insights

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The ICJ's Opinion on Climate Change: Pushing the Boundaries of International Law

Introduction

The advisory proceedings on climate change law concluded on July 23, 2025 with the International Court of Justice (ICJ) handing down its eagerly awaited Advisory Opinion. After the United Nations General Assembly had unanimously requested the opinion, an unprecedented number of 98 states and 13 international organizations participated in the proceedings in the Hague. The list of spectacular rulings in the opinion is long, from the granular obligations in the Paris Agreement to the applicability of customary law to greenhouse gas emissions. Remarkably, the Court was unanimous on all points.

The Court's landmark opinion will undoubtedly be the linchpin at the UN Climate Change Conference in Belém later this year (COP30). It reaches far beyond climate change law, though, enabling also deep insight on the creation of international law. This Insight summarizes the main holdings of the Opinion, and considers how the Court pushed the boundaries of international law in arriving at them. In doing so, the Insight draws on comprehensive data gathered from the submissions made by the 111 participants in the advisory proceedings.

Main Holdings of the Advisory Opinion

The advisory proceedings were pioneering in many regards. Many states, such as Nepal or Papua New Guinea, spoke for the first time in the Court's history.[1] Sixteen states spoke without even having filed any written submission. A great number of small island states used the stage in The Hague to describe their suffering dramatically. In turn, the Court delivered a rare unanimous Advisory Opinion that pushed the boundaries of international law on many points. Key holdings included:

***Scope*:** A crucial juncture of the advisory proceedings was the scope of the General Assembly's request. A narrowly interpreted purview focusing on the climate change

treaties—UNFCCC, Kyoto Protocol, and Paris Agreement—would have removed many of the more contentious issues from the Court's review, including customary law, human rights, and state responsibility. The Court, however, found the scope of the General Assembly's request to be wide (¶ 98), dispatching with arguments advanced to the contrary inter alia by Russia, the United Kingdom, and the United States. It rejected the idea that the climate change treaties amounted to *lex specialis.* Rather, the treaties should be read together with general international law (*see* ¶¶ 162 ff), in an exercise which scholarship would call "systemic integration."[2]

Climate Change Treaties: Rejecting the idea that the Paris Agreement broke with the UNFCCC and the Kyoto Protocol, the Court instead saw the three climate change treaties on a continuum. It notably upheld the principled distinction between developing and developed states, although it construed this on a spectrum rather than categorically. Consequently, in the Court's view, China sits somewhere between developing and developed states and has clear capacity and duty to mitigate emissions (¶ 150)[3].

The Court also read the goal of the states parties to the Paris Agreement dynamically, such that the goal should no longer be to limit the global average temperature increase to 2.0° Celsius and pursue efforts to limit the increase to 1.5° Celsius (as per the text of the Paris Agreement), but rather to squarely achieve a 1.5° Celsius goal, as this "has become the scientifically based consensus target" (¶ 224; see section 3.1 below). More broadly, the Court effectively reconstructed the Paris Agreement into a binding set of obligations. The Agreement, in the Court's reading, requires states not only to submit nationally determined contributions, but also to adopt implementing measures. Both duties were further subject to a due diligence standard that the Court, borrowing from the recent ITLOS advisory opinion on the law of the sea (see ¶¶ 344 and 347 of the Opinion), described as "stringent" (¶¶ 246 and 254).

***Customary International Law*:** The Court in the Opinion applied general environmental law on a par with the Paris Agreement. The lasting effect of this approach is that all states are bound by customary obligations, which to a large extent mirror the obligations under the Paris Agreement. This notably includes former parties to the Paris Agreement, such as the United States. The Court specifically extended the customary duty to prevent harm

to the environment to the climate system (¶ 134). The general standard of due diligence under this duty was also "stringent" (¶ 138).

***Human Rights*:** The Court addressed human rights in a separate section (¶¶ 369 ff.), in which it notably incorporated a human right to a clean, healthy, and sustainable environment (¶ 393). While effectively recognizing this as a binding right, the Court did not accord future generations a firm legal position, but instead considered the principle of intergenerational equity a mere "guide for the interpretation of applicable rules" (¶ 157). It also refused to address potential consequences of violations of specific rights of individuals and peoples (¶ 111), just as it did not entertain the notion that being a specially affected or particularly vulnerable state in principle entailed particular legal consequences (¶¶ 107-110).

***State Responsibility*:** The Court held that the rules of state responsibility applied fully in case of violations of climate change law (¶ 411). The Court notably ruled that fossil fuel production, consumption, and subsidies as well as the granting of fossil fuel exploration licenses could constitute wrongful acts attributable to the state concerned (¶ 427). According to the Court, the established legal rules of causation were capable of applying to violations of climate change law with regard to reparation (¶ 436). The Court also recognized the applicable norms broadly as *erga omnes* obligations, thus inviting all states to seek reparation for violations of climate change law (¶¶ 439 ff.), a ruling that is likely to reverberate widely in domestic climate change litigations. The Court, however, stopped short of discerning new peremptory obligations.

Analysis

A previous *ASIL Insight* anticipated the Advisory Opinion's impact on the sources of international law, in particular, customary law. The data my research team gathered from more than 10,000 pages of participants' submissions shows how the Court's rulings on the temperature goal, the broad approach it took, and its recognition of a human right to a healthy environment develop international law, pushing the boundaries of both its sources and legal interpretation.

Lowering the Temperature Goal

According to the Court, the goal is now clearly to limit the temperature increase to 1.5° Celsius, which is lower than the 2.0° degrees originally agreed under the Paris Agreement. Admittedly, states parties had reiterated their resolve to pursue efforts to this effect at yearly meetings in Glasgow in 2021 and in Dubai in 2023, but the language remained hortatory (see the decisions cited in ¶ 224). The Court, referring to the International Law Commission's (ILC) conclusions on subsequent agreement and practice,[4] interpreted the states parties' decisions as "agreement in substance" on the goal of limiting the temperature increase to 1.5° Celsius within the meaning of Article 31 (3)(a) of the Vienna Convention on the Law of Treaties (¶¶ 184 and 224).

Although we have not coded data on the temperature goal, it is clear that more than a few states favored a less strict view of the temperature goal in their submissions to the Court.[5] This throws doubt on the ICJ's finding of an "agreement in substance." The opinion glossed this over by alluding to the scientific consensus ("scientifically backed", ¶ 224), while avoiding mention of the temperature goal's binding effect. Whether the Court's bold interpretation will have an impact on states' actual greenhouse gas emissions remains to be seen, but it could have subtle effects on the making of law in the future. If, for instance, consensus among scientists can make up for incomplete agreement on the law, as the ICJ's reasoning suggests, states may think twice in the future before endorsing scientific consensus through intergovernmental decisions. If that proves to be the case, then science may paradoxically emerge weakened from the Court's effort in strengthening it.

The Court's Broad Approach

The opinion broadened state obligations by rejecting the *lex specialis* argument, which would have isolated the climate change treaties from general international law, and by bringing the duty to prevent harm to bear on the climate system. It also made state obligations firmer by heightening the standard of diligence applicable under the climate change treaties and customary law and by attaching legal consequences to violations. These verdicts are borne out by solid majorities of participants who filed submissions, as our data shows. More or less 80 percent of participants favored a wide scope of the opinion (thus rejecting *lex specialis*), wanted the duty to prevent to apply, and considered state responsibility relevant; approximately 12 percent were against such an approach, while the remaining participants had no or no clear view on the three points.[6]

On the evidence from the advisory proceedings, then, the development of international law seems driven by state majorities. However, a look at the numbers in the light of state groupings reveals that the majority of states with whom the Court sided, were composed largely of the world's least developed countries, most of the developing countries, and small island states (see Figure 1). One could conclude from this that the traditional, "Great Powers" have lost further grip on the principal judicial organ of the United Nations, or that the ICJ is, in fact, beginning to live up to its title. At the same time, it is worth mentioning that the minority of states against whom the Court ruled comprises about half the world's population (see the states listed in Figure 1).

Fig. 1: Participants giving negative answers to one or more of the three central questions; empty boxes indicate that no answer or no clear answer was given.

Recognition of a Human Right to a Clean, Healthy, and Sustainable Environment

The picture changes slightly regarding the human right to a healthy, clean, and sustainable environment, which the Court considered effectively binding. In its reasoning, the Court referred to the African Charter, the Arab Charter, and the Protocol of San Salvador to the American Convention, as these treaties include a human right to a clean environment. Then, before referring to "several regional and national courts" and their pronouncements on the right (¶ 391), the Court cited the annex to a United Nations Special Rapporteur's report, which listed "over one hundred States" (ibid.) that have enshrined the right to a clean environment in national law. The opinion went on to mention General Assembly resolution 76/300 of 28 July 2022, which also recognized the right and was adopted by a large majority of 161 affirmative votes.

The data from participants' submissions to the Court shows that 47 percent of participants filed an affirmative answer to the question whether the right to a clean environment was legally binding under international law, 24 percent a negative answer, and 29 percent gave no or no clear answer. Given the data, the Court in its Opinion did not rely on a clear majority of all participants, but sided with the 47 percent who gave an affirmative answer. The opinion glossed this over, however, by referring instead to "over one hundred states" which have enshrined the right in national law, according to the Special Rapporteur's report.

Difficult legal questions lurk behind these numbers, such as, how a *majority* of states' national legal practice relates to the affirmative legal view of a *minority* of participants in an advisory proceeding with regard to the generation of customary law. The ILC's work on the identification of customary international contains elements of an answer,[7] though it mostly requires an overall assessment. A regression analysis combining the Special Rapporteur's data on national law with our data from states' submissions in the advisory proceedings reveals that the enshrinement of the human right to a clean environment in national law correlates weakly with states' views that the right is part of binding international law. Figure 2 shows the numbers in a crosstabulation.

		1. Is the right to a clean environment enshrined in national law?	
		Yes	*No*
2. Is the right to a clean env. part of binding int. law?	*Yes*	30	15
	No	9	14

Fig. 2 Number of state participants and their position toward the right to a clean environment in national law and international law (question 1: A/HRC/43/53; question 2: participants' submissions in the advisory proceedings).[8]

Figure 2 shows that the critical mass of those states participating in the advisory proceedings that consistently back a binding right to a clean environment on both levels, domestically and internationally, stands rather low at 30 state participants. At the same time, significant groups are either not interested in the right at all (14 state participants), somewhat inconsistently (15 state participants arguing for an international right without having it domestically), or only domestically (9 state participants). These numbers show that the ICJ recognized the right to a clean environment as a binding international legal obligation, even though submissions to the Court suggest that only a relatively small minority of states have consistently and effectively endorsed the right. It follows that a large majority of states may well have voted in favor of General Assembly Resolution 76/300, trusting that it would not create a binding human right.[9] The Court, in contrast, referred to this very Resolution as "evidence of the acceptance of this right" (¶ 392).

Conclusion

While the "consensus-based" international legal order has perhaps always been a mirage, the advisory proceedings on climate change law have for the first time provided solid evidence of a majoritarian approach by the International Court of Justice to the sources and interpretation of international law. The opinion arguably embodies a gamble, though. The Court has thrown its weight behind climate change law, making it more granular and perhaps more effective, but it also appears to have departed from a truly common denominator. The opinion might "provide a positive feedback loop,"[10] coaxing states emitting large quantities of greenhouse gases out of their lethargy – or it might simply make them turn away further from climate change law, or perhaps even from international law more broadly.

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[1] *See* transcripts of oral proceedings of 6 December 2025, 10.00 am, p. 19 (Papua New Guinea), and 9 December 2025, 3.00. pm, p. 20 (Nepal), https://icj-cij.org/case/187/oral-proceedings.

[2] Campbell McLachlan, *The Principle of Systemic Integration in International Law*, OUP 2024; Margaret A. Young, "Systemic Integration of Obligations in an Era of Climate Change: Stability and Optimal Control", Melbourne Legal Studies Research Paper Series no. 971, 8 April 2025 (forthcoming in *The British Yearbook of International Law*).

[3] On the consequence that China does not have an unfettered freedom to emit, Judge Xue, a Chinese national, expressed her disapproval in a separate, but not dissenting opinion.

[4] *See* General Assembly Resolution 73/202 of 20 December 2018, welcoming the conclusions of the International Law Commission on subsequent agreement and subsequent practice. Conclusion 11(3) states that decisions by Conferences of state parties embody subsequent agreement or subsequent practice under article 31(3) Vienna Convention to the extent that they express "agreement in substance." In a similar vein, pronouncements of expert treaty bodies are subject to the applicable rules of the treaty and may give rise to, or refer to, a subsequent agreement or practice (Conclusion 13 (2) and (3)). The Rapporteur of the ILC on the topic was Georg Nolte, now a judge at the Court.

[5] If we look at the statements submitted by the permanent members of the Security Council, instead of all submissions, on the temperature goal, China (pp. 10-11, ¶¶ 22-24), the Russian Federation (p. 7), and the United Kingdom (p. 35, ¶¶ 62-63) saw the goal less strictly than 1.5° Celsius; France (p. 20, ¶ 53) and the United States (p. 52, ¶ 3.37) referred to the goal of 1.5° Celsius. All statements are available at: https://icj-cij.org/case/187/written-proceedings.

[6] Although the Opinion did not draw on hard data, its language emphasized majorities explicitly, notably, regarding wide scope ("[t]his interpretation is confirmed by the understanding of most of the participants […]", ¶ 94; "[m]ost participants…", ¶ 163), the duty to prevent being applicable ("[m]ost participants affirmed that…" versus "[o]ther participants argued…", ¶ 133), and state responsibility applying ("[t]his interpretation also finds support in the majority of the replies to a question…", ¶ 419).

[7] General Assembly Resolution 73/203 of 20 December 2018, welcoming the conclusions, in annex, of the International Law Commission on the topic of identification of customary international law. Michael Wood had been the ILC Rapporteur. On one hand, commentary 3 to Conclusion 5 states: "The relevant practice of States is not limited to conduct vis-à-vis other States or other subjects of international law; conduct within the State, such as a State's treatment of its own nationals, may also relate to matters of international law." Commentary 4 to conclusion 10 refers to "assertions made in written or oral pleadings before courts or tribunals" as means to assess *opinio iuris*. (The commentaries are available at: https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf)

[8] Twenty-five state participants had no position on question 2; the Nordic countries differed internally on question 1, while they together answered no to question 2; no information was available on Cook Islands regarding question 1.
[9] For the position of the United States on Resolution 76/300, see Contemporary Practice of the United States Relating to International Law: The United States Recognizes the Human Right to a Clean, Healthy, and Sustainable Environment, Jacob Katz Cogan (ed.), (117) AJIL (1) 2023, 129-133.
[10] Christina Voigt, "The Power of the Paris Agreement in International Climate Litigation", (32) *Review of European, Comparative & International Environmental Law* (2, July 2023), 237-249, p. 237.