XTRATEGY ADVISORY:

When the ICJ Speaks on Climate Change: International Obligations & Consequences for States, Communities, Investors & Development Banks

José Antonio Rivas, *Momin b. Mohsin*, *María José Guerrero* & *Camila Castro*

> The consequences of climate change are severe and far-reaching; they affect both ecosystems and human populations. Rising temperatures are causing the melting of ice sheets and glaciers, leading to sea level rise and threatening coastal communities with unprecedent flooding … The consequences underscore the urgent and existential threat posed by climate change.[1]

These were words of the International Court of Justice (ICJ), when it delivered the landmark advisory opinion on *Obligations of States In Respect Of Climate Change* on July 23, 2025. Issued at the Peace Palace in The Hague, the opinion marks a critical moment in the evolution of international environmental law.

The Opinion traces its origins to 2023, when the UN General Assembly formally requested an advisory opinion from the ICJ on States' obligations in relation to climate change.[2] The request sets out two carefully framed questions addressing:

(1) the content and scope of States' international legal obligations to protect the climate system and the environment; and
(2) the legal consequences that arise from breaching those obligations, particularly when these breaches result in significant harm to the climate system and the environment.[3]

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[1] Obligations of States In Respect Of Climate Change, Advisory Opinion, 73 (July 2025) ("Climate Change Advisory").
[2] G.A. Res. 77/276 (March 29, 2023).
[3] *See* G.A. Res. 77/276 (March 29, 2023).

I. What Is the Significance of Advisory Opinions?

Although not binding on disputing States,[4] ICJ advisory opinions carry considerable legal authority, as they can: (1) identify relevant treaty obligations, and (2) clarify and affirm rules of customary international law, which is binding on States.

[4] *United Nations Charter,* opened for signature 26 June 1945, XV UNCIO 335, amendments in 557 UNTS 143, 638 UNTS 308 and 892 UNTS 119 (entered into force 24 October 1945) (the ICJ issues advisory opinions at the request of one of the five principal organs of the United Nations or one of its sixteen specialized agencies), 96.

II. Substantive Legal Obligations of States

In comprehensively answering the two questions posed by the General Assembly, the ICJ considered the entire body of international law related to the environment and climate change, including: (1) the UN Charter, (2) core climate treaties (United Nations Framework Convention on Climate Change (UNFCCC), Kyoto Protocol, Paris Agreement), (3) United Nations Convention on the Law of the Sea (UNCLOS), (4) international human rights law, and (5) established customary international law.[5] The Court confirmed that the three core climate treaties are complementary, mutually reinforcing, and do not exclude other rules of international law.[6]

1. **Customary Duty to Prevent Significant Harm to the Environment:** the Court confirmed the existence of a customary international law duty to prevent harm to the climate system.[7] This duty also encompasses the obligation to act with due diligence,[8] entailing that States take measures to achieve "deep, rapid and sustained" reductions in greenhouse gas (GHG) emissions.[9] The duty further requires States to regulate the conduct of both public and private actors within their jurisdiction.[10]

2. **Duty to Co-operate:** the Court ruled that the State duty to co-operate for the protection of the environment is customary, therefore making co-operation not a matter of choice, but an **international legal obligation**.[11]

3. **On the Paris Agreement:** the Court found the 1.5° C threshold to be the parties' agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement.[12]

4. **Preparation of, and Compliance with, Nationally Determined Contributions (NDC's):** the Court further held that, although States enjoy discretion in formulating their own NDCs,[13] that discretion must be developed within the framework of the

[5] Climate Change Advisory, 172 (July 2025).
[6] Climate Change Advisory, ¶¶ 168, 195, 411 (July 2025).
[7] Climate Change Advisory, 273 (July 2025).
[8] Climate Change Advisory, 280 (July 2025).
[9] Climate Change Advisory, 282 (July 2025).
[10] Climate Change Advisory, 282 (July 2025).
[11] Climate Change Advisory, ¶¶ 301, 308 (July 2025).
[12] Climate Change Advisory, ¶¶ 224 (July 2025).
[13] Nationally Determined Contributions, https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs (noting that "[t]he Paris Agreement requests each country to outline and communicate their post-2020 climate actions, known as their NDCs. Together, these climate actions determine whether the world achieves the long-term goals of the Paris Agreement and to reach global peaking of greenhouse gas (GHG) emissions as soon as possible and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of GHGs in the second half of this century").

Paris Agreement and in light of the prevailing climate crisis.[14] In exercising that discretion, each State is required to act with due diligence and to ensure that its NDCs give effect to their obligations under the Paris Agreement.[15] Accordingly, NDCs must, when considered collectively, be capable of achieving the objective of limiting global warming to 1.5°C above pre-industrial levels, as well as the broader goal of stabilising GHG concentrations in the atmosphere at a level that prevents dangerous anthropogenic interference with the climate system.[16] Given the gravity of the climate crisis, the Court emphasised that the applicable standard of due diligence in the preparation of NDCs is a **stringent one**, requiring each party to make its utmost efforts to ensure that its NDC reflects its highest possible level of ambition in pursuit of the Agreement's objectives.[17]

Crucially, the role of a State party to the Paris Agreement (currently encompassing 194 countries and the EU), extends beyond the mere prerogative of determining the content of its climate contributions. Although NDCs are formulated by the State, once established, they are no longer merely aspirational.[18] The Paris Agreement imposes obligations on State Parties to prepare, communicate, and maintain NDCs as part of global mitigation efforts on a five-year cycle.[19] These are obligations of "result", requiring Parties to implement the measures reflected in their NDCs.[20]

This obligation requires each Party to do its utmost to ensure that its NDC reflect the highest possible ambition.[21] Moreover, the Court found that the Paris Agreement is prescriptive in nature, and requires successive NDCs to represent a progression beyond the Party's current NDC.[22]

5. **Erga omnes obligation:** under international law, *erga omnes* obligations refer to specifically defined duties that States owe not to particular States, but to the international community as a whole.[23] The Court found that 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 owed *erga omnes*.[24] As a consequence, any State may invoke the responsibility of a breaching State for non-compliance with such obligations, irrespective of whether it has suffered direct injury. [25] While non-injured States may not seek reparation for their own benefit, they

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[14] Climate Change Advisory, 245 (July 2025) (In advance of the Paris Conference, 186 States, accounting for over 90 percent of global greenhouse gas emissions, submitted emissions-reduction pledges known as Intended Nationally Determined Contributions (INDCs). These submissions set out each State's proposed mitigation efforts, including the preservation of carbon sinks, for the period up to 2025 or 2030 and, in many cases, economy-wide emissions-reduction targets. Upon a State's ratification or accession to the Paris Agreement, its INDC is converted into a Nationally Determined Contribution (NDC)).
[15] Climate Change Advisory, 245 (July 2025).
[16] Climate Change Advisory, 245 (July 2025).
[17] Climate Change Advisory, 246 (July 2025).
[18] Climate Change Advisory, 236 (July 2025).
[19] Climate Change Advisory, 235 (July 2025).
[20] Climate Change Advisory, 235 (July 2025).
[21] Climate Change Advisory, 240 (July 2025).
[22] Climate Change Advisory, 241 (July 2025).
[23] Barcelona Traction, Light & Power Co. (Belg. v. Spain), Second Phase, Judgment, 1970 I.C.J. 3, 33 (Feb. 5, 1970).
[24] Climate Change Advisory, 440 (July 2025).
[25] Climate Change Advisory, ¶¶ 441 -2 (July 2025).

are entitled to pursue claims for cessation of the wrongful conduct, assurances and guarantees of non-repetition, and the performance of reparation in the interest of the injured States or the beneficiaries of the obligation breached.[26]

6. **Scientific Reliance & Determination of each State's contribution to global emissions:** the ICJ confirmed that GHG emissions are "unequivocally caused by human activities"[27], but clarified the internationally wrongful act is not emissions as such, but acts or omissions causing significant harm to the climate system in breach of international obligations.[28] The question then becomes: to what quantifiable extent can acts or omissions of a particular State affect the climate system? Since the adoption of the UNFCCC, States have been required to report emissions. Today, authoritative sources provide data on: (1) cumulative net emissions by region,[29] and (2) current and historical emissions that can be attributed to individual States.[30] Thus, as the Court crucially observed, **it is scientifically possible to determine each State's contribution by reference to historical and current emissions data**.[31] The Court further recalled that other courts and tribunals have recognized causal links between State conduct, climate change, and resulting harm.[32]

7. **GHG emissions affecting the environment, and the State acts or omissions:** During the proceedings, some States argued that GHG emissions by private actors were not attributable to States. The Court clarified that the relevant obligation is not to attribute private conduct to the State, but to assess whether the State has complied with its duty to regulate private actors with due diligence.[33] Attribution in this context concerned the State's own actions or omissions.[34] Where a State omits adopting or enforcing the necessary legislative and regulatory measures to limit emissions by private actors within its jurisdiction, that failure may give rise to international responsibility under well-established principles of international law.[35]

III. Legal Consequences For Non-Compliance

The Court held that a State's failure to comply with its climate obligations amounts to "an internationally wrongful act."[36] On the question of attribution, it was further affirmed that "the well-established rules of international law that the conduct of any organ of a State must be regarded as an act of that State … [are] applicable in the context of climate change."[37]

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[26] Climate Change Advisory, 443 (July 2025).
[27] Climate Change Advisory, 79 (July 2025).
[28] Climate Change Advisory, 429 (July 2025).
[29] Climate Change Advisory, 429 (July 2025) (referring to 2023 IPCC Synthesis Report which provides data on cumulative net emissions by region).
[30] Climate Change Advisory, 429 (July 2025).
[31] Climate Change Advisory, 429 (July 2025).
[32] Climate Change Advisory, 429 (July 2025).
[33] Climate Change Advisory, 428 (July 2025).
[34] Climate Change Advisory, 428 (July 2025).
[35] Climate Change Advisory , 428 (July 2025).
[36] Climate Change Advisory, 427 (July 2025).
[37] Climate Change Advisory, 427 (July 2025).

States have a positive obligation to adopt regulatory measures for the protection of the climate system, and to ensure their effective enforcement, including by securing compliance from private actors, including persons, communities, and companies.

Similarly, when assessing investment projects across economic sectors (such as energy, infrastructure, natural resources, and utilities, whether financed by private banks or development banks), financial institutions must take into account that States (including the host State of the project) are bound by the aforementioned customary rules of international law on climate change.

The host State must also comply with its climate change treaty commitments, including its NDCs under the Paris Agreement, if applicable. This presents a fundamental question for both private and international development finance institutions: *what justification exists for funding projects that fail to align with, or potentially contradict, the international obligations and domestic climate legislation that the host State has committed to upholding?*

This question is not merely theoretical. The Court has previously confirmed that environmental damage is compensable under international law. Compensation may be owed both for harm to the environment "in and of itself," including indemnification for the impairment or loss of environmental goods and services during the period prior to recovery, and for expenses incurred by injured States as a consequence of such damage.[38] In light of this jurisprudence, and of the Court's observation that it is scientifically possible to determine a State's contribution to global emissions, financing projects that are misaligned with a host State's climate commitments may expose States and, indirectly, financial institutions to legal and financial consequences arising from breaches of international environmental obligations.

As NDCs vary in content and ambition across States, and individual projects differ in their characteristics, a comprehensive case by case analysis of these variations, though possible, is beyond the scope of this advisory.

IV. The Impact of the ICJ's Advisory Opinion & Potential Implications for States & Private Actors

The ICJ's clarification of international duties has profound implications, likely leading to heightened legal scrutiny, while boosting compliance of projects with international obligations on climate change:

- *Increased Compliance Standard:* The emphasis on due diligence and the duty to regulate private actors will increase compliance standards for companies, demanding alignment with stringent international climate obligations even where local regulations are lenient.

- *Climate Litigation Risk:* The opinion is expected to increase climate lawsuits, particularly against high-emission industries. Companies could be held liable

[38] Climate Change Advisory, 453 (July 2025).

for failing to align with international climate standards, with the due-diligence benchmark being central to future cross-border claims.

International claims by private actors may increase in a world where the ICJ has clarified the international law obligations of States on climate change. Compared to the past, communities, individuals, companies, and investors may now more reasonably expect host States to comply with their customary international law and treaty obligations relating to climate change, where such obligations are relevant to the protection of rights or, in certain cases, investment projects.[39]

State to State claims may likewise become more frequent, particularly given the *erga omnes* character of some of the obligations identified by the ICJ. Naturally, any such claim would be subject to a range of conditions before it could be brought before an international tribunal, including the complaining State's *jus standi* and the satisfaction of applicable jurisdictional requirements.

- *Financing and Investor Scrutiny:* Institutional investors and financing bodies, including international development organizations, will likely use the opinion to demand compliance with these established international law obligations on climate change, reinforcing the need for solid climate risk assessment and governance.

- *Strategic Response:* Businesses are strongly advised to adopt proactive standards that align their operations with international best practices and the Court's strict due-diligence expectations to mitigate future regulatory and legal risks.

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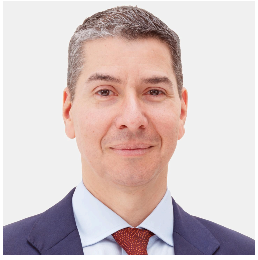
Key Contacts:

[39] *See* Peter Allard v. The Government of Barbados, PCA Case No. 2012-06, Award (June 27, 2016) (Allard claimed that a failure by Barbados to take environmental protection measures breached the BIT and resulted in the destruction of the value of his investment in an eco-tourism site. The tribunal dismissed the claims and held that Barbados took all necessary steps to protect the investment and that any alleged failure to enforce environmental laws was irrelevant to the Full Protection & Security standard, particularly since Allard never notified the State of the issues. The tribunal further found no expropriation, as Allard retained possession and economic use of the site and failed to prove a causal link between environmental degradation and the closure of his business).



José Antonio Rivas
Xtrategy LLP
Founding Partner
+1(202) 944-0084
jarivas@xtrategycenter.com
www.xtrategyllp.com