PRAVNI ZAPISI, God. XVI, br. 2 (2025)
UDK 341.645.2:504.7
DOI 10.5937/pravzap16-62288

CASE NOTE / KOMENTAR ODLUKE

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THE ICJ'S ADVISORY OPINION ON CLIMATE CHANGE: A POSITIVE, YET SMALL, STEP FORWARD

Abstract: *The ICJ's Advisory Opinion on the obligations of States in respect of climate change represents a pivotal moment in international environmental law. Being one of three recent decisions on this matter, the Opinion fits neatly within a growing body of jurisprudence aimed at compelling States to fulfill their internationally owed duties.*

The Opinion clarifies that States have legal obligations from a panoply of legal instruments to mitigate, adapt and cooperate in regard to the adverse effects of climate change. A breach of these obligations constitutes an internationally wrongful act and triggers State responsibility. Additionally, the Court endorsed the 1.5°C temperature goal as a legally binding target.

While the Opinion is laudable in many respects, others could have been improved. These include the reluctance of the Court to give a definite answer on the rights of future generations and the question of continued statehood due to the permanent loss of territory due rising sea levels.

Key words: Climate Change, ICJ, Advisory Opinion, State Obligations, State Responsibility, Climate Change Treaties, Statehood, Human Rights, International Environmental Law.

1. Introduction

The climate crisis is an existential challenge to both current and future generations. Amidst political inaction, judicial bodies are being asked to weigh in on the matter to clarify and potentially mandate States to take action. The International Court of Justice's (ICJ) Advisory Opinion on the obligations of States in respect of climate change,[1] which was delivered on 23 July 2025 in response to a request by the United Nations General

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1 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, General List No. 187.

Assembly (UNGA), is the latest addition to a growing body of jurisprudence of international tribunals that aims to compel States to fulfill their duties owed to the world and its peoples in the face of the climate crisis.

The ICJ's Opinion is both clear and decisive: under various climate change treaties, customary international law, human rights law and other international law, States have an overwhelming obligation to protect and preserve the climate system. A breach of these obligations constitutes an internationally wrongful act and will trigger State responsibility. Most notably, the Court affirmed findings of the Intergovernmental Panel on Climate Change's (IPCC) as the best available science regarding climate change and established a temperature goal of 1.5°C as the legally binding target.

There is much worthy of praise in the ICJ's Opinion, among others the clear rejection of the *lex specialis* argument brought by especially high emitting States and its rigorous engagement of scientific evidence. The Court clarified that there is enough scientific evidence to conclude causation and attribution of State responsibility. Yet, as this case note contends, the Court was equally cautious, leaving not only many questions unanswered but also opening the door to further uncertainty. These specifically include two aspects: the right of future generations and the precarious legal status of small island developing States facing the potential loss of their territory due to sea-level rise. Following a detailed analysis of the Court's key findings, this note critically evaluates the achievements and shortcomings of the Opinion. It is suggested that the Court's Opinion represents a positive, yet small, response to the UNGA's expansive request for clarification.

2. Factual and Legal Background

The ICJ's Advisory Opinion of 23 July 2025 on the obligations of States in respect of climate change is the latest decision in a currently evolving transnational judicial dialogue. Resolution 77/276, adopted on 29 March 2023 by the UNGA, formally requested the ICJ to clarify States' international obligations owed to the climate system as well as corresponding legal consequences for harming the climate system through significant emissions of anthropogenic greenhouse gases (GHG).[2]

The Court was asked to render an Advisory Opinion on the following questions:

2 UNGA Resolution 77/276, *Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change*, UN doc. A/RES/77/276, (29 March 2023).

a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?
b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
   i. States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
   ii. Peoples and individuals of the present and future generations affected by the adverse effects of climate change?[3]

The UNGA asked that, in answering the request, the Court take into particular consideration the Charter of the United Nations, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESC), the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Agreement, the United Nations Convention on the Law of the Sea (UNCLOS), the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment.[4]

The proceedings attracted unprecedented global engagement, with 91 initial written submissions and 62 subsequent comments from States and International Organizations.[5] Public hearings where held from 2 to 13 December 2024, with 102 oral statements heard.[6] Notably, before the public hearing, the Court also met with the past and present authors of the reports of the IPCC, to get better acquainted with the scientific basis and effects of climate change.[7]

The Court opined unanimously that the climate change treaties, customary international law and the Conventions referenced in Resolution 77/276 trigger international obligations for States in respect to climate change. A breach of any of these obligations by a State would constitute

3 *Ibid*.; ICJ, Advisory Opinion, p. 8.
4 *Ibid*.
5 *Ibid*., p. 11, para. 17; p. 12, para. 24.
6 *Ibid*., p. 14, para. 35.
7 *Ibid*., p. 13, para. 33.

an internationally wrongful act that entails the responsibility of the State. Where the obligation is one of conduct, a stringent standard of due diligence needs to be applied.[8]

Markedly, the ICJ's Opinion is situated in a broader discourse on state obligations relating to climate change, as illustrated by the Advisory Opinions of the International Tribunal for the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACtHR). The ITLOS rendered its Advisory Opinion on 21 May 2024, affirming in it that the law of the sea is directly applicable in determining the content and scope of States' obligations in respect to climate change.[9] Similarly, the IACtHR's Advisory Opinion was delivered on 29 May 2025, only two months before the Advisory Opinion of the ICJ. The IACtHR was tasked with giving guidance on the obligations of States in respect to the climate emergency, which it affirmed to exist, within the framework of international human rights law.[10]

What all three Advisory Opinions have in common is that they categorically affirm States' obligations in respect to climate change. Taken together, these three opinions illustrate a transnational and trans-judicial dialogue aimed at strengthening the international framework for State obligations with respect to climate change. The high level of participation in all these proceedings, culminating in the ICJ proceedings, demonstrates a growing consensus on the urgency of climate obligations as well as their justiciability. Additionally, all three opinions show a willingness to address the climate crisis in a robust and ambitious manner, interlinking international environmental principles with human rights and scientific evidence.

3. The Court's Opinion Under the Microscope

The Court took up a total of 15 pages reviewing the latest scientific evidence on climate change and another 60 pages reviewing the applicable law – before it started its legal analysis. It found the Charter of the United Nations, the climate change treaties (i.e. the UNFCCC, the Kyoto Protocol, and the Paris Agreement), UNCLOS and other environmental treaties – including the Ozone Layer Convention and the Montreal Protocol, the Biodiversity Convention and the Desertification Convention – to

8 *Ibid*., p. 130, para. 457.

9 ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, Case No. 31, (*Advisory Opinion on Climate Change and International Law*), para. 441.

10 IACtHR, *On the scope of the state obligations for responding to the climate emergency and human rights*, Advisory Opinion of 20 May 2025, AO-32/25 214, p. 214.

be part of the directly applicable law in this case.[11] Additionally, the Court examined customary international law and found the duty to prevent significant harm to the environment and the duty to cooperate for the protection of the environment equally to be part of the applicable law.[12] It similarly found the core human rights treaties, including the ICCPR and the ICESCR, and the human rights recognized under customary international law to be applicable.[13]

Lastly, the Court stated that the principles of sustainable development, common but differentiated responsibilities and respective capabilities, equity, intergenerational equity and the precautionary approach are applicable as guiding principles for the interpretation and application of the aforementioned applicable law.[14] However, the "polluter pays" principle was rejected by the Court, stating that this principle was neither part of any of the climate change treaties nor has it been accepted as applying directly between States without having been specified in a treaty.[15]

This long list of applicable law demonstrates the comprehensive nature of the Court's undertaking of establishing a coherent framework for legal obligations of States in respect of climate change. As stated above, the Court was similarly rigorous in its examination of the latest scientific evidence available.[16] In particular, the Court acknowledged from the beginning that the climate system has undergone widespread and rapid changes and that this change is caused primarily by anthropogenic GHG emissions. It recognized the IPCC's findings as the best available science on the causes, nature and consequences of climate change, and cited its reports throughout its Opinion.[17] Most notably, the Court endorsed the temperate goal of 1.5°C from the IPCC's reports as a legal target to be fulfilled when States' obligations are determined, under the Paris Agreement.[18] For better clarity, the following analysis is divided into three separate sections: the treaty-based obligations of States (Section 3.1.), the obligations found in customary international law (Section 3.2.), and the obligations found in other environmental treaties, UNCLOS and international human rights law (Section 3.3.). Section 3.4. addresses the Court's reasoning in relation to the second question posed to it, namely, State responsibility in respect of climate change obligations.

11 ICJ, Advisory Opinion, p. 47, paras. 121, 124.
12 *Ibid*., p. 48, para. 129.
13 *Ibid*., p. 51, para. 145.
14 *Ibid*., p. 56, para. 161.
15 *Ibid*., p. 56, para. 160.
16 *Ibid*., pp. 34–38, paras. 72–87.
17 *Ibid*., pp. 34–35, paras. 72–74.
18 *Ibid*., p. 73, para. 224; p. 130, para. 457.

3.1. TREATY-BASED OBLIGATIONS

The Court commenced its legal analysis by examining the obligations flowing from the climate change treaties. It found that obligations can be grouped into three categories: obligations of mitigation, obligations of adaptation, and obligations of cooperation.[19] While the UNFCCC is, as its name suggests, only a framework law, the Kyoto Protocol and the Paris Agreement are concretizations of the obligations contained in the UNFCCC.[20] Nevertheless, the UNFCCC in itself also entails binding legal obligations. The primary objectives of it are the limiting of anthropogenic GHG emissions by sources and the preservation and enhancement of sinks and reservoirs for GHGs.[21]

According to the Court, all States parties to the UNFCCC have legally binding obligations to adopt measures that contribute to the mitigation of GHG emissions and adaptation to climate change.[22] Chief among them is the obligation to develop, periodically update, publish and make available national inventories of GHG anthropogenic emissions by sources and removals by sinks, and to implement programs containing measures to mitigate climate change (Art. 4 (1) UNFCCC). Developed country Parties and other Parties listed in Annex I of the UNFCCC (Annex I Parties), have an additional obligation to adopt national policies and corresponding measures to mitigate climate change, by limiting their anthropogenic GHG emissions and protecting and enhancing their carbon sinks and reservoirs, therefore taking the lead in combating climate change (Art. 4 (2) UNFCCC).[23]

The Court noted that these obligations contain both obligations of result and conduct. Importantly, the Court stressed that where the obligation is one of conduct, a State acts wrongfully when it fails to use all its available means to bring about the objective; relating to an obligation of result, policies and measures adopted to fulfill the obligation need to be able to achieve the required goal. Hence, the purely formal but substantially empty adoption of a policy or measure will not fulfill the obligation.[24]

Additionally, international cooperation lies at the heart of the UNFCCC, mandating collaboration in various areas, from financial transfers to technology transfers and capacity-building. The duty to cooperate is an

19 *Ibid*., p. 62, para. 185.
20 *Ibid*., p. 64, para. 195.
21 *Ibid*., p. 65, para. 200.
22 *Ibid*., p. 130, para. 457.
23 *Ibid*., pp. 66–67, paras. 201–204.
24 *Ibid*., p. 68, para. 208.

obligation of conduct, and its fulfillment must be judged against a standard of due diligence. However, which obligations particularly arise from the duty of cooperation has to be determined on a case-by-case basis and cannot be stated in the abstract.[25]

The Court equally affirmed that the Kyoto Protocol is a concretization of certain obligations under the UNFCCC. It requires Annex I Parties of the UNFCCC to commit to quantified emission reductions within certain commitment periods.[26] Although there is currently no commitment period beyond 2020, the Protocol establishes legally binding reduction commitments for Annex I Parties. Non-compliance with the reduction commitments by an Annex I Party constitutes an internationally wrongful act.[27]

Moving on to the Paris Agreement, the Court stated that it exemplifies the most comprehensive climate change treaty to date. It sets out legally binding obligations not only on issues of mitigation and adaptation but also on issues of finance, technology development and transfer, transparency of action and support, and capacity-building. It also contains the temperature goal of 1.5°C, which states that the global average temperature should be limited to an increase of 2°C, with efforts made to limit it to 1.5°C above pre-industrial levels, to significantly reduce the risks and impacts of climate change (Art. 2 (1) Paris Agreement).[28] The Court started by observing, that there is now a scientific consensus on the temperature goal of 1.5°C as the target to be achieved under the Paris Agreement, despite it only being worded as an additional effort. This temperature goal has also become the new legal target for States Parties, as various documents of the Conference of the Parties (COP) cite exclusively this goal. As such, in accordance with Art. 31 (3) (a) of the Vienna Convention on the Law of Treaties, the Court found the temperature goal of 1.5°C to be a subsequent agreement by the Parties.[29]

The Paris Agreement entails several obligations of conduct and result. First, States are obliged to prepare, communicate and maintain nationally determined contributions (NDCs). Second, while the Paris Agreement does not provide requirements for the content of these NDCs, they nevertheless must be "capable of making an adequate contribution to the achievement of the temperature goal,"[30] meaning that States do not have

25 *Ibid*., p. 71, para. 218.
26 *Ibid*., p. 71, para. 219.
27 *Ibid*., p. 72, para. 221.
28 *Ibid*., p. 72, para. 223.
29 *Ibid*., p. 73, para. 224.
30 *Ibid*., p. 77, para. 242.

unfettered discretion in the matter. Importantly, the discretion that States do have regarding their NDCs, must be exercised with due diligence. The Court found the standard of due diligence to be stringent in light of the serious threat posed by climate change. The NDCs should therefore represent the highest possible ambition of States to achieve the objectives set out by the Paris Agreement.[31] Third, the NDCs must be implemented through domestic mitigation measures. These measures also must include the activity of private actors and can be achieved by an effective national system of appropriate legislation, administrative procedures and enforcement mechanisms.[32] Fourth, adaptation measures must be put in place. The Paris Agreement does not in itself provide a list of actions necessary to fulfil this obligation. Hence, States also must be assessed against a standard of due diligence when implementing adaptation measures and they will have to align their efforts with the best available science. Citing an IPCC report from 2023, the Court observed that effective adaptation options, such as the restoration of ecosystems and the creation of early warning systems, could be considered appropriate measures to fulfil the adaptation obligations under the Paris Agreement.[33] Lastly, the Paris Agreement also entails obligations relating to cooperation, including financial assistance, technology transfer and capacity-building. In this context, the Court states that "the customary duty to co-operate for the protection of the environment reinforces the treaty-based co-operation obligations under the Paris Agreement."[34]

3.2. OBLIGATIONS UNDER CUSTOMARY INTERNATIONAL LAW

The Court found two obligations to arise from customary international law: the duty to prevent significant harm to the environment, and the duty to cooperate for the protection of the environment. Reiterating its jurisprudence on this matter,[35] the Court confirmed that both du-

31 *Ibid*., p. 78, paras. 245–246.

32 *Ibid*., pp. 79–80, paras. 252–253.

33 *Ibid*., p. 81, paras. 257–258.

34 *Ibid*., p. 82, para. 261; pp. 82–83, paras. 264, 267.

35 The Court references several cases, *ibid*., p. 85, para. 272: Arbitral Tribunal, *Trail smelter case (United States v. Canada)*, Decision of 11 March 1941, United Nations, Reports of International Arbitral Awards, Vol. III. (*Trail Smelter*); ICJ, *Corfu Channel (United Kingdom v. Albania)*, Judgment, *ICJ Reports* 1949, p. 4 (*Corfu Channel*); ICJ, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *ICJ Reports* 2010, p. 14 (*Pulp Mills*); ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports* 1996, p. 226 (*Nuclear Weapons Advisory Opinion*); ICJ,

ties are well established within customary international law. The duty to prevent significant harm to the environment applies to the climate system, as the climate system "is an integral and vitally important part of the environment."[36] The Court also confirmed that this duty arises toward both present and future generations.[37] As confirmed in several of the Court's cases, the duty to prevent arises when there is a risk of a significant harm to the environment.[38] Whether an activity constitutes a risk of significant harm depends on the level of probability and severity of the harm.[39] The Court considered that such a risk may also be present where the harm is caused by a cumulative effect of different acts, where various States and private actors under their jurisdiction are involved, irrespective of the difficulty to ascertain the exact share of responsibility of any particular State. Relying on the assessment of the IPCC, the Court ultimately found that the accumulation of GHG emissions in the atmosphere is causing significant harm to the climate system and other parts of the environment. Yet, the specific responsibilities of States need to be assessed *in concreto*.[40]

The Court considered at length the standard of due diligence in this connection. It reiterated that due diligence requires states to use all the means available to them to prevent the risk of significant harm.[41] In the context of the climate crisis, this means at least mitigation and adaptation measures that control both public and private conduct within the States' jurisdiction or control. Such measures need to be effective. Additionally, the Court observes that, where ample scientific evidence that a significant harm will occur is available, the diligence owed by States will be more demanding. Similarly, if a State has the technologies means to prevent harm, the State is expected to use them.[42] However, the principle of common but differentiated responsibilities and capabilities also plays

Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Judgment, *ICJ Reports* 2015, p. 665 (*Certain Activities*); ICJ, *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, *ICJ Reports* 2015, p. 706 (*Construction of a Road*).

36 ICJ, Advisory Opinion, p. 85, para. 273.

37 *Ibid*.

38 *Ibid*., p. 86, para. 274.

39 *Ibid*., p. 86, para. 275, with reference to ITLOS, *Advisory Opinion on Climate Change and International Law*, Advisory Opinion of 21 May 2024, Case No. 31, p. 91, para. 239; *Ibid*., p. 137, para. 397.

40 ICJ, Advisory Opinion, pp. 86–87, paras. 276–279.

41 *Ibid*., p. 87, para. 281, with reference to the *Pulp Mills* case.

42 ICJ, Advisory Opinion, pp. 88–89, paras. 282–286.

a significant role here, as developed States will be required to implement more demanding measures and will have to satisfy a higher standard of conduct than least developed States.[43] Lastly, the Court stated that the duty to exercise due diligence in preventing significant harm to the environment also requires certain procedural steps, this being primarily an environmental impact assessment.[44]

Turning to the duty to cooperate, the Court reiterates that this duty has a customary character and is especially important when a shared resource is in question. The duty to cooperate applies to the climate system, as the climate system is a resource shared by all States. Therefore, the Court found that cooperation is the very basis of meaningful international efforts in respect to climate change. While States are not required to conclude treaties to further their efforts under this duty, they are nevertheless required to make good faith efforts to arrive at collective actions. The duty to cooperate is founded on the interdependence of States and thus requires continued development and implementation of collective climate action by States.[45] As the Court concluded, "[c]limate change is a common concern. Co-operation is not a matter of choice for States but a pressing need and a legal obligation."[46]

Concerning the relationship between treaty-based obligations and obligations based on customary rules, the Court noted that "compliance [with treaty-based obligations as interpreted by the Court] in full and in good faith"[47] will suggest a substantial compliance with the customary duties to prevent significant environmental harm and to cooperate, without meaning that these obligations are necessarily the same. Most importantly, the Court continued by outlining how Non-State Parties to the climate change treaties could fulfil their customary obligations, namely through cooperating with the State Parties to the climate change treaties in such a way that the "practice that comports with the required conduct of [State Parties to] the climate change treaties."[48] Without cooperation, a Non-State Party "has the full burden of demonstrating that its policies and practices are in conformity with its customary obligations."[49]

43 *Ibid*., pp. 90–91, paras. 290–294.
44 *Ibid*., pp. 91–92, paras. 295–298.
45 *Ibid*., pp. 93–94, paras. 301–307.
46 *Ibid*., p. 95, para. 308.
47 *Ibid*., p. 96, para. 314.
48 *Ibid*., p. 96, para. 315.
49 *Ibid*.; *Ibid*., p. 96, paras. 314–315.

3.3. OBLIGATIONS UNDER OTHER ENVIRONMENTAL TREATIES, UNCLOS AND INTERNATIONAL HUMAN RIGHTS LAW

The Court considered several other environmental treaties: the Ozone Layer Convention and the Montreal Protocol, the Biodiversity Convention and the Desertification Convention. It found that all these treaties similarly prescribe obligations to their State Parties which amount to the protection of the climate system and other parts of the environment. The Biodiversity Convention obliges State Parties to ensure that activities within their jurisdiction or control do not cause damage to the environment of another State or areas beyond the limits of national jurisdiction as well as to develop national strategies for the conservation and sustainable use of biological diversity. The Court observed that ecosystem protection can in certain instances simultaneously function as a climate change mitigation or adaptation measure.[50]

The Court then considered the United Nations Convention of the Law of the Sea. Here, it took note of the Advisory Opinion delivered by ITLOS on 21 May 2024 and decided to put "great weight to the interpretation adopted by the Tribunal."[51] It then affirms, citing repeatedly the decision of ITLOS, that anthropogenic GHG emissions constitute marine pollution and that States are obliged to protect and preserve the marine environment from harm.[52] In relation to sea-level rise and the possibility of losing State territory because of climate change, the Court considered that UNCLOS does not contain any provisions requiring States to update charts or lists of geographical coordinates that outline a State's maritime zone. While not engaging further with this topic, the Court notes that the loss of one of the constituent elements of a state would not necessarily result in the loss of statehood.[53]

Finally, the Court also turned to international human rights law and extracted therefrom the obligations of States in respect to climate change. The Court connected the issues of climate change and human rights by stating that under international human rights law States have an obligation to respect, protect and ensure the enjoyment of human rights of individuals and peoples. It continued by finding that the protection of the environment is a precondition for the enjoyment of human rights.[54] Accordingly, a number human rights are impaired because of the adverse

50 *Ibid*., p. 99, paras. 327–329.

51 *Ibid*., p. 101, para. 338.

52 *Ibid*., p. 102, paras. 340–342.

53 *Ibid*., pp. 105–107, paras. 358–359, 362, 364.

54 *Ibid*., pp. 108–109, paras. 371–373.

effects of climate change: the right to life, the right to health, the right to an adequate standard of living, the right to privacy, family and home, as well as the rights of women, children and indigenous people.[55] The Court also noted that other regional human rights courts have already affirmed the relation between the adverse effects of climate change and the impairment of human rights, citing recent decisions of different regional courts.[56] It concluded its analysis of international human rights law by stating that the right to a clean, healthy and sustainable environment is also a precondition for the enjoyment of many human rights and therefore essential.[57] States are therefore obligated to take measures to protect the climate system and other parts of the environment in order to safeguard human rights.[58]

3.4. STATE RESPONSIBILITY

Turning to the second question posed to the Court, it again started by reviewing the applicable law, which in this case were the customary rules on State responsibility.[59] It equally found that the climate change treaties do not constitute *lex specialis* in respect to the customary rules on State responsibility. Therefore, the customary rules are applicable.[60]

In general, a State will be responsible for breaches of any of the obligations determined by the Court, as identified in its Opinion. A breach of such an obligation will constitute an internationally wrongful act that entails State responsibility.[61] The Court found that the most significant obligation of States in relation to climate change will be the obligation to prevent significant harm to the climate system and other parts of the environment. It reiterated that responsibility will be triggered when a State fails to take all measures available to it to prevent the significant harm. To determine whether a State failed its obligation, its actions are to be judged under a standard of due diligence.[62]

The Court observed that the complex and multifaceted nature of the climate crisis gives rise to distinct issues in relation to the application of

55 *Ibid*., pp. 109–111, paras. 377–382.
56 *Ibid*., p. 112, para. 385.
57 *Ibid*., p. 113, para. 393.
58 *Ibid*., p. 115, para. 403.
59 *Ibid*., p. 116, para. 407 (with reference to its case law on the matter).
60 *Ibid*., pp. 118–119, paras. 411, 414–417.
61 *Ibid*., p. 130, para. 457.
62 *Ibid*., p. 117, para. 409.

the customary rules on State responsibility, as concentrations of GHG emissions are not produced by a single activity or group of activities that can neatly be ascribed to a particular State or States. Thus, the Court identifies the two main issues in respect to climate change: attribution and causation.[63]

Concerning the question of attribution, the Court stated that it is possible to determine each State's total contribution to global emissions through scientific methods. To underscore its point, it relied on a 2023 IPCC report, which included data on current and historical emissions attributable to individual States. While acknowledging that several States have contributed to climate change, the Court also stresses that the rules on State responsibility have no issue addressing cases in which more than one State is injured or responsible.[64]

Regarding causation, the Court observed that causation involves two elements: whether a climatic event could be attributed to anthropogenic climate change and to what extent the damage caused by it can be attributed to a specific State or group of States.[65] While the second element requires an *in concreto* assessment, the first element can be answered by looking at scientific data. The Court found that in relation to the first element of causation, the scientific evidence is clear: significant harm to the climate system and other parts of the environment has been caused by anthropogenic GHG emissions.[66]

Last but not least, the Court found that all States have a common interest in the protection of global environmental commons, such as the atmosphere and the high seas. As such, the obligations determined in the Court's Opinion constitute obligations *erga omnes* insofar as they are based on customary international law, and obligations *erga omnes partes* insofar as they are treaty-based.[67]

Finally, the Court stated that the legal consequences arising from wrongful acts included all legal consequences provided for under the law of State responsibility. These include the duty of performance, the duty of cessation and guarantees of non-repetition, and the duty to make reparation (restitution, compensation and satisfaction).[68]

63 *Ibid*., p. 120, paras. 421–422.
64 *Ibid*., pp. 122–123, paras. 429–430.
65 *Ibid*., p. 124, para. 437.
66 *Ibid*.
67 *Ibid*., p. 125, para. 440.
68 *Ibid*., pp. 126–129, paras. 445–455.

4. A Positive, Yet Small, Development: What Went Right and Where Could the Court Have Done More?

The ICJ's Advisory Opinion was proclaimed by many as a "historic"[69] and "ground-breaking"[70] ruling. There is much within this Opinion that can be applauded, yet there are some parts where the Court's arguments were lacking. Commendable aspects of the Opinion are, among others, the Court's clear stance on the applicability of varying sources of international law to the climate crisis (despite the attempt of many developed States to argue that the climate change treaties constitute *lex specialis*), the applicability of international human rights law, and its rigorous engagement with scientific evidence.

Concerning the broad application of both treaty and other international law, it is noteworthy that especially high-emitting States, such as the US,[71] the UK[72] and Australia,[73] argued for a narrow interpretation and an exclusion of rules – especially customary rules – outside the climate change treaties based on *lex specialis*. The Court clarified, by referencing the ILC, that the principle of *lex specialis* only applies when an inconsistency between the potentially applicable rules, or an identifiable intention to exclude one over another, exists in the cases where several rules apply to the same circumstances. Such an inconsistency or intention was found to not exist between the climate change treaties and other rules of international law, therefore the whole body of relevant international law was found to be applicable.[74] Given the global nature of the climate crisis, the systemic integration approach[75] taken by the Court, over the *lex*

69 Schaugg, L., Jones, N., Qi, J., 2025, Historic International Court of Justice Opinion Confirms States' Climate Obligations, *International Institute for Sustainable Development*, 28 July, (https://www.iisd.org/articles/deep-dive/icj-advisory-opinion-climate-change, 18. 10. 2025).

70 Jantarasombat, P., Chan, I., 2025, ICJ Climate Change Advisory Opinion: Peoples and Individuals as Obligees, *EJIL: Talk!*, 17 October, (https://www.ejiltalk.org/icj-climate-change-advisory-opinion-peoples-and-individuals-as-obligees, 18. 10. 2025).

71 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, General List No. 187, Verbatim Record 2024/40, 4 December 2024, pp. 41 and 44.

72 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, General List No. 187, Verbatim Record 2024/48, 10 December 2024, p. 44.

73 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, General List No. 187, Verbatim Record 2024/35, 2 December 2024, p. 41.

74 ICJ, Advisory Opinion, p. 57, paras. 166–168.

75 Arato, J., Uriburu, J., 2025, Treaty and Custom in the ICJ's Climate Change Opinion, *EJIL: Talk!*, 24 July, (https://www.ejiltalk.org/treaty-and-custom-in-the-icjs-climate-change-opinion, 14. 11. 2025).

specialis approach, is to be applauded. An acceptance of the *lex specialis* argument could have seriously restricted the reach of the obligations. By rejecting this argument, the Court made it clear that other rules of international law, most notably customary international law and the law of the sea, are also applicable and even States not parties to the climate change treaties are bound by them. This is particularly relevant now that certain high-emitting States, such as the US, have left the treaty regime. By interconnecting the obligations of treaty and customary rules,[76] Non-State Parties have been drawn closer to the treaty regime[77] and can be held accountable for their emissions. In this respect, it is also noteworthy that when the Court clarified the obligations under UNCLOS, it explicitly cited ITLOS jurisprudence and in various parts endorsed ITLOS' latest Advisory Opinion from May 2024.[78]

A narrow reading would have also prevented the Court from incorporating human rights into the applicable law – this despite widespread acceptance among States that climate change is impacting human rights.[79] The Court's analysis of the various rights, while welcome in and of itself, could have been improved in several instances. Chief among them is that the Court left it open how exactly the rights of future generations would manifest and how such rights would have to be balanced against the rights of current generations. This is so despite the fact that the UNGA asked specifically for clarification on this point in its Resolution 77/276. The Court only discussed intergenerational equity as a "manifestation [of the principle] of equity in the general sense" and deemed it significant as a "guide for the interpretation of applicable rules,"[80] despite its observation that "its relevance for the obligations in respect of climate change

76 ICJ, Advisory Opinion, pp. 95–96, paras. 309–315.

77 Arato, J., Uriburu, J., 2025; Gehring, M., 2025, When Custom Binds All States: Reflections on Customary International Law in the ICJ Climate Advisory Opinion, *Verfassungsblog*, 15 August, (https://verfassungsblog.de/customary-law-icj-climate-advisory-opinion, 14. 11. 2025).

78 See, for example, ICJ, Advisory Opinion, pp. 102–103, paras. 340, 342–347. For a deeper discussion on the this matter, see, for example, Spiegeleir, A. de, Rocha, A., 2025, Sea-Level Rise Reaches The Hague: Findings in Relation to the Law of the Sea in the ICJ's Climate Change Advisory Opinion, *Verfassungsblog*, 4 August, (https://verfassungsblog.de/law-of-the-sea-in-the-icjs-climate-change-advisory-opinion, 14. 11. 2025).

79 See, for example, ICJ, Verbatim Record 2024/40, p. 47, although rejecting the argument that international human rights law can emanate obligations in respect to GHG emissions, the US nevertheless accepts that human rights are impacted by climate change. See also Heri, C., 2025, Human Rights in the ICJ's Climate Opinion, *Verfassungsblog*, 1 August, (https://verfassungsblog.de/human-rights-in-the-icjs-climate-opinion, 18. 10. 2025).

80 ICJ, Advisory Opinion, p. 55, para. 157.

is undisputable."[81] It is lamentable that the Court shied away from this question as it would have potentially impacted standing requirements in many jurisdictions, as well as the substantive content and temporality of many rights.

In the same vein, the Court only remarks – seemingly in passing – that States may have an obligation under the non-refoulement principle when it comes to climate refugees.[82] While remarkable that the Court addressed the issue of climate refugees at all[83] – without having been directly requested to do so, as Judge Aurescu also wrote in his separate opinion – it would have been important to also include positive obligations, covering proactive measures to prevent refoulement. Such positive obligations could include the obligation to admit those seeking protection and the issuance of temporary residence permits.[84]

Ultimately, the Court also avoided a definite answer to whether the right to a clean, healthy and sustainable environment is an autonomous right. It only stated that this right is a "precondition for the enjoyment of many human rights" and that it is "inherent in the enjoyment of other human rights."[85] It is regrettable that the Court did not take this opportunity to declare it an independent right. However, as some scholars have already noted, this is due to the nature of the proceedings and the ICJ being a court of general jurisdiction – not one of human rights.[86] Yet, on a positive note, just as when the Court considered States' obligations under the law of the sea, it similarly cited the latest jurisprudence on the application of human rights in relation to the adverse effects on climate change by regional human rights courts, namely the IACtHR[87] and the ECtHR[88].[89] Taken together,

81 *Ibid*., p. 54, para. 155. See also Odermatt, J., 2025, What the Court Didn't Say, *Verfassungsblog*, 30 July, (https://verfassungsblog.de/what-the-court-didnt-say, 18. 10. 2025).

82 ICJ, Advisory Opinion, p. 110, para. 378.

83 For a deeper discussion of this topic, see, for example, Riemer, L., 2026, A Single Paragraph's Promise, *Verfassungsblog*, 26 July, (https://verfassungsblog.de/icj-advisory-opinion-on-climate-change-human-displacement, 18. 10. 2025); Rao, M., 2025, Climate Displacement in the ICJ's Advisory Opinion: Recognised but Not Resolved, *Völkerrechtsblog*, 11 August, (https://voelkerrechtsblog.org/climate-displacement-in-the-icjs-advisory-opinion, 18. 10. 2025).

84 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, Separate Opinion of Judge Aurescu, General List No. 187, p. 10, paras. 25–26.

85 ICJ, Advisory Opinion, p. 113, para. 393.

86 See, for example, Heri, C., 2025.

87 IACtHR, *On the scope of the state obligations for responding to the climate emergency and human rights*, Advisory Opinion of 20 May 2025, AO-32/25 214.

88 ECtHR, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, No. 53600/20, Judgment of 9 April 2024, [GC].

89 ICJ, Advisory Opinion, p. 112, para. 385.

this can be seen as a positive development of the trans-judicial dialogue between the various international courts, which will hopefully lead to a global and harmonized jurisprudence on climate change matters.

Lastly, the Court's engagement with scientific evidence is to be applauded. On the one hand, the Court made a visible effort to understand the scientific basis, impacts and risks of climate change.[90] On the other hand, it also found that the reports of the IPCC constitute the best available science at the moment, in respect to climate change.[91] This also has important consequences for the due diligence owed by States when assessing whether they have fulfilled their international obligations in respect to climate change. Additionally, the Court transformed a scientifically determined goal, namely the temperature goal of 1.5°C, into a legally binding target for States.[92]

However, there are other parts of the decision where the Court made statements that were not backed by proper reasoning or arguments. These include, for example, its proclamation that the obligations determined are owed *erga omnes (partes)*[93] and that statehood may not necessarily be lost with the loss of territory. In light of the length of the case note, the following will only discuss the issue of statehood.

The Court only noted in brevity, after finding that charts delimiting the maritime area of a State do not have to be updated, that "once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood."[94] Several judges took up this

90 *Ibid*., p. 13, para. 33.

91 *Ibid*., p. 88, para. 284.

92 *Ibid*., p. 73, para. 224. For a further discussion on the incorporation of science in the ICJ's Opinion, see Sulyok, K., 2025, On the Science-Coloured Glasses of the ICJ: Harmfulness, Wrongfulness, and Climate Accountability, *Völkerrechtsblog*, 6 August, (https://voelkerrechtsblog.org/on-the-science-coloured-glasses-of-the-icj, 14. 11. 2025).

93 ICJ, Advisory Opinion, pp. 125–126, paras. 439–443. An interesting blog post dissects this statement of the ICJ here: Urs, P., 2025, Open the Floodgates: Standing for the Enforcement of Obligations Erga Omnes in the ICJ's Advisory Opinion on Climate Change, *CIL Dialogues*, 11 August, (https://cil.nus.edu.sg/blogs/open-the-floodgates-standing-for-the-enforcement-of-obligations-erga-omnes-in-the-icjs-advisory-opinion-on-climate-change, 18. 10. 2025); for discussion on what might follow from this *erga omnes (partes)* declaration, see Chan, I., 2025, Further Legal Consequences of Obligations Erga Omnes (Partes) in the ICJ Climate Change Advisory Opinion: Duty of Non-Recognition and Article 62 Intervention, *Völkerrechtsblog*, 28 October, (https://www.ejiltalk.org/further-legal-consequences-of-obligations-erga-omnes-partes-in-the-icj-climate-change-advisory-opinion-duty-of-non-recognition-and-article-62-intervention, 14. 11. 2025).

94 ICJ, Advisory Opinion, p. 107, para. 363.

issue in their separate opinions and declarations.[95] Both Judge Sebutinde and Judge Aurescu wished that the Court would have been more proactive in highlighting that the loss of territory (and population) due to climate-related sea-level rise would not lead to the loss of statehood.[96] Judge Aurescu additionally added that this should also not lead to the loss of membership in the United Nations.[97] As the Court was ambiguous here through its use of the term "necessarily", the wish for a more definitive statement is understandable, especially since it is mostly small island states that will be affected by the loss of territory through sea-level rise. This loss would not only include land territory but, more importantly, also economically important maritime areas, including their exclusive economic zones. By avoiding a definite proclamation on this issue, the Court left small island states in a precarious position, abandoning them to find their own solutions to a pressing and fast-approaching problem.

Notably, Judge Aurescu discussed the broader issue of a State not only losing its territory but also its population – two of the three elements of statehood[98] – through sea-level rise and how a State would still operate its government if it is deprived of its former two elements.[99] Judge Tomka went a step further and remarked that with its statement the Court might have unintentionally quasi-endorsed "the deconstruction of the conditions of statehood as such."[100] In his declaration, he opined that there is no state practice for sea-level rise-induced territory disappearance. Different to other possibly similar cases, the specificity of climate change-induced territory loss would mean the permanent loss of it and its population.[101] As Judge Tomka noted, the international community finds itself in the "midst of a great normative contestation"[102] and in a moment of "profound self-inquiry",[103] where States will have

95 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, Separate Opinion of Judge Sebutinde General List No. 187; ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, Separate Opinion of Judge Bhandari, General List No. 187; ICJ, Separate Opinion of Judge Aurescu, 2025; ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, Declaration of Judge Tomka, General List No. 187.

96 ICJ, Separate Opinion of Judge Sebutinde, 2025, p. 3, para. 8; ICJ, Separate Opinion of Judge Aurescu, 2025, pp. 8–9, paras. 20–22.

97 *Ibid*.

98 Shaw, M., 2021, *International Law*, Cambridge, Cambridge University Press, p. 182.

99 Corneo, A., Scherer, J., 2025, Is Montevideo Sinking?, *Verfassungsblog*, 19 August, (https://verfassungsblog.de/montevideo-climate-statehood-icj, 18. 10. 2025).

100 ICJ, Declaration of Judge Tomka, 2025, p. 1 para. 2.

101 *Ibid*., p. 1, para. 5.

102 *Ibid*., p. 2, para. 7.

103 *Ibid*., p. 3, para. 9.

to redecide what a State is.[104] Although not at the heart of the Advisory Opinion, the Court's statement on continued statehood could potentially redefine the essence of international law. This could both drastically change the understanding of 'State' and through that, potentially, open international law to entities traditionally not included as subjects, such as corporations.

5. Conclusion

Answering all the UNGA's questions from Resolution 77/276 in the affirmative, the Court clarified States' obligations to protect the climate system and urged them to do the utmost to confront this "existential problem of planetary proportions".[105] It equally clarified the legal consequences in cases of breaching these obligations, opening the whole arsenal of possible legal consequences, as provided for in the rules on State responsibility. By basing the obligations on various sources, treaties, customary international law, and human rights, the Court made it abundantly clear that States can and should be held accountable in full for their wrongful actions in respect to climate change.

In summary, the ICJ's Advisory Opinion can be seen as the latest decision in a triad of advisory opinions by international tribunals. Together they form a broader trans-judicial dialogue, which also includes regional human rights tribunals, such as the ECtHR. This dialogue will be further advanced with the currently pending request before the African Court on Human and Peoples' Rights for an Advisory Opinion on the human rights obligations of African states in addressing the climate crisis.[106] Hopefully, this will lead to a global and harmonized response to the adverse effects of climate change. One state or even a continent will not be able to tackle the enormous problems brought about by the climate crisis, yet together our world may still be able to protect and preserve this planet that we all call home. The ICJ's, as well as the other Advisory Opinions and decisions of international tribunals, are a push in the right direction. Yet, as the ICJ

104 *Ibid*., pp. 2–3, paras. 6–9. For further reflections on the topic of statehood, see Syla, Z., Kent, A., 2025, Statehood in the Climate Crisis: The ICJ's Climate Advisory Opinion and the Presumption of State Continuity, *Verfassungsblog*, 19 August, (https://verfassungsblog.de/statehood-in-the-climate-crisis, 14. 11. 2025).

105 ICJ, Advisory Opinion, p. 129, para. 456.

106 PALU, 2025, Request for an Advisory Opinion on the Human Rights Obligations of African States in Addressing the Climate Crisis, *The Climate Litigation Database*, (https://www.climatecasechart.com/documents/request-for-an-advisory-opinion-on-the-human-rights-obligations-of-african-states-in-addressing-the-climate-crisis-petition_68af, 20. 10. 2025).

noted in its conclusion, "[a] complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge [and above] all, a lasting and satisfactory solution requires human will and wisdom [...] to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come."[107]

Bibliography

1. Shaw, M., 2021, *International Law*, Cambridge, Cambridge University Press.

Legislative Sources

1. UNGA Resolution 77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change, UN doc. A/RES/77/276 (29 March 2023).

Case Law

1. Arbitral Tribunal, *Trail smelter case (United States v. Canada)*, Decision of 11 March 1941, United Nations, *Reports of International Arbitral Awards*, Vol. III.
2. ECtHR, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, No. 53600/20, Judgment of 9 April 2024, [GC].
3. IACtHR, *On the scope of the state obligations for responding to the climate emergency and human rights*, Advisory Opinion of 20 May 2025, AO-32/25 214, p. 214.
4. ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Judgment, *ICJ Reports* 2015, p. 665.
5. ICJ, *Construction of a Road in Costa Rica Along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, *ICJ Reports* 2015, p. 706.
6. ICJ, *Corfu Channel (United Kingdom v. Albania)*, Judgment, *ICJ Reports* 1949, p. 4.
7. ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports* 1996, p. 226.
8. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, General List No. 187.
9. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, Declaration of Judge Judge Tomka, General List No. 187.
10. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, Separate Opinion of Judge Aurescu, General List No. 187.
11. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, Separate Opinion of Judge Bhandari, General List No. 187.

107 ICJ, Advisory Opinion, p. 129, para. 456.

12. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, Separate Opinion of Judge Sebutinde, General List No. 187.
13. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, General List No. 187, Verbatim Record 2024/40, 4 December 2024.
14. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, General List No. 187, Verbatim Record 2024/48, 10 December 2024.
15. ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, General List No. 187, Verbatim Record 2024/35, 2 December 2024.
16. ICJ, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *ICJ Reports* 2010, p. 14.
17. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, Case No. 31, (Advisory Opinion on Climate Change and International Law), para. 441.

Internet Sources

1. Arato, J., Uriburu, J., 2025, Treaty and Custom in the ICJ's Climate Change Opinion, *EJIL: Talk!*, 24 July, (https://www.ejiltalk.org/treaty-and-custom-in-the-icjs-climate-change-opinion, 14. 11. 2025).
2. Chan, I., 2025, Further Legal Consequences of Obligations Erga Omnes (Partes) in the ICJ Climate Change Advisory Opinion: Duty of Non-Recognition and Article 62 Intervention, *Völkerrechtsblog*, 28 October, (https://www.ejiltalk.org/further-legal-consequences-of-obligations-erga-omnes-partes-in-the-icj-climate-change-advisory-opinion-duty-of-non-recognition-and-article-62-intervention, 14. 11. 2025).
3. Corneo, A., Scherer, J., 2025, Is Montevideo Sinking?, *Verfassungsblog*, 19 August, (https://verfassungsblog.de/montevideo-climate-statehood-icj, 18. 10. 2025).
4. Gehring, M., 2025, When Custom Binds All States: Reflections on Customary International Law in the ICJ Climate Advisory Opinion, *Verfassungsblog*, 15 August, (https://verfassungsblog.de/customary-law-icj-climate-advisory-opinion, 14. 11. 2025).
5. Heri, C., 2025, Human Rights in the ICJ's Climate Opinion, *Verfassungsblog*, 1 August, (https://verfassungsblog.de/human-rights-in-the-icjs-climate-opinion, 18. 10. 2025).
6. Jantarasombat, P., Chan, I., 2025, ICJ Climate Change Advisory Opinion: Peoples and Individuals as Obligees, *EJIL: Talk!*, 17 October, (https://www.ejiltalk.org/icj-climate-change-advisory-opinion-peoples-and-individuals-as-obligees, 18. 10. 2025).
7. Odermatt, J., 2025, What the Court Didn't Say, *Verfassungsblog*, 30 July, (https://verfassungsblog.de/what-the-court-didnt-say, 18. 10. 2025).
8. PALU, 2025, Request for an Advisory Opinion on the Human Rights Obligations of African States in Addressing the Climate Crisis, *The Climate Litigation*

Database, (https://www.climatecasechart.com/documents/request-for-an-advisory-opinion-on-the-human-rights-obligations-of-african-states-in-addressing-the-climate-crisis-petition_68af, 20. 10. 2025).

9. Rao, M., 2025, Climate Displacement in the ICJ's Advisory Opinion: Recognised but Not Resolved, *Völkerrechtsblog*, 11 August, (https://voelkerrechtsblog.org/climate-displacement-in-the-icjs-advisory-opinion, 18. 10. 2025).
10. Riemer, L., 2026, A Single Paragraph's Promise, *Verfassungsblog*, 26 July, (https://verfassungsblog.de/icj-advisory-opinion-on-climate-change-human-displacement, 18. 10. 2025).
11. Schaugg, L., Jones, N., Qi, J., 2025, Historic International Court of Justice Opinion Confirms States' Climate Obligations, *International Institute for Sustainable Development*, 28 July, (https://www.iisd.org/articles/deep-dive/icj-advisory-opinion-climate-change, 18. 10. 2025).
12. Spiegeleir, A. de, Rocha, A., 2025, Sea-Level Rise Reaches The Hague: Findings in Relation to the Law of the Sea in the ICJ's Climate Change Advisory Opinion, *Verfassungsblog*, 4 August, (https://verfassungsblog.de/law-of-the-sea-in-the-icjs-climate-change-advisory-opinion, 14. 11. 2025).
13. Sulyok, K., 2025, On the Science-Coloured Glasses of the ICJ: Harmfulness, Wrongfulness, and Climate Accountability, *Völkerrechtsblog*, 6 August, (https://voelkerrechtsblog.org/on-the-science-coloured-glasses-of-the-icj, 14. 11. 2025).
14. Syla, Z., Kent, A., 2025, Statehood in the Climate Crisis: The ICJ's Climate Advisory Opinion and the Presumption of State Continuity, *Verfassungsblog*, 19 August, (https://verfassungsblog.de/statehood-in-the-climate-crisis, 14. 11. 2025).
15. Urs, P., 2025, Open the Floodgates: Standing for the Enforcement of Obligations Erga Omnes in the ICJ's Advisory Opinion on Climate Change, *CIL Dialogues*, 11 August, (https://cil.nus.edu.sg/blogs/open-the-floodgates-standing-for-the-enforcement-of-obligations-erga-omnes-in-the-icjs-advisory-opinion-on-climate-change, 18. 10. 2025).

SAVETODAVNO MIŠLJENJE MEĐUNARODNOG SUDA PRAVDE O KLIMATSKIM PROMENAMA: POZITIVAN, ALI MALI KORAK NAPRED

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APSTRAKT

Savetodavno mišljenje Međunarodnog suda pravde o obavezama država povodom klimatskih promena predstavlja prelomni trenutak u međunarodnom ekološkom pravu. Mišljenje se, kao jedna od tri skorašnje odluke u ovoj oblasti, uklapa u rastuću sudsku praksu usmerenu na primoravanje država da ispune svoje međunarodne dužnosti.

Mišljenjem se razjašnjava da države imaju pravne obaveze, iz niza pravnih instrumenata, ublažavanja posledica klimatskih promena, prilagođavanja i saradnje u vezi s njihovim štetnim dejstvima, a kršenje pomenutih obaveza predstavlja međunarodno protivpravno delo i povlači odgovornost države. Najzad, Sud je potvrdio cilj ograničenja globalnog zagrevanja na 1,5° C kao pravno obavezujući.

Iako savetodavno mišljenje u mnogim aspektima zaslužuje pohvale, pojedini aspekti, kao što su uzdržanost Suda da pruži konačan odgovor o pravima budućih generacija i pitanje nastavka državnosti u slučaju trajnog gubitka teritorije usled porasta nivoa mora, mogli su biti progresivniji.

Ključne reči: klimatske promene, Međunarodni sud pravde, savetodavno mišljenje, obaveze država, odgovornost država, sporazumi o klimatskim promenama, državnost, ljudska prava, međunarodno ekološko pravo.

Case Note History:

Received: 20 October 2025

Accepted: 1 December 2025