agreements [such as the Kyoto Protocol and the Paris Agreement] under the UNFCCC – are intended to interpret or give substance

to obligations in the UNFCCC, and not to abrogate or to modify them.”⁵²

The ICJ thus confirms that developed countries’ specific differentiated obligations under the climate change treaties and customary international law must still guide climate policymaking and negotiations. This means the States listed in the UNFCCC’s Annexes I and II or in Annex B of the Kyoto Protocol are “developed countries” that continue to be subject to and must comply with their specific differentiated obligations that are different from those applicable to developing countries. The ICJ also noted that developed countries have a duty to cooperate in providing support to developing countries under the Paris Agreement, with the provision of finance, in particular, being a continuation of their obligation to do so under Article 4.3 of the UNFCCC.⁵⁴

Under the Paris Agreement, particularly with respect to the obligation to prepare and communicate NDCs capable of realizing the objectives of the Agreement,⁵⁵ the ICJ held that the obligation applies to all Paris Agreement Parties but would be subject to the application of the principle of CBDR-RC under which, as provided in Article 4.4 of the Paris Agreement, developed countries “should continue taking the lead by undertaking economy-wide absolute emission reduction targets” while developing countries are expected to “continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances”.⁵⁶ The ICJ thus clearly reinforces the burden-sharing design of the multilateral climate change treaty regime: developed countries (i.e., those listed under the UNFCCC’s Annexes) bear greater legal obligations, particularly regarding leadership in emissions reduction and provision of financial and technological support, with such obligations continuing under the Paris Agreement, while developing countries assume obligations that are subject to the application of the principle of CBDR-RC.

The ICJ's interpretation of the UNFCCC's Annex-based differentiation and the evolving application of CBDR-RC under the climate change treaties provides strong legal and normative backing for developing country positions in the UNFCCC negotiations. The opinion highlights that the UNFCCC Annexes and their relationship to certain obligations applicable only to developed countries (e.g., to take the lead in mitigation and to provide climate finance and technology transfer to developing countries) are formal expressions of CBDR-RC embedded in treaty law. This means that the way in which the UNFCCC reflected the principle of CBDR-RC (for example, in the set of common as well as differentiated commitments under Article 4 thereof) is not simply a historical artifact but is a continuing legal standard that continues to bear legal significance in directly imposing higher obligations on developed countries under the UNFCCC and the continuation of such obligations under the Paris Agreement. This further means that developing countries that have not voluntarily assumed developed-country-like roles under the Paris Agreement continue as such based on their self-assessment of their own level of capability and development status.

The ICJ made clear, however, that the standard of due diligence to be applied by Paris Agreement Parties with respect to the content of their NDCs, rather than being entirely discretionary for Parties, requires that these Parties have to ensure that their NDCs “must become more demanding over time”⁵⁷ and reflect the “highest possible ambition ... capable of making an adequate contribution to the achievement of the [Paris Agreement's] temperature goal”.⁵⁸ However, as the ICJ points out, “consistent with the varying character of due diligence and the principle of common but differentiated responsibilities and respective capabilities, the standard to be applied when assessing the NDCs of different parties will vary depending, *inter alia*, on historical contributions to cumulative GHG emissions, and the level of development and national circumstances of the party in question”.⁵⁹

Self-Assessment and Self-Ascription of Development Status for Developing Countries under the Paris Agreement

Under the Paris Agreement, there is no *a priori* system for determining what each Party's NDC should contain or for assessing the adequacy of each Party's NDC vis-à-vis the standard of due diligence discussed by the ICJ. It is up to each Party to decide what to put into its NDC subject to certain guidelines.⁶⁰ It would hence be up to each Party to decide how it can reflect in its current or forthcoming NDCs the standard of due diligence discussed by the ICJ with respect to the content of such NDCs. Of course, this means that developed countries (i.e., those listed under the UNFCCC's Annexes or the Kyoto Protocol's Annex B) have a more stringent standard of due diligence to comply with as compared to developing countries.

Also, it is up to each Party to self-assess and report what it feels it has achieved regarding its NDC.⁶¹ Under the Paris Agreement's Enhanced Transparency Framework (ETF), the technical expert review teams that review the biennial transparency reports submitted by Parties to report on progress in achieving their NDCs are not allowed to make political judgments, review the adequacy or appropriateness of the NDC, the adequacy of domestic actions, or the decision to use flexibility.⁶² Neither can the facilitative, multilateral consideration of progress (FMC) process under the ETF be used to assess the adequacy of the party's NDC as its scope is quite circumscribed and does not allow for such assessment.⁶³ The global stocktake (GST) process under Article 14 of the Paris Agreement also cannot be used to make a multilateral assessment of each Party's development status, including with respect to what obligations a Party should assume under the Paris Agreement due to its development status, since the GST is an assessment of collective progress towards achieving the purpose of the Paris Agreement and its long-term goals; in fact, the modalities for the GST explicitly state, *inter alia*, that it "should ... have no individual Party focus ...".⁶⁴

The ICJ thus implicitly confirms that under the Paris Agreement, States determine their own level of ambition for their NDCs based on their own assessment of capabilities, with developed countries (those listed in the UNFCCC's Annexes) being expected to do more. There is no suggestion in the Paris Agreement that developing countries are automatically elevated to a higher tier of obligations unless they voluntarily do so through more ambitious NDCs. The ICJ notes that development status is "not static",⁶⁵ but it does not create a presumption of increased obligations unless capabilities have demonstrably changed. There is no current multilateral legal mechanism under the climate change treaties that enables the recategorization of a developing country to being a developed country.

There being no formal or official multilateral process for assessing the compliance of the content of NDCs with the standard of due diligence under the Paris Agreement as outlined by the ICJ, it would hence have to be up to each State to undertake such an assessment by itself in good faith, taking into account its own national circumstances, level of development, historical contributions to cumulative GHG emissions, and such other factors as it deems relevant. This implies that as far as the designation of development status is concerned, for developing countries, such status would be self-ascribed – i.e., it would be up to each country to decide whether and when, given its national circumstances, capacities, level of development, etc., it wishes to consider itself to be a developed country and have other countries also consider it as such.

In the context of the climate change treaties, such self-ascription by a developing country to developed country status could come in the form of asking under Article 15 of the UNFCCC to be inscribed into Annexes I or II of the UNFCCC⁶⁶ or self-declaring that the country will assume the obligations of developed countries under the Paris Agreement.

Conversely, however, self-ascription with respect to developed country status under the climate change treaties could also run the other way – i.e., a developed country listed in Annexes I or II of the UNFCCC or Annex B of the Kyoto Protocol could ask to be deleted from these lists.⁶⁷ Although development status can evolve, this does not undo the multilaterally agreed legal status of countries listed under these Annexes. Rather, it may increase their obligations over time under the Paris Agreement. In fact, the ICJ does not suggest that developed countries can re-assess themselves and “self-reclassify” out of their specific differentiated obligations under the UNFCCC.

The ICJ makes clear that applying the principle of CBDR-RC implies that any assessment of a State’s obligations in respect of climate change – whether under treaty law or customary international law – must take into account its development status, capabilities, and national circumstances, as well as its obligations under the climate treaties and customary international law.⁶⁸ This assessment is not merely rhetorical; it is central to determining the content, scope, and standard of performance of a State’s climate obligations.

Based on the Advisory Opinion, the assessment is primarily a nationally determined exercise, albeit having some normative boundaries shaped by the obligations contained in the climate change treaties and customary international law in relation to the environment. For example, the ICJ recognizes that under Article 4 of the Paris Agreement, States have an obligation of result to prepare, communicate, and maintain NDCs. The content of those NDCs is left to national discretion, but this discretion is bound by:⁶⁹

- The purpose of the Paris Agreement (i.e., limiting warming to 1.5°C or well below 2°C),
- The principle of CBDR-RC, in the light of different national circumstances,
- The requirement of progression and highest possible ambition.

For each State to then self-determine whether its NDC complies with its obligations under the Paris Agreement, a context-specific assessment is required under which the State evaluates its financial and institutional capacity, access to technology, scientific and technical knowledge, overall socioeconomic development level, its development priorities, domestic capacity to mitigate and adapt, contribution to historical emissions, and other relevant factors that shape and influence what it would nationally determine as its reasonable or appropriate contribution and action under the due diligence standard applicable under the Paris Agreement as well as under customary international law.

Hence, any assessment of a State's obligations in respect of climate change or its compliance with such obligations, in the ICJ's view, should be based on a nuanced evaluation of its development status, level of capacity, historical contributions to cumulative GHG emissions, and other relevant factors, while also taking into account and reflecting the common as well as differentiated obligations of States that are Parties to the UNFCCC, the Kyoto Protocol, and the Paris Agreement. This includes:

- Adjusting the due diligence standard for obligations like mitigation, adaptation, provision of support, and cooperation, in light of the common as well as differentiated obligations under the climate change treaties and customary international law;
- Interpreting NDC content and ambition under the Paris Agreement in light of a State's economic and institutional capabilities;
- Determining differentiated responsibilities in international cooperation, especially for finance and technology, particularly of developed countries to support developing countries.

This approach operationalizes the principle of CBDR-RC and reinforces the legal requirement of differentiation, not as an exception, but as a foundational aspect of international climate law. This reflects a text-based as well as contextual approach to defining State responsibility in relation to climate change as the approach taken in understanding the interpretation and application of the principle of CBDR-RC.

IV. Conclusion

The Paris Agreement did not end the clear developed-developing country differentiation embedded in the UNFCCC and Kyoto Protocol. Instead, differentiation is embedded in the structure of NDCs and in finance, adaptation, and support obligations. In its nuanced reaffirmation of the principle of CBDR-RC under the Paris Agreement, the ICJ makes clear that the obligations of developed countries under the UNFCCC continue to subsist as the fundamental basis for their climate obligations, on top of which they would have additional obligations under the Paris Agreement. For developing countries, the nuance lies in how they assess the level of, and carry out, their obligations under the Paris Agreement, e.g., preparing, communicating and maintaining NDCs, in a dynamic and context-sensitive manner that reflects their self-assessment of their national circumstances, capacities, and other relevant factors.

The ICJ's Advisory Opinion provides a clear legal and structural basis for distinguishing self-differentiation for developing countries under the Paris Agreement from multilaterally agreed textual list-based differentiation for developed countries under the UNFCCC.⁷⁰ Differentiation remains a legal and structural feature of the regime, not merely a political or voluntary one. Applying the ICJ's "mutually supportive" approach vis-à-vis the legal relationship between the UNFCCC, Kyoto Protocol, and Paris Agreement and the obligations contained in these treaties, together with the ICJ's text-based yet contextual approach in applying the principle of CBDR-RC to

developed and developing States' differentiated obligations under these treaties, the following conclusions come out:

- Developed countries listed in Annexes I and II of the UNFCCC and Annex B of the Kyoto Protocol continue to be subject to their CBDR-RC-based differentiated obligations (with respect to mitigation, adaptation, provision of support, and reporting) thereunder. Developed countries' status as such, with their corresponding specific differentiated obligations, was determined multilaterally under the UNFCCC through the textual list-based approach seen in the Annexes, and this continues to apply under the Paris Agreement, imposing heightened obligations.
- Developing countries – i.e., those States that are not listed in the UNFCCC's Annexes or in Annex B of the Kyoto Protocol – are subject to the common obligations under the UNFCCC and the Paris Agreement. Developing countries operate under a regime of nationally determined obligations based on self-ascribed “national circumstances”, consistent with CBDR-RC under both the UNFCCC and the Paris Agreement.
- For both developed and developing countries, their obligation with respect to the content of their NDCs under the Paris Agreement is to make sure that their NDCs “must become more demanding over time”⁷¹ and reflect the “highest possible ambition ... capable of making an adequate contribution to the achievement of the [Paris Agreement's] temperature goal”,⁷² while recognizing that “the NDCs of different parties will vary depending, *inter alia*, on historical contributions to cumulative GHG emissions, and the level of development and national circumstances of the party in question”.⁷³
- Developed countries listed in Annexes I or II of the UNFCCC or Annex B of the Kyoto Protocol, in addition to their differentiated obligations thereunder, would also have additional differentiated obligations under the Paris Agreement that point to a more stringent standard of due diligence for them with respect to their implementation of such obligations – i.e.,

to take the lead in preparing and communicating progressively more ambitious NDCs, including economy-wide mitigation measures that go beyond what they had committed to under the UNFCCC and/or Kyoto Protocol, and in providing additional support to developing countries beyond what they had been providing under the UNFCCC.

- It is up to each developing country Party under the Paris Agreement to self-ascribe what its development status is and what the attendant obligations are that it would be assuming for which such status would be relevant, taking into account its national circumstances and other factors, provided that it complies in good faith with the common obligations for all Parties under the Paris Agreement, including meeting the standard of due diligence with respect to the content of NDCs as discussed by the ICJ taking into account the principle of CBDR-RC as applied under the Paris Agreement.

The ICJ's Advisory Opinion provides developing countries with a strong legal basis to insist on higher ambition and support from developed countries, while asserting the legitimacy of self-differentiation by developing countries for their own contributions. It does not impose higher climate change obligations on developing countries that have not self-described themselves as developed countries. The Court carefully respects the principle of CBDR-RC and emphasizes that differentiation in obligations remains a cornerstone of international climate law. It explicitly affirms that the determination of obligations is based on capabilities, national circumstances, and legal classifications, and does not arbitrarily impose equal or heightened obligations on developing countries unless they themselves assume them.

The ICJ's Advisory Opinion hence provides a juridical affirmation of the principle of CBDR-RC, equity, and support obligations (of developed countries) in respect of climate change. Developing countries can cite these findings to push back against developed countries' arguments to eliminate differentiation between developed

and developing countries under the climate change treaties; call for stronger financial and technology transfer commitments from developed countries; and defend their right to development and policy space under the multilateral climate regime.

The ICJ's approach to the interpretation and application of the principle of CBDR-RC with respect to international law obligations in relation to climate change links together States' international law obligations and the real-world adverse effects of climate change, including the downstream impacts thereof on people's lives and livelihoods and the development prospects of countries.⁷⁴

This approach reflects the principles and provisions enshrined in the UNFCCC and its Paris Agreement. For example, the preamble of the UNFCCC affirmed that "responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty", while its Article 3.4 declared that "[t]he Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change." The chapeau of Article 2.1 of the Paris Agreement stated that "[t]his Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty".

The ICJ stated that "the climate change treaties describe sustainable development as a 'principle' by which 'the Parties shall be guided' in their actions to achieve the objective of the Convention and to implement its provisions ... Given its continuous and uncontested universal recognition, the Court considers that the principle of

sustainable development guides the interpretation of certain treaties and the determination of rules of customary international law, including the duty to prevent significant harm to the environment and the duty to co-operate for the protection of the environment.”⁷⁵ The ICJ further observed that “the principle of sustainable development does not in itself create specific rights and obligations for States, but informs the interpretation of the obligations under the climate change treaties”.⁷⁶

This holds the potential to influence how States approach and implement the policy interlinkage between effective climate change and sustainable development action. It also provides a clear legal foundation in support of developing countries’ longstanding push within the multilateral climate change regime for the full and effective implementation by developed countries of their obligations under the UNFCCC and its Paris Agreement to provide support (through finance, technology transfer, and capacity building) to developing countries’ national climate actions in the context of the latter’s pursuit of sustainable development and poverty eradication.

In doing so, the ICJ’s Advisory Opinion advances the international discourse in looking at the achievement of sustainable development as a global public good and a collective global responsibility, shaped by national experiences and international law. This highlights the interconnectedness of global environmental, economic, and social systems when it comes to designing and implementing national, regional, and international approaches to combating climate change and its adverse effects while enhancing the lives and economic welfare of people and communities, especially those in developing countries.

Endnotes

- ¹ ICJ, Advisory Opinion on Obligations of States in Respect of Climate Change (23 July 2025), at <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>
- ² ICJ AO, para. 457(3).A. The Court also stated that “there is no incompatibility between the three climate change treaties. On the contrary, they are mutually supportive, with the Kyoto Protocol and Paris Agreement providing greater specification to the general obligations contained in the UNFCCC. Indeed, the UNFCCC being a ‘framework convention’, and in view of the general character of the obligations contained therein, the subsequent decisions by the parties – including decisions adopting protocols and agreements under the UNFCCC – are intended to interpret or give substance to obligations in the UNFCCC, and not to abrogate or to modify them.” See ICJ AO, para. 195.
- ³ ICJ AO, para. 457(3).B.
- ⁴ ICJ AO, paras. 319–324 and 457(3).C.
- ⁵ ICJ AO, paras. 339–354 and 457(3).D.
- ⁶ ICJ AO, paras. 325–330.
- ⁷ ICJ AO, paras. 331–334.
- ⁸ ICJ AO, paras. 369–404 and 457(3).E.
- ⁹ ICJ AO, paras. 162–173, 309–315.
- ¹⁰ ICJ AO, para. 457(4).
- ¹¹ ICJ AO, para. 148.
- ¹² ICJ AO, para. 151.
- ¹³ ICJ AO, para. 179.
- ¹⁴ See, e.g., ICJ AO, paras. 198–199, 268–270.
- ¹⁵ ICJ AO, paras. 200–207.
- ¹⁶ ICJ AO, paras. 210–213.
- ¹⁷ ICJ AO, paras. 214–215.
- ¹⁸ ICJ AO, para. 217.
- ¹⁹ ICJ AO, para. 219.
- ²⁰ ICJ AO, para. 226.
- ²¹ ICJ AO, para. 227.
- ²² ICJ AO, para. 247.
- ²³ ICJ AO, para. 248.
- ²⁴ ICJ AO, para. 264.
- ²⁵ ICJ AO, para. 265.
- ²⁶ ICJ AO, para. 272.
- ²⁷ ICJ AO, para. 273.
- ²⁸ ICJ AO, para. 280.
- ²⁹ ICJ AO, para. 280.
- ³⁰ ICJ AO, para. 281.

31 ICJ AO, para. 282.
32 ICJ AO, para. 283.
33 ICJ AO, para. 287.
34 ICJ AO, para. 290.
35 ICJ AO, para. 291.
36 ICJ AO, para. 292.
37 ICJ AO, para. 301.
38 ICJ AO, para. 304.
39 ICJ AO, para. 306.
40 ICJ AO, para. 229.
41 ICJ AO, para. 245.
42 ICJ AO, para. 246.
43 See ICJ AO, paras. 226 and 292.
44 ICJ AO, para. 150.
45 ICJ AO, para. 150.
46 See, e.g., textual references in the UNFCCC and Paris Agreement to “developing countries” or “developing country Parties” and “developed countries” or “developed country Parties”. The ICJ recognized these two categories by repeatedly referring to them in relation to the text and Annexes of the UNFCCC. See, e.g., ICJ AO, paras. 61, 66, 80, 87, 110, 118, 149–150, 179, 192, 198–199, 202, 205–207, 211–212, 217, 219–221, 226–227, 241, 248, 264–269, 291–292, and 457(3).A(b).
47 Particularly those listed under UNFCCC, Articles 4.8, 4.9, and 4.10, and various provisions of the Paris Agreement such as Articles 4.6, 9.4, 9.9, 11.1, and 13.3. Developing countries that are recognized and designated by the United Nations to be “least developed” are listed here: <https://unctad.org/topic/least-developed-countries/list>; small island developing States recognized by the United Nations are listed here: <https://www.un.org/ohrlls/content/list-sids>
48 See UNFCCC, Annexes I and II, at https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf
49 This would encompass the 134 member States of the Group of 77 and China, see <https://www.g77.org/doc/members.html>; as well as other countries not listed in Annexes I or II of the UNFCCC or Annex B of the Kyoto Protocol.
50 See Kyoto Protocol, Annex B for the first commitment period at <https://unfccc.int/resource/docs/convkp/kpeng.pdf> and Annex B for the second commitment period at https://unfccc.int/files/kyoto_protocol/application/pdf/kp_doha_amendment_english.pdf
51 ICJ AO, para. 226.
52 ICJ AO, para. 195.
53 See ICJ AO, paras. 199, 205–207, 211, 217, 219–221, and 268.
54 ICJ AO, paras. 227 and 264.

55 See ICJ AO, paras. 240–249.
 56 ICJ AO, paras. 247–248.
 57 ICJ AO, para. 241.
 58 ICJ AO, paras. 242–243, 245–246, and 249.
 59 ICJ AO, para. 247.
 60 See decision 18/CMA.1, annex, para. 64, at <https://unfccc.int/resource/tet/0/00mpg.pdf>
 61 Decision 18/CMA.1, annex, paras. 65–78.
 62 Decision 18/CMA.1, annex, para. 149.
 63 Decision 18/CMA.1, annex, para. 190.
 64 Decision 19/CMA.1, para. 14, at https://unfccc.int/sites/default/files/resource/CMA2018_03a02E.pdf
 65 ICJ AO, para. 226.
 66 For example, Kazakhstan in April 1999 proposed its inclusion in Annex I of the UNFCCC. See UNFCCC, at <https://unfccc.int/process-and-meetings/the-convention/history-of-the-convention/proposal-to-amend-annexes-i-and-ii-to-remove-the-name-of-turkey-and-to-amend-annex-i-to-add-the-name>
 67 For example, Turkey (now Türkiye) was originally listed in both Annexes I and II of the UNFCCC. It was deleted from Annex II by an amendment that entered into force on 28 June 2002 pursuant to COP decision 26/CP.7. See UNFCCC, at <https://unfccc.int/process-and-meetings/the-convention/history-of-the-convention/proposal-to-amend-annexes-i-and-ii-to-remove-the-name-of-turkey-and-to-amend-annex-i-to-add-the-name>
 68 See, e.g., ICJ AO, paras. 226, 229, 247, 252, 258.
 69 See ICJ AO, paras. 226, 229, 233–249.
 70 See, e.g., ICJ AO, paras. 268–270.
 71 ICJ AO, para. 241.
 72 ICJ AO, paras. 242–243, 245–246, and 249.
 73 ICJ AO, para. 247.
 74 The records of the proceedings, including States’ submissions, may be accessed on the ICJ’s website at <https://www.icj-cij.org/case/187>
 75 ICJ AO, para. 147.
 76 ICJ AO, para. 181.

**Understanding the Applicability of the ICJ's
Advisory Opinion to Climate-Change-Caused
Loss and Damage**

I. Introduction: Landmark ICJ Recognition of Climate-Change-Caused Loss and Damage

In its Advisory Opinion, the International Court of Justice (ICJ) recognized the existence of loss and damage arising from the adverse effects of climate change.¹ In doing so, the ICJ considered the linkage between States' obligations under the climate treaties and customary international law, highlighting for example that under Article 4.2 of the Paris Agreement, the obligation to pursue domestic mitigation measures is subject to a stringent due diligence standard "on account of 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'".²

The ICJ also noted that under the Paris Agreement, there is an obligation of cooperation with respect to loss and damage (Article 8.4 of the Paris Agreement).³ It further observed that "Article 8 encourages parties to the Agreement to adopt a co-operative and facilitative approach with respect to loss and damage associated with the adverse effects of climate change, including recourse to the mechanism established under that provision".⁴ It recognized, however, that Article 8 of the Paris Agreement "does not ... address issues of liability or compensation of parties for such loss and damage, since the expression 'as appropriate, on a cooperative and facilitative basis' emphasizes co-operation rather than compensation or liability".⁵ Nonetheless, the ICJ did "not find in Article 8 of the Paris Agreement any clearly expressed *lex specialis* that would exclude the application of the general rules on State responsibility"⁶ and consequently considered that "the rules to be applied by this Court or any potential arbitral tribunal in the event of a breach of the provisions of the climate change treaties are the general rules on State responsibility under customary international law".⁷

In short, the Court concluded that “responsibility for breaches of obligations under the climate change treaties, and in relation to the loss and damage associated with the adverse effects of climate change, is to be determined by applying the well-established rules on State responsibility under customary international law”.⁸ It then went on to clarify that “the ‘well-established rule of international law’ that ‘the conduct of any organ of a State must be regarded as an act of that State’ ... is applicable in the context of climate change. Failure of a State to take appropriate action to protect the climate system from GHG emissions – including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies – may constitute an internationally wrongful act which is attributable to that State. The Court also emphasizes that the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases.”⁹

II. International Law Obligations in Respect of Climate Change

In this context, the obligations in respect of climate change whose breach may implicate State responsibility generally include the primary legal obligations under the climate change treaty framework (UNFCCC, Kyoto Protocol, and Paris Agreement) identified by the Court,¹⁰ and the obligations under customary international law, including the most significant primary obligation for States in relation to climate change 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.¹¹ More specifically, the Court unanimously in the dispositive portion of its Advisory Opinion helpfully identified these obligations across different international law regimes, to wit:

International Law Regime	Climate-Change-Related International Law Obligations
Climate change treaties (UNFCCC, Kyoto Protocol, Paris Agreement)¹²	The climate change treaties set forth binding obligations for States parties to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions. These obligations include the following: (a) States parties to the United Nations Framework Convention on Climate Change have an obligation to adopt measures with a view to contributing to the mitigation of greenhouse gas emissions and adapting to climate change; (b) States parties listed in Annex I to the United Nations Framework Convention on Climate Change have additional obligations to take the lead in combating climate change by limiting their greenhouse gas emissions and enhancing their greenhouse gas sinks and reservoirs; (c) States parties to the United Nations Framework Convention on Climate Change have a duty to co-operate with each other in order to achieve the underlying objective of the Convention; (d) States parties to the Kyoto Protocol must comply with applicable provisions of the Protocol; (e) States parties to the Paris Agreement have an obligation to act with due diligence in taking measures in accordance with their common but differentiated responsibilities and respective capabilities capable of making an adequate contribution to achieving the temperature goal set out in the Agreement; (f) States parties to the Paris Agreement have an obligation to prepare, communicate and maintain successive and progressive nationally determined contributions which, <i>inter alia</i>, when taken together, are capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels; (g) States parties to the Paris Agreement have an obligation to pursue measures which are capable of achieving the objectives set out in their successive nationally determined contributions; and (h) States parties to the Paris Agreement have obligations of adaptation and co-operation, including through technology

International Law Regime	Climate-Change-Related International Law Obligations
	and financial transfers, which must be performed in good faith.
Customary international law ¹³	Customary international law sets forth obligations for States to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions. These obligations include the following: (a) States have a duty to prevent significant harm to the environment by acting with due diligence and to use all means at their disposal to prevent activities carried out within their jurisdiction or control from causing significant harm to the climate system and other parts of the environment, in accordance with their common but differentiated responsibilities and respective capabilities; (b) States have a duty to co-operate with each other in good faith to prevent significant harm to the climate system and other parts of the environment, which requires sustained and continuous forms of co-operation by States when taking measures to prevent such harm.
Ozone, biodiversity, and desertification treaties (VOL, MP, CBD, CCD) ¹⁴	States parties to the Vienna Convention for the Protection of the Ozone Layer and to the Montreal Protocol on Substances that Deplete the Ozone Layer and its Kigali Amendment, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, have obligations under these treaties to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions.
Law of the sea (UNCLOS) ¹⁵	States parties to the United Nations Convention on the Law of the Sea have an obligation to adopt measures to protect and preserve the marine environment, including from the adverse effects of climate change and to co-operate in good faith.
Human rights treaties ¹⁶	States have obligations under international human rights law to respect and ensure the effective enjoyment of human rights by taking necessary measures to protect the climate system and other parts of the environment.

Under both treaty and customary international law, the Court ruled that “[a]s far as climate change is concerned, such appropriate rules and measures include, but are not limited to, regulatory mitigation mechanisms that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system. Adaptation measures reduce the risk of significant harm occurring and are therefore also relevant for assessing whether a State is fulfilling its customary obligations with due diligence. These rules and measures must regulate the conduct of public and private operators within the States’ jurisdiction or control and be accompanied by effective enforcement and monitoring mechanisms to ensure their implementation.”¹⁷

Additionally, the ICJ noted that taking necessary mitigation and adaptation measures “to protect the climate system and other parts of the environment ... with due account given to the protection of human rights, the adoption of standards and legislation, and the regulation of the activities of private actors” is also an obligation under international human rights law since “the full enjoyment of human rights cannot be ensured without the protection of the climate system and other parts of the environment”.¹⁸

States that are Parties to other relevant treaties such as the Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol, the Convention on Biological Diversity, the Convention to Combat Desertification, and the UN Convention on the Law of the Sea also have climate-change-related obligations under these treaties.¹⁹ As the Court unanimously opined, a breach by a State of these climate-change-related international law obligations “constitutes an internationally wrongful act entailing the responsibility of that State”.²⁰

Due diligence in compliance with obligations is a key element. The ICJ gave the example of compliance with the domestic mitigation obligation under Article 4.2 of the Paris Agreement, in which the ICJ stated that such compliance “is to be assessed on the basis

of whether the party exercised due diligence in its efforts and in deploying appropriate means to take domestic mitigation measures, including in relation to activities carried out by private actors”.²¹ Similarly, with respect to the customary international law duty to prevent significant transboundary environmental harm, the ICJ held that “due diligence requires a State to ‘use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State’ ... This means that States must ... ‘put in place a national system, including legislation, administrative procedures and an enforcement mechanism necessary to regulate the activities in question, and ... exercise adequate vigilance to make such a system function efficiently, with a view to achieving the intended objective’.”²²

The ICJ’s Advisory Opinion therefore makes clear that all States, including developing countries, have obligations to act in respect of climate change, given its characterization as a common concern of humankind and the recognition that the adverse effects of climate change threaten the enjoyment of fundamental human rights.

III. Common But Differentiated Responsibilities and the Duty to Cooperate as Integrated Foundational Principles of International Climate Change Legal Obligations

However, the Court emphasized that the nature and scope of these obligations must be interpreted through the lens of equity and CBDR-RC. For developing countries, this means their obligations are not identical to those of developed States; rather, they are obligations of conduct, shaped by the standard of due diligence and contingent on their national capacities and the extent of support they receive.

Hence, for example, while the ICJ reaffirmed that all States must exercise due diligence in preparing NDCs under the Paris Agreement that are capable of meeting the Paris goals collectively,²³ the

stringency of the due diligence obligation varies “depending, *inter alia*, on historical contributions to cumulative GHG emissions, and the level of development and national circumstances” of the State concerned.²⁴ In this context, in assessing whether the standard of due diligence has been met for purposes of determining State responsibility, the ICJ made clear that the principle of CBDR-RC would be applicable.

For example, under the Paris Agreement, the standard “may vary depending on the circumstances of the State in question and its capacity to influence the salient acts or events There thus exists a link between the concept of due diligence and the principle of common but differentiated responsibilities and respective capabilities in light of different national circumstances”²⁵ In the same manner, the principle of CBDR-RC is applicable to the standard of due diligence in relation to the customary international law duty to prevent significant transboundary environmental harm.²⁶ This means that the application of CBDR-RC implies that developing countries, depending on their self-assessment of their circumstances and capabilities, would meet a lower standard of due diligence and hence undertake a lower level of climate action compared with developed countries. In this context, the ICJ makes clear that the obligations of developed countries under the UNFCCC continue to subsist as the fundamental basis for their climate obligations, on top of which they would have additional obligations under the Paris Agreement; however, for developing countries, the nuance under the Paris Agreement lies in how they assess the level of, and carry out, their obligations under the Agreement in a dynamic and context-specific manner that reflects their self-assessment of their national circumstances, capacities, development level, and other relevant factors.²⁷

The Advisory Opinion underscores the interconnected nature of climate action, international equity, and differentiated responsibilities. For developing countries, their obligations to act on climate change cannot be interpreted in isolation from the principle of CBDR-

RC. As affirmed by the Court, CBDR-RC remains a foundational principle of the UNFCCC and the Paris Agreement, requiring that the extent and nature of developing countries' mitigation and adaptation measures be assessed in light of their historical contributions to climate change, present economic and social circumstances, and developmental priorities. In other words, developing countries are not held to the same level of responsibility as developed countries, particularly given their limited role in creating the crisis and their ongoing struggle to eradicate poverty and achieve sustainable development.

The Court further emphasized that equity must guide the interpretation and implementation of States' obligations under international climate law. Equity entails recognizing that the global carbon budget has largely been consumed by developed countries and that developing countries require equitable access to the remaining atmospheric space in order to pursue their development needs. In practice, this means that while developing countries are expected to progressively enhance their climate action, this obligation is conditional upon the extent to which they are supported by developed countries, as codified in Article 4.7 of the UNFCCC. This provision makes clear that the effective implementation of developing countries' climate commitments is dependent on developed countries fulfilling their obligations to provide financial resources, technology transfer, and capacity-building support.

The Advisory Opinion reaffirmed that the obligation of developed countries to provide climate finance and technology transfer is not merely aspirational but a binding component of the international legal framework on climate change. These obligations flow from both treaty commitments under the UNFCCC and the Paris Agreement, as well as general international law principles of cooperation and the duty not to cause transboundary harm. The Court highlighted that developed countries, by virtue of their capabilities and historical responsibility, are legally obliged to assist developing countries in addressing both mitigation and adaptation challenges. Technology

transfer, in particular, was identified as an essential element in enabling developing countries to leapfrog carbon-intensive pathways and to implement nationally appropriate climate actions.

Central to this architecture is the duty to cooperate, which the Court identified as an obligation of States in addressing climate change under both customary norms and the climate treaties.²⁸ Cooperation in this sense is not limited to participation in multilateral processes but extends to substantive obligations of assistance and support. For developing countries, the duty to cooperate reinforces the expectation that their climate action is part of a global compact where their own contributions are conditioned and facilitated by the support that developed countries are required to provide.²⁹ Thus, CBDR-RC, equity, and cooperation converge to define the nature of developing countries' climate obligations: they are means- and support-contingent obligations, to be undertaken to the extent possible within their capacities and contingent upon the provision of finance, technology, and capacity support from developed countries.

Taken together, the ICJ's reasoning reinforces the legal interpretation that Article 4.7 of the UNFCCC continues to govern the implementation of developing country obligations. This provision not only recognizes the primacy of sustainable development in developing countries' climate action, but also explicitly links the scope of their commitments to the fulfilment of developed country obligations. In effect, the Court confirmed that developing countries' duties under international climate law cannot be divorced from the structural conditions of inequality in the international system, and that the realization of ambitious and effective climate action in the Global South is predicated upon a fair and equitable sharing of responsibilities, in line with CBDR-RC, equity, and the duty to cooperate.

Under the Paris Agreement, developing countries are also required to prepare, communicate, and maintain NDCs and to pursue domestic mitigation and adaptation measures with the aim of achieving them.³⁰

The Court underscored that these NDC-related obligations are obligations of due diligence, meaning that States must make genuine, good-faith efforts consistent with their circumstances, knowledge, and available resources. For developing countries, the Court confirmed that this standard cannot be divorced from the principle enshrined in Article 4.7 of the UNFCCC – the extent to which they can implement their commitments depends on whether developed countries provide the financial resources, technology transfer, and capacity-building support that they are legally obliged to deliver – and also recognized in Article 4.5 of the Paris Agreement which states that “Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.”

If developed countries fail to comply with their obligations to provide support (such as finance and technology transfer consistent with the UNFCCC and Paris Agreement) and to cooperate, the Court’s reasoning implies that the scope of due diligence required from developing countries is correspondingly adjusted and narrows. Instead, the standard of due diligence becomes one of taking all feasible measures that are reasonable in light of their economic and technological constraints. In such circumstances, developing countries remain obliged to make best efforts within their means to reduce emissions and adapt to climate impacts – i.e., they must still take all feasible and reasonable measures, nationally determined by them, according to their actual capabilities and circumstances, but they cannot be expected to meet the same level of ambition or implement measures that exceed their available capacities or that are pegged to support not actually received. This preserves the integrity of CBDR-RC and equity, while ensuring that developing countries are not held responsible for outcomes that depend on support they did not receive, or which was inadequate relative to their needs.

The Court’s opinion thus provides a safeguard for developing countries against an inequitable interpretation of international climate

obligations. It clarifies that non-compliance by developed countries with their duties to support and cooperate does not extinguish the obligations of developing countries, but it does fundamentally shape their content. Developing countries must act diligently within their national circumstances and capabilities as determined by themselves, such as by developing policies aligned with their development strategies, enhancing resilience where possible, and incrementally improving data and reporting systems, but they cannot be required to assume the burdens of mitigation and adaptation at levels that go beyond available support (they may, of course, voluntarily and in a nationally determined manner decide to do so if they deem themselves capable of doing so).

Thus, even in the absence of support, developing countries retain a minimum obligation of conduct: they must carry out reasonable, contextually grounded action while not being penalized for the lack or inadequacy of external assistance. In this sense, the Court reaffirmed that the Paris Agreement's bottom-up architecture does not negate the differentiation embedded in the UNFCCC but instead must be understood as reinforcing the conditional and capacity-based nature of developing country obligations. As noted above, the nature and scope of developing countries' climate change international law obligations must be interpreted through the lens of equity and CBDR-RC, which means these would not be identical to those of developed States but rather would be shaped by a variable standard of due diligence contingent on their national determination based on their capacities and the extent of support they receive.

The application of the principles of equity and CBDR-RC vis-à-vis the obligations of developing countries in relation to climate change has implications on the application of the rules of State responsibility for breaches of such obligations and the legal consequences of such breaches. In essence, it means that developing countries should not be held to the same standard as developed countries with respect to compliance with their climate change obligations, precisely because of their different national circumstances and capacities.

IV. Breach of Obligations Giving Rise to State Responsibility

The failure, for example, of developed countries to fulfil their obligations to cooperate and provide support to developing countries under the climate change treaties could conceivably be cited by developing countries as a basis for justifying their lower level of implementation of their climate change obligations under international law, hence avoiding implications of being in breach of such obligations and therefore not committing an internationally wrongful act that triggers State responsibility (at least to the extent to which they are in fact undertaking good-faith due diligence to implement such obligations in light of their national circumstances and capacities).

Furthermore, the failure or inadequacy of developed countries' actions to fulfil their climate change obligations, particularly those relating to cooperation and the provision of support to developing countries, could in and of themselves constitute a breach of such obligations regardless of whether harm from such inaction or inadequate action was caused to another State. This was clearly indicated by the Court when it stated that "causation of damage is not a requirement for the determination of responsibility as such. For a finding of State responsibility, what is required is an internationally wrongful act and its attribution to a State, whether the act causes harm or not."³¹ It is only when an injured State seeks reparation as a remedy that causation of damage from the wrongful act of a State vis-à-vis the injured State becomes relevant.³²

According to the Court, "it is well established that every internationally wrongful act of a State entails the international responsibility of that State. In the present context, the internationally wrongful act may range from breaches of treaty obligations, such as the procedural obligation of a State to prepare, communicate or implement NDCs under Article 4 of the Paris Agreement, to breaches of obligations under customary international law, such as

the failure of a State to regulate emissions of GHGs under its duty to exercise due diligence to prevent significant harm, or its failure to conduct EIAs [environmental impact assessments].”³³ In this context, breaches giving rise to State responsibility may occur in the following circumstances:

- Failure to meet due diligence obligations under climate treaties (e.g., Paris Agreement):
 - o Not pursuing or implementing appropriate domestic mitigation measures under Article 4.2 of the Paris Agreement.
 - o Not exercising due diligence in efforts to reduce emissions, including failure to deploy appropriate means, standards, and regulatory systems to meet obligations.
 - o Non-compliance with procedural obligations to prepare, communicate or implement NDCs under Article 4 of the Paris Agreement.
 - o Failure to regulate emissions of GHGs.
 - o Failure to conduct EIAs.³⁴
- Non-compliance with their loss-and-damage-related obligations under the Paris Agreement (Article 8), i.e., by not cooperating in a “cooperative and facilitative” manner, or failing to cooperate in good faith, on addressing loss and damage.
- Failure to regulate private actors (due diligence obligation):
 - o Not adopting legislation, administrative procedures, or enforcement mechanisms to regulate activities of private actors that cause emissions.
 - o Not exercising due diligence to make such systems function effectively, such as not limiting emissions from the activities of State and private actors under their jurisdiction, or failing to control fossil fuel production, licensing, subsidies, or consumption in areas within their jurisdiction by State or private actors.

- Failure to prevent significant transboundary environmental harm:
 - o Not using “all means at [their] disposal” to prevent activities under their jurisdiction or control from causing significant harm to other States.
 - o Failure to implement a functioning national system for monitoring, enforcing, and reducing emissions that have transboundary effects.
- Failure to adopt necessary mitigation and adaptation measures (including human rights linkages):
 - o Not implementing mitigation measures to achieve “deep, rapid, and sustained” GHG reductions.
 - o Not adopting adaptation measures to reduce risks of significant harm.
 - o Neglecting to protect human rights by failing to safeguard the climate system and broader environment, which underpin the enjoyment of rights.
- Non-compliance with their obligations under other international treaties relevant to climate protection (to the extent that they are Parties to these treaties), i.e., non-compliance with climate-related obligations under the Vienna Convention and Montreal Protocol (ozone), Convention on Biological Diversity, Convention to Combat Desertification, or UNCLOS.
- Failure to respect the principle of CBDR-RC:
 - o For developed countries: failing to provide higher levels of action and support as required under the UNFCCC and Paris Agreement.³⁵
 - o For developing countries: failing to carry out obligations in a nationally determined manner in light of their respective national capacities and circumstances and the external support provided and received.
- Failure to comply with their duty to cooperate.³⁶

In general, what would constitute a breach of the obligations listed above would be the failure of a State to exercise due diligence by not taking the necessary or appropriate measures, such as in adopting and enforcing appropriate rules, regulations, measures, and systems to mitigate and adapt to climate change, regulate private actors, cooperate on loss and damage, prevent transboundary harm, and uphold related human rights and treaty obligations, not only by the State's governmental agencies but also by private actors that are under its jurisdiction or control.³⁷

The ICJ further clarified that State responsibility may arise not only for acts by State actors but also by private actors, when it observed that “[i]n relation to private actors, ... the obligations it has identified under question (a) include the obligation of States to regulate the activities of private actors as a matter of due diligence. Therefore, attribution in this context involves attaching to a State its own actions or omissions that constitute a failure to exercise regulatory due diligence. In such circumstances, the question of attributing the conduct of private actors to a State does not arise. The legal standard to assess compliance with the obligation to regulate, as well as the nature of the actions or omissions that lead to attribution, has been set out by the Court in several cases ... Thus, a State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction.”³⁸

V. Breaches and Remedies, Including on Loss and Damage

With respect to the inaction or inadequacy of action of developed countries to fulfil their climate change obligations under international law, any State, whether injured thereby or not, could assert the responsibility of such developed countries for breaching such obligations and seek appropriate remedies. This is because “States’ obligations pertaining to the protection of the climate system and

other parts of the environment from anthropogenic GHG emissions, in particular the obligation to prevent significant transboundary harm under customary international law, are obligations *erga omnes*” and “the obligations of States under these treaties [the UNFCCC, Kyoto Protocol, and Paris Agreement] are obligations *erga omnes partes*”.³⁹

As noted above, a breach by a State of climate-change-related international law obligations “constitutes an internationally wrongful act entailing the responsibility of that State The legal consequences resulting from the commission of an internationally wrongful act may include the obligations of: (a) cessation of the wrongful actions or omissions, if they are continuing; (b) providing assurances and guarantees of non-repetition of wrongful actions or omissions, if circumstances so require; and (c) full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met, including that a sufficiently direct and certain causal nexus can be shown between the wrongful act and injury.”⁴⁰ The Court also noted that “breaches of States’ obligations do not affect the continued duty of the responsible State to perform the obligation breached”.⁴¹

However, only certain of the remedies listed above may be available to a State seeking to assert the State responsibility of developed countries, as the Court well explained, depending on whether the State asserting State responsibility could be considered an “injured or specially affected” State or not. According to the Court, “while a non-injured State may pursue a claim against a State in breach of a collective obligation, it may not claim reparation for itself. Rather, it may only make a claim for cessation of the wrongful act and assurances and guarantees of non-repetition, as well as for the performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached.”⁴²

Injured or specially affected States that want to pursue a reparations claim would have to prove that damage was caused by the respondent State’s internationally wrongful act – e.g., a developed

country's failure or inadequacy to comply with its climate change international law obligations. In such a case, as the Court held, "since reparation implies the existence of damage, causation must be established between the wrongful act of a State – or group of States – and particular damage suffered by the injured State or, in the case of a breach of obligations under international human rights law, by the injured individuals".⁴³ The longstanding legal standard for establishing causation was further explained by the Court as also "capable of being applied to the establishment of causation between the internationally wrongful act of non-compliance with States' obligations to protect the climate system from harm caused by anthropogenic GHG emissions and the damage suffered by States as a result of such a wrongful act. This standard requires the existence of 'a sufficiently direct and certain causal nexus between the wrongful act ... and the injury suffered by the Applicant' ... Moreover, as the Court has observed, the 'causal nexus' between the wrongful act and the damage in question is not static in nature, and 'may vary depending on the primary rule violated and the nature and extent of the injury' ... Accordingly, the Court is of the view that the standard of 'a sufficiently direct and certain causal nexus' between an alleged wrongful action or omission and the alleged damage is flexible enough to address the challenges arising in respect of the phenomenon of climate change."⁴⁴

The Court further explained that applying the legal standard of causation in the climate change context would require a concrete assessment of the causal link between a given climatic event that is attributable to anthropogenic causes and the extent of the climate-change-caused damage that can be attributed to a particular State or group of States, as follows:

437. In terms of the operation of this legal standard in the climate change context, the Court observes that causation involves two distinct elements. *First*, whether a given climatic event or trend can be attributed to anthropogenic climate change; and *second*, to what extent damage caused by climate change can

be attributed to a particular State or group of States. While the second element must be established *in concreto* in respect of specific claims brought by States in respect of damage, in many cases the first element may be addressed by recourse to science. The scientific evidence adduced in these proceedings establishes that significant harm to the climate system and other parts of the environment has been caused as a result of anthropogenic GHG emissions For example, the IPCC's 2023 Synthesis Report includes data clearly linking the human contribution to climate change to observed increases in heatwaves, flooding and drought (p. 48, figure 2.3).

438. In light of the foregoing, the Court concludes that while the causal link between the wrongful actions or omissions of a State and the harm arising from climate change is more tenuous than in the case of local sources of pollution, this does not mean that the identification of a causal link is impossible in the climate change context; it merely means 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.⁴⁵

VI. Conclusion: Implications of the ICJ Advisory Opinion for Remedies in Respect of Climate-Change-Related Loss and Damage

The Advisory Opinion represents a watershed moment in the evolution of international climate law, clarifying the international legal landscape governing remedies for climate-change-related loss and damage by firmly situating climate harm within the general law of State responsibility, rather than being confined to the cooperative, facilitative, and non-liability framing of Article 8 of the Paris Agreement. By confirming that neither the UNFCCC nor the Paris Agreement constitutes a *lex specialis* excluding the application of customary international law on State responsibility, the Court has decisively affirmed that breaches of climate-related obligations may give rise to internationally wrongful acts entailing legal consequences

under general international law. By anchoring climate harm within the established framework of State responsibility under customary international law, the Court has transformed what has often been treated as a primarily political and moral concern into a justiciable matter grounded in enforceable legal principles.

The Court's most significant contribution lies in its unequivocal confirmation that breaches of climate-related obligations constitute internationally wrongful acts that trigger State responsibility under general international law. By rejecting any notion that Article 8 of the Paris Agreement constitutes a *lex specialis* that would exclude the application of customary rules on State responsibility, the ICJ has established that climate harm falls squarely within the traditional remedial framework of international law. This clarification resolves a longstanding legal ambiguity and provides injured States with a coherent doctrinal foundation for pursuing remedies beyond the diplomatic and cooperative mechanisms contemplated in the climate treaties.

First, the Court establishes that remedies for climate-change-related loss and damage are legally available where there is a breach of primary obligations under climate treaties, customary international law, or other relevant regimes (including human rights law and the law of the sea). The Court makes clear that responsibility arises not from greenhouse gas emissions as such, but from a State's failure to exercise due diligence in fulfilling its obligations to prevent significant harm to the climate system, to regulate public and private actors, to cooperate in good faith, and to provide support where required. This clarification provides a coherent legal basis for claims seeking cessation of wrongful conduct, assurances and guarantees of non-repetition, and – where causation and injury are established – reparation in the form of restitution, compensation, or satisfaction. This aligns climate responsibility with established principles of environmental law while accommodating the unique characteristics of climate change as a cumulative, global, and multi-causal phenomenon.

Second, the Opinion significantly lowers the legal barriers to invoking responsibility by affirming that climate-related obligations are obligations *erga omnes* or *erga omnes partes*. This designation substantially broadens the range of actors who may invoke responsibility for climate-related breaches, enabling any State, not only those specially injured, to challenge non-compliance. As a result, any State may invoke the responsibility of a breaching State, even if it is not itself specially injured. While non-injured States are limited to seeking cessation, guarantees of non-repetition, and performance of obligations in the interest of injured States or beneficiaries, this clarification strengthens the collective enforcement dimension of international climate law and legitimizes broader diplomatic, judicial, and quasi-judicial efforts to compel compliance, not only, for example, within the UNFCCC political negotiations context but also in other fora such as in the UN Human Rights Council or before international or national tribunals that may acquire jurisdiction over specific cases.

This allows for collective enforcement efforts and strengthens the accountability dimension of international climate governance. This framework creates multiple pathways for pursuing remedies. It enables States to bring claims not only in bilateral dispute settlement but also through multilateral forums, human rights bodies, and regional tribunals. It reinforces the legal basis for diplomatic initiatives aimed at compelling compliance, and it provides normative support for civil society advocacy and domestic litigation that seeks to hold States accountable for their international obligations. In essence, the *erga omnes* characterization transforms climate protection from a matter of bilateral concern into a collective responsibility of the international community.

Third, the Court provides critical guidance on remedies for loss and damage by articulating a flexible and context-sensitive approach to general climate change harm causation while requiring a context-specific approach to individual State attribution assessments. Recognizing the complex, cumulative, and global nature of climate

change, the Court confirms that the traditional requirement of a “sufficiently direct and certain causal nexus” is applicable to climate-change-related loss and damage but must be applied flexibly. Scientific attribution can establish the link between anthropogenic climate change and harmful events, while responsibility for specific damage may be assessed *in concreto* in light of historical emissions, conduct, and capacity. This clarification substantially enhances the legal feasibility of reparation claims for climate-related loss and damage, particularly for injured and specially affected States.

The Court did this by distinguishing between two elements of causation: first, whether a given climatic event can be attributed to anthropogenic climate change (a question often addressable through scientific evidence that can link cumulative emissions to temperature increases and consequent adverse effects); and second, to what extent damage caused by climate change can be attributed to a particular State or group of States (which must be established *in concreto* in specific cases identifying the causal link between specific State emissions and specific harms).

This two-stage approach substantially enhances the legal feasibility of reparation claims:

- The first stage can often be satisfied through established scientific climate change adverse effects attribution methods, including those documented in IPCC reports and peer-reviewed literature linking specific types of events, such as heatwaves, flooding, and droughts, to human-caused climate change. This first element requires using a context-sensitive approach to determine general scientific attribution of climate adverse effects to anthropogenically caused climate change. It does this by retaining and applying the legal standard of causation under international law to climate change in a manner that is sensitive to the scientific and physical realities of climate change and its adverse effects, consistently with due diligence and environmental harm jurisprudence. In this sense, the Court

did not establish a special or *sui generis* causation approach only for climate change.

- The second stage then allows for *in concreto* case- or context-specific national assessments that can take into account historical emissions, cumulative contributions to emissions, levels of development, and capacity, thereby integrating considerations of equity and differentiated responsibility into the remedial framework itself. The Court is emphasizing that the legal attribution of individual cases of climate harm to specific countries must be established through specific and individualized assessments⁴⁶ rather than through the application of general or abstract principles, as it clearly states in paragraph 438 that “the causal link must be established in each case through an *in concreto* assessment”. This clearly indicates a context-specific approach.

By affirming that a causal link between climate change and harm is not impossible to establish, the Court has rejected the notion that climate harm is inherently non-justiciable. Instead, it has provided a legal roadmap for injured States to pursue reparation claims against States that are in breach of their international obligations in respect of climate change, grounded in robust scientific context-sensitive evidence and tailored context-specific *in concreto* assessments and legal arguments.

Fourth, the Advisory Opinion integrates equity and the CBDR-RC principle into the remedial framework. While CBDR-RC does not preclude responsibility, it shapes both the assessment of breach and the scope of remedies and fundamentally influences how due diligence obligations are to be interpreted and applied. Developed countries, given their historical responsibility and greater capabilities, are subject to a more stringent due diligence standard and bear heightened obligations of cooperation, finance, and technology transfer, compared with developing countries.

Critically, the Court confirmed that failures by developed countries to fulfil these support obligations may independently constitute internationally wrongful acts, even in the absence of proof that specific damage resulted from such failures. This finding establishes that cessation and guarantees of non-repetition may be sought for breaches of support obligations regardless of whether causation of particular harm can be demonstrated. For developing countries, this creates a legal avenue to challenge inadequate climate finance, insufficient technology transfer, and failures of cooperation, issues that have long been central to equity concerns within climate negotiations but have lacked clear remedial pathways.

Moreover, the integration of CBDR-RC into the assessment of due diligence means that developing countries cannot be held to the same standard of responsibility as developed States. Their obligations remain contingent in a context-sensitive and context-specific manner on their national circumstances, capacities, and the extent of support they receive, ensuring that remedies are pursued within a framework that recognizes structural inequalities and historical injustices in the international system.

Finally, the Court's reasoning confirms that remedies for climate-change-related loss and damage extend beyond compensation alone. The obligation of cessation underscores the continuing duty of States to align their conduct with climate obligations, including by strengthening mitigation, adaptation, and regulatory frameworks. Guarantees of non-repetition and assurances likewise emphasize the forward-looking, systemic nature of climate responsibility. Restitution, where materially possible, and satisfaction, including acknowledgment of breach, expressions of regret, or formal apologies, also form part of the remedial toolkit. These non-monetary forms of reparation may be particularly significant in the climate context, where many harms are irreversible or where affected communities seek recognition and accountability as much as financial compensation. By emphasizing these diverse forms of remedy, the Court positions the law of State responsibility as a tool not merely

for backward-looking redress but for systemic transformation. Remedies become integral to ensuring compliance, preventing future harm, and safeguarding the rights and interests of present and future generations affected by climate change.

Taken as a whole, the ICJ Advisory Opinion provides a robust and coherent legal foundation for seeking remedies in respect of climate-change-related loss and damage. It confirms that climate harm is justiciable under international law, that responsibility may be invoked collectively, and that reparation, while subject to evidentiary requirements, is legally available. In doing so, the Court has transformed loss and damage from a predominantly political and moral claim into one grounded in enforceable legal principles, with profound implications for future litigation, negotiations, and accountability mechanisms under international law.

The practical implications of the Advisory Opinion are far-reaching. For climate litigation, the Opinion provides authoritative guidance that can be invoked before domestic courts, regional human rights bodies, and international tribunals. It strengthens the legal basis for contentious cases between States, for advisory proceedings in regional courts, and for human rights complaints alleging violations of climate-related obligations. The Opinion may also inform the interpretation of investment treaties, trade agreements, and other international instruments where climate considerations intersect with State obligations.

For international climate policy, the Advisory Opinion reinforces the legal underpinnings of loss and damage as a distinct pillar of climate action. While it does not create new obligations, it clarifies that existing obligations under climate treaties and customary international law already encompass responsibility for climate-related harm. This clarification may influence ongoing negotiations on the operationalization of the Loss and Damage Fund, the structure of future climate finance commitments, and the development of

mechanisms for addressing climate-induced displacement and migration.

The Advisory Opinion also has implications for compliance mechanisms within the climate regime itself. By confirming that breaches of climate obligations are subject to general international law on State responsibility, it strengthens the normative force of the accountability mechanisms under the Paris Agreement (such as the Enhanced Transparency Framework, the Global Stocktake, and the Paris Agreement Implementation and Compliance Committee). It provides a legal backstop that complements the climate treaty regime's primarily facilitative approach, ensuring that States could be held legally accountable under international law and face potential legal consequences for persistent non-compliance.

In sum, the ICJ Advisory Opinion marks the further evolution of international climate law from a predominantly treaty-based regime focused on cooperation and facilitation into a fully integrated component of general international law, complete with established principles of responsibility, causation, and remedy. By situating climate harm within the framework of State responsibility, expanding standing through *erga omnes* obligations, providing workable guidance on causation, integrating equity and differentiated responsibility, and emphasizing diverse forms of remedy, the Court has created a legal architecture capable of supporting meaningful accountability for climate-change-related loss and damage.

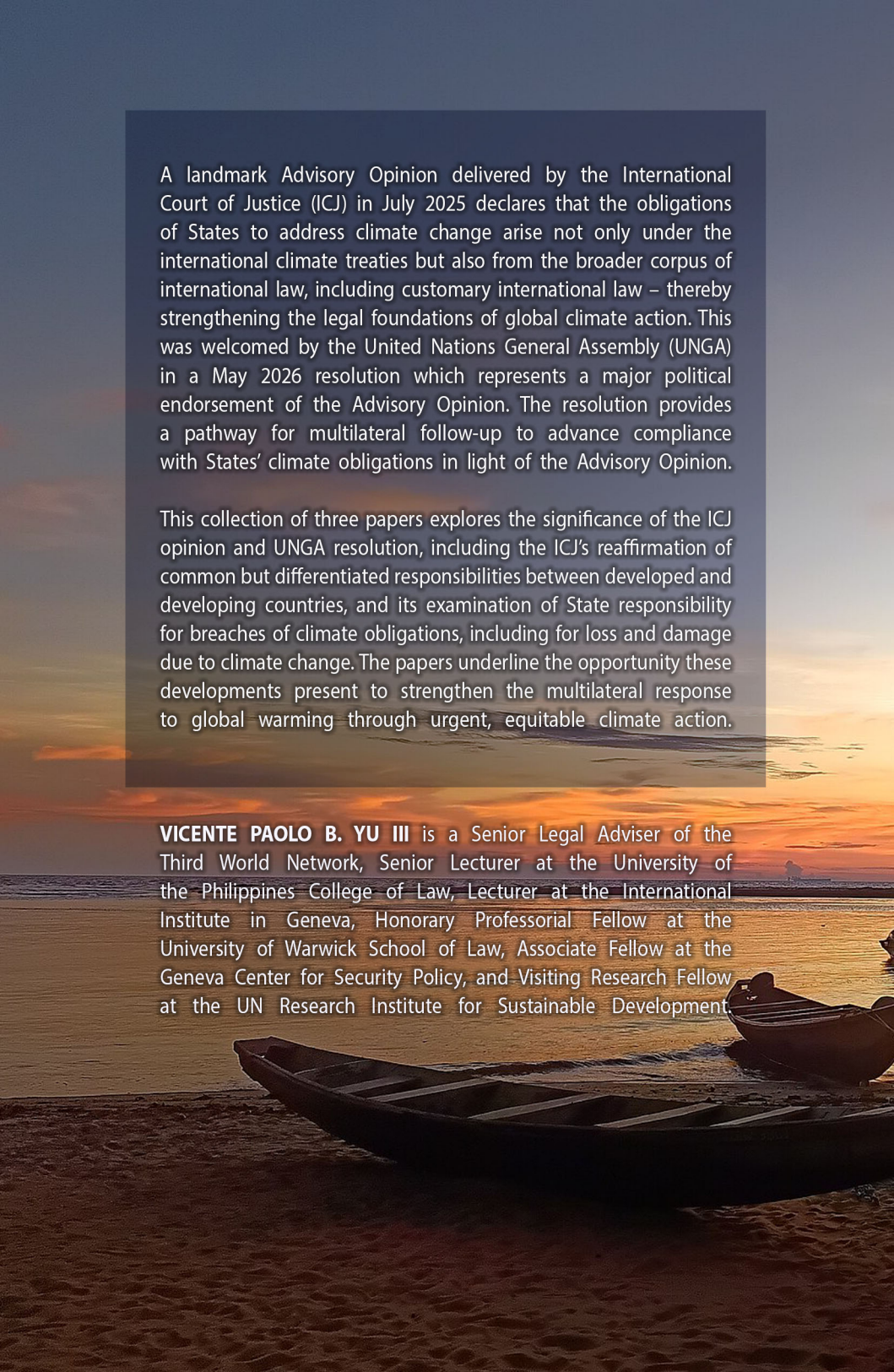
The Opinion does not eliminate the political, scientific, and practical challenges inherent in pursuing climate-related remedies. Establishing causation will remain complex, quantifying climate-change-caused losses and damages difficult, and securing compliance with remedial orders challenging. Yet by confirming that these challenges do not render climate harm non-justiciable, the Court has fundamentally shifted the terrain of climate accountability. Loss and damage is no longer solely a matter for political negotiation or

voluntary cooperation; it is now firmly established as a question of legal obligation, potential breach, and enforceable remedy under international law. In bringing this about, the ICJ Advisory Opinion provides not only a legal framework for past and present harms, but also a normative foundation for building a more equitable and accountable international climate order for generations to come.

Endnotes

- ¹ See, e.g., ICJ AO, paras. 73, 77, 78, 83, 87.
- ² ICJ AO, para. 254. This stringent due diligence standard, according to the ICJ, “requires States to be proactive and pursue measures that are reasonably capable of achieving the NDCs set by them. These measures may include putting in place a national system, including legislation, administrative procedures and an enforcement mechanism, and exercising adequate vigilance to make such a system function effectively, with a view to achieving the objectives in their NDCs.” See ICJ AO, para. 253.
- ³ ICJ AO, paras. 260, 270.
- ⁴ ICJ AO, para. 414.
- ⁵ ICJ AO, paras. 414–415.
- ⁶ ICJ AO, paras. 415 and 418–419.
- ⁷ ICJ AO, para. 417.
- ⁸ ICJ AO, paras. 408–409, 420.
- ⁹ ICJ AO, para. 427. These conventional and customary obligations are those identified by the ICJ in its Advisory Opinion. See, e.g., ICJ AO, para. 457(3).A–E.
- ¹⁰ ICJ AO, paras. 268–270, 408.
- ¹¹ ICJ AO, paras. 132–139, 409.
- ¹² ICJ AO, para. 457(3).A.
- ¹³ ICJ AO, para. 457(3).B.
- ¹⁴ ICJ AO, para. 457(3).C.
- ¹⁵ ICJ AO, para. 457(3).D.
- ¹⁶ ICJ AO, para. 457(3).E.
- ¹⁷ ICJ AO, para. 282.
- ¹⁸ ICJ AO, para. 403. See also ICJ AO, para. 457(3).E.
- ¹⁹ See ICJ AO, paras. 320–330, 332–335, 340, 342–354, 364, 457(3).C–D.
- ²⁰ ICJ AO, para. 457(4).
- ²¹ ICJ AO, para. 252.
- ²² ICJ AO, para. 281.
- ²³ ICJ AO, paras. 245–246.
- ²⁴ ICJ AO, para. 247.
- ²⁵ ICJ AO, para. 247.
- ²⁶ ICJ AO, paras. 280–283, 287, 290–292, 457(3).B(a).
- ²⁷ See, e.g., ICJ AO, paras. 226, 229, 247, 252, 258.
- ²⁸ ICJ AO, paras. 140–142, 183, 214–218, 260–267.
- ²⁹ See, e.g., UNFCCC, Art. 4.7.
- ³⁰ Paris Agreement, Arts. 3, 4.2, 4.3, 4.4, 4.9.
- ³¹ ICJ AO, para. 443.
- ³² ICJ AO, para. 443.
- ³³ ICJ AO, para. 444.

34 ICJ AO, para. 444.
 35 See, e.g., ICJ AO, paras. 183, 211, 217.
 36 See, e.g., ICJ AO, paras. 139–142, 183, 211, 214, 215, 217, 218, 260–267.
 37 ICJ AO, paras. 282, 444.
 38 ICJ AO, para. 428.
 39 ICJ AO, paras. 440 and 442.
 40 ICJ AO, paras. 445 and 457(4).
 41 ICJ AO, para. 445.
 42 ICJ AO, para. 443.
 43 ICJ AO, para. 433.
 44 ICJ AO, para. 436.
 45 ICJ AO, paras. 437–438.
 46 For an example of studies that sought to specifically attribute national responsibility for climate change impacts, see Fei, T et al., Quantifying national responsibilities for climate change impacts (preprint version) (Research Square, 9 December 2025), at <https://doi.org/10.21203/rs.3.rs-3945496/v1>. Some national courts have held their respective States responsible for climate harm or risk, albeit on various grounds. See, e.g., *Urgenda Foundation v. Netherlands* (<https://www.urgenda.nl/en/themas/climate-case/>), *Neubauer et al. v. Germany* (<https://www.acrisl.org/casenotes/m2l18m8skjpglk8-83mk2-k5yza-dcafy-x5ztr-bjfxk-c9y55-5ryfp>), *Verein KlimaSeniorinnen Schweiz v. Switzerland* (<https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22appno%22:%5B%2253600/20%22%5D,%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%5D,%22itemid%22:%5B%22001-233206%22%5D%7D>}), *Leghari v. Pakistan* (<https://www.escri-net.org/caselaw/2023/leghari-vs-federation-pakistan/>), and *Future Generations v. Colombia Ministry of Environment* (<https://www.informea.org/en/court-decision/future-generations-vs-ministry-environment-and-others>).

A sunset over a beach with a wooden boat in the foreground. The sky is a mix of orange, yellow, and blue, with the sun low on the horizon. The beach is sandy and the water is calm. A wooden boat is in the foreground, and another one is further out in the water.

A landmark Advisory Opinion delivered by the International Court of Justice (ICJ) in July 2025 declares that the obligations of States to address climate change arise not only under the international climate treaties but also from the broader corpus of international law, including customary international law – thereby strengthening the legal foundations of global climate action. This was welcomed by the United Nations General Assembly (UNGA) in a May 2026 resolution which represents a major political endorsement of the Advisory Opinion. The resolution provides a pathway for multilateral follow-up to advance compliance with States' climate obligations in light of the Advisory Opinion.

This collection of three papers explores the significance of the ICJ opinion and UNGA resolution, including the ICJ's reaffirmation of common but differentiated responsibilities between developed and developing countries, and its examination of State responsibility for breaches of climate obligations, including for loss and damage due to climate change. The papers underline the opportunity these developments present to strengthen the multilateral response to global warming through urgent, equitable climate action.

VICENTE PAOLO B. YU III is a Senior Legal Adviser of the Third World Network, Senior Lecturer at the University of the Philippines College of Law, Lecturer at the International Institute in Geneva, Honorary Professorial Fellow at the University of Warwick School of Law, Associate Fellow at the Geneva Center for Security Policy, and Visiting Research Fellow at the UN Research Institute for Sustainable Development.