



THE OBLIGATIONS OF STATES IN RESPECT OF CLIMATE CHANGE

WHAT DOES THE INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION MEAN FOR THE WORK ON LOSS AND DAMAGE UNDER THE UN CLIMATE CHANGE REGIME?

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OBJECTIVE

The science underscores a grim reality: climate risks are escalating, and Loss and Damage caused by the adverse effects of climate change (**Loss and Damage**)¹ is now occurring every day. Mitigation and adaptation remain vital, but are no longer enough. Responding to (including a focus on addressing)² Loss and Damage must be elevated as the third pillar of climate action—central to the global response under the United Nations Framework Convention on Climate Change (**UNFCCC**) and Paris Agreement.

The International Court of Justice (ICJ) Advisory Opinion on States' obligations in respect of climate change is a powerful legal and diplomatic tool in efforts to secure urgently needed progress in multilateral negotiations on climate change. Meaningful progress offers the possibility to secure climate justice for countries and communities on the frontlines of the crisis who urgently need support.

This brief provides recommendations to assist negotiators in their engagements in Loss and Damage bodies and processes under the UNFCCC and Paris Agreement, including the:

- Fund for Responding to Loss and Damage (FRLD);
- Warsaw International Mechanism (WIM), including its Executive Committee (ExCom), Expert Groups and the Santiago Network; and
- Upcoming negotiations in Belem, Brazil in November 2025, including: the 63rd meeting of the Subsidiary Bodies (SB 63); thirtieth meeting of the Conference of the Parties (COP 30); and 7th meeting of the COP serving as the meeting of the Parties to the Paris Agreement (CMA 7).



SUMMARY OF RECOMMENDATIONS

The following recommendations provide a snapshot of the key takeaways from across this brief. They are to support negotiators in drawing on the ICJ Advisory Opinion to advance progress on Loss and Damage under the UNFCCC and Paris Agreement. They do not represent an exhaustive list of legal or policy implications. Negotiators should use this brief to ensure that outcomes under the UNFCCC and Paris Agreement reflect States' legal obligations and the moral and political imperative to act.

A. Use the Advisory Opinion as a legal and diplomatic tool

1. Recognise the Advisory Opinion as an **authoritative clarification of States' legal responsibilities on climate change** including *inter alia*, stringent due diligence and aligning Nationally Determined Contributions (NDCs) with the 1.5°C scientifically-based goal under the Paris Agreement, reinforcing a growing body of international jurisprudence.
2. Deploy the Advisory Opinion in negotiations to demonstrate that **climate harms causing loss and damage** - which significantly impair human rights, harming people and nature - **constitute internationally wrongful acts** under customary international law.
3. Affirm that **obligations extend beyond the UNFCCC and Paris Agreement**. There are numerous areas of complementary law also governing climate change action, including the UN Charter, a number of treaties (such as on the ozone layer and oceans) and conventions (biological diversity and desertification), customary international law, and international human rights law.
4. Make clear that failure to mitigate climate change, support adaptation or co-operate to respond to loss and damage gives rise to responsibility under international law. **States and private actors can be made accountable for harm caused.**
5. Emphasise that **scaling up loss and damage financial support is grounded in legal principles of State responsibility**. Harm can be remedied through several pathways, including reparations.
6. Reiterate that **adequate support for addressing loss and damage is a binding obligation** of international co-operation not a voluntary act of solidarity.
7. Emphasise that the **most effective way to meet these responsibilities is through scaled-up co-operation**, including finance, technology transfer, and capacity-building.
8. Recognise and **defend the following principles**:
 - a. **States** that have experienced complete land loss and population displacement due to climate change **do not lose their statehood or sovereign status**.
 - b. **Non-refoulement**, which applies where there is a real risk of irreparable harm to the right to life if an individual is returned to their country of origin.

B. Frame negotiation arguments around international law

Science and evidence

9. **Ground decision-making in the best available science**, as reflected in findings of the Intergovernmental Panel on Climate Change (IPCC), noting that science evolves over time (e.g. forthcoming Seventh Assessment Report (AR7) chapter on loss and damage).
10. Reiterate that **losses and damages are already being experienced and will escalate** unless mitigation action, and adaptation and loss and damage support, increase significantly.

Loss and damage as a regime feature

11. Affirm that **responding to loss and damage is the 'third pillar' of climate action**, alongside mitigation and adaptation.
12. Emphasise that **Paris Agreement Article 8 obligations**, including to co-operate with respect to loss and damage, **are not optional**.

Equity and CBDR-RC (+ National Circumstances)

13. Highlight that **the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) is a cardinal principle**, requiring burdens to be shared equitably in line with States' responsibility (cumulative emissions) and capabilities.
14. Affirm that the Paris Agreement formulation of the principle, with the addition of "different national circumstances", does not alter the core meaning of the principle of CBDR-RC. **Exercise caution regarding the risks of weakening this principle within the climate regime.**

Human rights

15. **Recognise and integrate human rights principles into decision-making**, including: equality; non-discrimination; participation and empowerment; accountability and transparency; access to information; justice and the rule of law.
16. Ensure that **affected communities can directly access funding** and benefit from environmental and social safeguards that **do no harm**.

Governance

17. Affirm that **loss and damage response falls under both the UNFCCC and the Paris Agreement**.
18. Resolve the WIM governance dispute by adopting mirror decisions under both the COP and CMA, without the standard footnotes. COP and CMA decisions on loss and damage should always be recalled in a balanced manner to ensure continuity across both governing bodies.

C. Align COP/CMA decision text with the findings of the International Court of Justice

Strengthen the scientific and policy base

19. **Establish an annual State of Loss and Damage Report** under the WIM's third review, that complements the IPCC and Global Stocktake cycles.
20. Encourage the **WIM ExCom to regularly collate and disseminate the latest climate science and data** on loss and damage and establish a periodic scientific review (state of play) under its standing agenda item on "How the latest climate science can inform policy-making relevant to averting, minimizing, and addressing loss and damage".
21. Request the **Santiago Network and the FRLD to compile and publish data on country needs and priorities**, strengthening evidence-based decision-making.
22. Request the WIM ExCom to **finalise guidelines on** enhancing the collection and management of data and information relevant to loss and damage for **Biennial Transparency Reports (BTRs)**.
23. Request the **WIM ExCom** to compile methodologies for **quantifying loss and damage needs**.
24. Request the WIM ExCom to develop guidelines on the **preparation of national loss and damage plans** and integrating loss and damage in **NDCs**.

Ensure scaled-up, adequate provision of co-operation and support

25. Call on the **Santiago Network to urgently expand its outreach to deliver technical assistance**, including facilitating access to action and support - including finance, technology and capacity-building for the implementation of loss and damage responses.
26. Urge the **FRLD to operationalise the Barbados Implementation Modalities with urgency** to begin delivering the pledges made at COP 28 in Dubai.
27. Urge **developed country Parties to provide significantly scaled up new, additional, predictable and adequate financial resources for responding to loss and damage** in line with their legal obligations, including for the FRLD and the Santiago Network, and to give a clear political signal that the FRLD's resource mobilization strategy - to be finalized in 2026 - must aim to be in line with the needs of developing countries, and commence replenishment in 2027

D. Strengthen political messaging and ambition

28. **Welcome Vanuatu's leadership in pursuing a UNGA resolution** endorsing the ICJ Advisory Opinion.
29. **Acknowledge the Pacific and Youth-led origins of the campaign for the ICJ Advisory Opinion**, which gained unanimous support from UN Member States, affirming that the **pursuit of climate justice continues to inspire collective global action on climate change**.



CONTEXT AND AUTHORITY OF THE ICJ ADVISORY OPINION

A.

Pacific and Youth-led campaign to use international law to fight for climate justice, which gained the support of UN Member States

Vanuatu, as a co-founding chair of the Alliance of Small Island States (AOSIS), first proposed in 1991 that the Convention include a loss and damage fund and insurance mechanism, and has been leading ambition on loss and damage solutions and mechanisms ever since. The campaign for the Advisory Opinion was launched and driven by the Pacific Islands Students Fighting Climate Change, and also carried forward by the leadership of Vanuatu. Together with World's Youth for Climate Justice and youth globally, and a core group of nations—including many Small Island Developing States—led by Vanuatu, this global campaign ultimately led to the Advisory Opinion, delivered unanimously on 23 July 2025.

Since the Advisory Opinion was delivered, Vanuatu has indicated its intent to pursue a UN General Assembly resolution to endorse the Court's conclusions and operationalise the findings. States and other actors are also now considering how the Advisory Opinion can be utilised to enhance the global response to climate change.

B.

The Advisory Opinion carries great legal weight and moral authority, clarifying international law obligations on Loss and Damage

The ICJ is the principal judicial organ of the United Nations, as provided in the United Nations Charter, Chapter XIV. The statute of the ICJ is annexed to the Charter, forming an integral part of it. It is one of six principal organs of the UN. The Court's role is to settle, in accordance with international law, legal disputes submitted to it by the 193 UN Member States, and to give advisory opinions on legal questions. It consists of 15 judges elected by the UN General Assembly and Security Council. The General Assembly may request the ICJ to provide an advisory opinion on any legal question.³

The UN General Assembly requested the ICJ to provide its Advisory Opinion through resolution A/RES/77/276, adopted by consensus on 29 March 2023. The Court conducted written proceedings with a record 91 written submissions by States and international organisations, along with 62 comment submissions, followed by oral proceedings from 2 to 13 December 2024.⁴

States must treat the Advisory Opinion seriously, and consider how they are adhering to international law obligations on climate change. The advisory opinions of the Court provide an authoritative clarification of existing and binding obligations under international law, and carry great legal weight and moral authority. The Advisory Opinion can be used by both States and non-State actors in a range of contexts, including litigation, diplomacy, national legislative reforms and advocacy.

C.

The Advisory Opinion is reinforced and complemented by a growing body of international law on the obligations of States on climate change

The ICJ's Advisory Opinion is not an isolated development. It is part of a wider trend across international courts and tribunals, clarifying States' legal obligations in respect of climate change. Together, legal cases and opinions are building a complementary body of authoritative guidance on how international law applies to the climate crisis, with a common thread: climate change is now firmly recognised as a matter of international law, with obligations across multiple regimes.

The ICJ Advisory Opinion is notable for its broad scope, covering States' general international obligations on climate change. However, as was evident in the nuanced separate opinions of the ICJ judges, there is much more that can be said regarding States' international law obligations on climate change. Two recent advisory opinions on oceans and human rights are of high relevance for a deeper look into complementary areas of international law beyond the UNFCCC and Paris Agreement.

Regarding oceans, the International Tribunal for the Law of the Sea (ITLOS) delivered its Advisory Opinion on Climate Change and International Law on 21 May 2024. ITLOS was established by the UN Convention on the Law of the Sea (UNCLOS). The Tribunal clarified that the obligations of States party to UNCLOS include preventing, reducing and controlling pollution, including greenhouse gas emissions and their detrimental effects on the marine environment —and these obligations go beyond commitments under the Paris Agreement.

Regarding human rights, the Inter-American Court of Human Rights (Inter-American Court) delivered its Advisory Opinion OC-32/24 on 9 April 2024. The Inter-American Court was established by the American Convention on Human Rights "Pact of San José, Costa Rica". The Court clarified States' human rights obligations in the face of the climate emergency to adopt measures that both prevent climate harms and respond to harms when they occur. It confirmed that human rights violations may result from failure to comply with environmental standards, and breach gives rise to possible remedies (such as restoration, compensation and assistance) and reparation.

Future advisory opinions and cases should be closely followed to understand how the law applies in different contexts. For example, on 2 May 2025, the African Court of Human and People's Rights received a request for an advisory opinion. The African Court was established by African States pursuant to the African Charter on Human and People's Rights. The request poses a number of issues for determination regarding African States' human and peoples' rights obligations on climate change under the African Charter and other relevant instruments, as well as broader customary and treaty law obligations.

SCIENCE IS THE FOUNDATION OF STATES' OBLIGATIONS ON CLIMATE CHANGE: POLICY-MAKING CANNOT BE SEPARATED FROM SCIENCE

A. The best available science is contained in the Intergovernmental Panel on Climate Change reports

The ICJ based its decision not only on law but also on climate science, underscoring that policy-making cannot be separated from science. In its ruling, the ICJ, as other international courts have before them, confirmed that the Intergovernmental Panel on Climate Change (IPCC) reports represent “the best available science on the causes, nature and consequences of climate change”.⁵ The Inter-American Court reached the same conclusion in its advisory opinion, declaring that the best available science should be used for climate action and responses to the climate crisis, with the IPCC being an authoritative source.⁶

2024 was the warmest year in the 175-year instrumental record, with global average temperatures around 1.55°C above the 1850–1900 baseline. In 2023, the atmospheric concentration of carbon dioxide, as well as those of methane and nitrous oxide, reached the highest levels in the last 800,000 years and continued to increase in 2024.⁷

Ocean heat content has reached unprecedented levels,⁸ global mean sea level continues its accelerating rise, glaciers are undergoing massive retreat, polar sea-ice extent remains consistently below average, and ocean acidification is intensifying. The pace of ocean warming between 2005 and 2024 has more than doubled compared to 1960–2005, and global mean sea level is rising at more than twice the rate observed in the 1990s.⁹

Most recently, the second “Global Tipping Points” report published by the University of Exeter found that warm-water coral reefs are passing their tipping point. The widespread collapse of 80% of reef ecosystems entails irreversible harm to marine and human life dependent on reefs to help support fisheries, and protect coastlines from storm surges and rising sea levels.¹⁰ This is the first of the tipping points to be breached and is directly relevant to losses and damages.

Resolution A/RES/77/276 grounds the request for an advisory opinion in the scientific evidence on loss and damage, noting with concern the IPCC’s findings that human-induced climate change through more frequent and intense extreme events has caused widespread harm beyond natural variability. It further warns that rising emissions and temperatures will intensify such losses and damages.

The ICJ underscored these and other key findings of the IPCC on loss and damage, which make clear that loss and damage resulting from climate change is no longer a projected risk but a lived reality. They also highlighted that rising sea levels, intensifying heatwaves, unprecedented floods, prolonged droughts, and biodiversity loss are not hypothetical but worsening unfolding crises.¹¹

The ICJ asserted that limiting temperature rise to 1.5°C - not 2°C - is the global target based on scientific consensus and subsequent COP and CMA decisions.¹² However, the IPCC also warns that 1.5°C is not safe for countries and communities around the world already experiencing loss and damage at our current 1.2°C rise pre-industrial level.¹³ Losses and damages to nature and people are already happening and rapidly escalating; near-term mitigation action can reduce but not eliminate all losses and damages, and effective adaptation cannot prevent all losses and damages, and remains insufficient.¹⁴

B.

The science is not static and will continue to evolve - States must act on the latest findings, including the dedicated chapter on loss and damage in the forthcoming IPCC Seventh Assessment Report

The Court was also clear that science is not static; it evolves over time as scientists' understandings deepen and as the tools improve, enabling greater accuracy.¹⁵ For example, the forthcoming Seventh Assessment Report (AR7) includes, for the first time, a dedicated loss and damage chapter, "Chapter 5: Responses to losses and damages" which will inform the scale and nature of climate action expected of States.¹⁶

C.

Disinformation undermines climate action - States must maintain legitimacy and effectiveness in addressing the climate crisis by ensuring the science relied upon in decision-making is truthful and sound

The ICJ did not address disinformation explicitly, however, the Inter-American Court advisory opinion identified disinformation as obstructing effective climate action, and poses one of the gravest challenges facing the international community.¹⁷ States must ensure the information they use and share is accurate, refrain from disseminating information not supported by the best available science or by pertinent local, traditional, or Indigenous Knowledge,¹⁸ and combat greenwashing.¹⁹

The Inter-American Court further affirmed that truthful information is vital to realising rights of participation and access to information, requiring States to take measures to curtail climate disinformation and promote access to truthful and reliable sources.²⁰ The Court stressed an "obligation of active transparency" by States to provide accessible, accurate, and timely climate-related information.²¹

THE UNFCCC AND PARIS AGREEMENT ARE MUTUALLY SUPPORTIVE AND COMPLEMENTARY LEGAL INSTRUMENTS, AND STATES' CLIMATE OBLIGATIONS EXTEND MORE BROADLY UNDER INTERNATIONAL LAW

A.

No intention to establish *lex specialis* can be found in the climate change treaty framework. For breaches of UNFCCC and Paris Agreement obligations, general rules on State responsibility under customary international law apply

Lex specialis in international law is a legal principle that dictates that a more specific rule will take precedence over a more general one when they conflict. During the proceedings, some States argued that the legal principle of *lex specialis* applies to the climate treaties and therefore climate change obligations are confined to these specific treaties, and take precedence over any general rules on State responsibility under other areas of international law.

The ICJ Advisory Opinion dismissed this argument, finding that there is no inconsistency between the provisions of the climate change treaties and other rules and principles of international law, reiterating that the preambles of the UNFCCC and the Paris Agreement themselves contain references to other rules and principles. Therefore, the Court made clear that States cannot rely on *lex specialis* reasoning to displace, contradict or narrow the scope of their obligations related to climate change.

The Court provided a list of the most directly relevant applicable law which includes:²²

- Charter of the United Nations;
- Treaty law set out in the UNFCCC and the Paris Agreement, UNCLOS, and Ozone layer treaties (the [Montreal Protocol](#) and [Vienna Convention for the Protection of the Ozone Layer](#));
- [Convention on Biological Diversity](#) and the [Desertification Convention](#);

- Customary duties to prevent significant harm to the environment and co-operate for the protection of the environment;
- International human rights law.

The ICJ therefore confirms that a breach of any climate change obligations under the UNFCCC, Paris Agreement or a range of other relevant international law, may constitute an internationally wrongful act and triggers State responsibility.²³

The Court indicated that in interpreting their obligations under the climate change treaties, there must also be recourse to certain guiding principles for the interpretation of various applicable rules and principles: sustainable development, common but differentiated responsibilities and respective capabilities, equity, intergenerational equity, and the precautionary approach or principle.²⁴

Also relevant to interpretation are the decisions of the governing bodies of the UNFCCC and Paris Agreement - the COP and the CMA. These decisions have legal effect where:²⁵

- a. The treaty itself provides. For example, Article 4.8 of the Paris Agreement says that all Parties “shall” provide information in accordance with decision 1/CP.21 (the COP decision adopting the Paris Agreement) and any relevant decisions of the CMA.
- b. The decision constitutes a “subsequent agreement” under Article 31, para 3(a) of the Vienna Convention on the Law of Treaties (**Vienna Convention**), such decisions can be taken into account in interpreting the climate change treaties.²⁶

The States supporting the *lex specialis* argument referred to Articles 8, 14 and 15 of the Paris Agreement on loss and damage and compliance to substantiate their positions. In rejecting their positions, the Court pointed to: (a) the WIM’s emphasis on co-operative and facilitative basis with respect to loss and damage under Article 8;²⁷ (b) that contributions to the FRLD is limited to “complementary and additional support”; and (c) the COP decisions adopting the Paris Agreement, which explicitly states that “Article 8 of the Agreement does not involve or provide a basis for any liability or compensation.”²⁸

The Court explained that this demonstrates that “the text, context and object and purpose of the climate treaties” indicates no “discernible intention on the part of the parties to the Paris Agreement to derogate from the customary international law rules on State responsibility for breaches of treaty obligations.”²⁹ The Court concluded that responsibility for breaches of obligations under the climate change treaties, and in relation to the loss and damage associated with the adverse effects of climate change, is to be determined by applying the well-established rules on State responsibility under customary international law.³⁰

B.

The Paris Agreement does not replace or supersede the UNFCCC obligations on Loss and Damage

The ICJ also responded to submissions regarding whether the Paris Agreement prevails over the UNFCCC in the event of any conflict between provisions.³¹ The ICJ assessed the compatibility of the obligations of the UNFCCC and Paris Agreement by applying articles 31 to 33 of the Vienna Convention.³² The Court emphasised that the Paris Agreement was adopted by the COP of the UNFCCC as a “related legal instrument” to achieve its purposes, and any related legal instrument of the COP is to operate “in accordance with the relevant provisions of the [UNFCCC]”.³³

The Court was also clear that the Paris Agreement and the UNFCCC are “mutually supportive” and the Paris Agreement is intended to give substance to the UNFCCC but not abrogate or modify its obligations.³⁴ Therefore, as a general rule, the Paris Agreement does not prevail over or replace or override the UNFCCC or customary international law. This provides further weight to the argument that Article 8.2 of the Paris Agreement, which sets out the CMA’s authority over the WIM, does not displace the COP’s continuing authority and guidance established in decision 2/CP.19.

However, the Court also emphasised that, notwithstanding its conclusion that there is no incompatibility between the climate change treaties, should there appear to be conflicts between the treaties, these should be resolved by applying the rules of treaty interpretation.³⁵

VI

BREACH OF INTERNATIONAL CLIMATE CHANGE OBLIGATIONS GIVES RISE TO REMEDIES FOR INJURED STATES: DUTY OF PERFORMANCE, CESSATION, NON-REPETITION, AND FULL REPARATION

The ICJ Advisory Opinion is clear that there is a suite of international law that is applicable to States climate change obligations. In customary international law, these obligations are framed as duties to prevent harm to the environment and to co-operate in good faith to avoid such harm. The ICJ Advisory Opinion confirms unequivocally that a failure to comply with international climate change obligations may constitute an internationally wrongful act, giving rise to legal consequences for the responsible State under customary international law.

Some of the ICJ Advisory Opinion’s most powerful findings are regarding fossil fuel obligations. The Court considered both consumption and production activities as being within the scope of its inquiry, observing that:

...the relevant conduct for the purposes of these advisory proceedings is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions. The Court considers that the material scope of its inquiry encompasses the full range of human activities that contribute to climate change as a result of the emission of GHGs, including both consumption and production activities.³⁶

The Court later considered questions relating to attribution, clarifying that “attribution in the context of determining State responsibility denotes “the operation of attaching a given action or omission to a State” under international law”.³⁷ In this context, the Court concluded that the:

...Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State. The Court also emphasizes that the internationally wrongful act in question is not the emission of GHGs per se, but the breach of conventional and customary obligations identified under question (a) pertaining to the protection of the climate system from significant harm resulting from anthropogenic emissions of such gases.³⁸

Remedies for breaches of the range of obligations on climate change, include the duty of performance, the obligations of cessation and non-repetition. Where causation is made out, for reparations (including restitution, compensation, or satisfaction) to injured States.³⁹

Remedies		Description
Duty of performance		A continuing duty to perform the obligation breached.
Cessation		Cessation of the wrongful actions or omissions, if they are continuing.
Non-repetition		Provide assurances and guarantees of non-repetition of wrongful actions or omissions, if circumstances so require.
Full reparations	<i>Restitution</i>	Aims to restore the situation that existed before the wrongful act. May be difficult or unfeasible in the context of environmental harm, but may include reconstructing damaged or destroyed infrastructure or restoring ecosystems and biodiversity. ⁴⁰
	<i>Compensation</i>	In the event that restitution should prove to be materially impossible, responsible States have an obligation to compensate. Compensation corresponds to the financially assessable damage to injured States or their nationals, covering both damage to the environment itself and related expenses. Given the uncertainty in quantifying climate damage, compensation may exceptionally be determined as a global sum, based on evidence and equitable considerations. ⁴¹
	<i>Satisfaction</i>	The nature and circumstances of a breach will determine whether satisfaction is warranted. It can “take the form of expressions of regret, formal apologies, public acknowledgments or statements, or education of the society about climate change”. ⁴²

THE UNFCCC AND PARIS AGREEMENT INCLUDE OBLIGATIONS RELATED TO LOSS AND DAMAGE

The ICJ clarifies that both the UNFCCC and Paris Agreement set out binding obligations on Parties. Under the Convention, Annex I Parties bear a particular responsibility to take the lead⁴³ in measures to avert and minimise loss and damage. These obligations are grounded in the broader duty of international co-operation – principally through finance, technology transfer and capacity-building.⁴⁴

A. **Developed countries have specific obligations to support developing countries**

The Court highlights that developed countries have clear legal obligations under Articles 4.3-4.5 of the UNFCCC “to provide financial assistance, technology transfers, and other forms of support to developing countries, especially those that are particularly vulnerable to the adverse effects of climate change, to assist them in meeting their commitments under the UNFCCC.”⁴⁵ This includes assisting them “in meeting costs of adaptation to those adverse effects” (Article 4.4).

B. **Loss and damage is implicit in the UNFCCC framework**

Although the UNFCCC does not explicitly use the term ‘loss and damage’, the Court notes that Article 4(8) of the Convention, requires Parties to give full consideration, in implementing their commitments, to “...what actions are necessary under the Convention...to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change...”.⁴⁶ Many States argue that this provides early recognition of the need to respond to loss and damage within the UNFCCC framework.

C.

Under the Paris Agreement, States have a binding duty to co-operate in good faith and provide support for loss and damage

The Court underscores that loss and damage is one of the Paris Agreement's "salient features".⁴⁷ Article 8 establishes binding obligations of co-operation to enhance understanding, action, and support in this area.⁴⁸ These obligations— especially those relating to financial and technological support - must be carried out in good faith.⁴⁹

The ICJ recalls that the duty of States to co-operate for the protection of the environment has a customary character,⁵⁰ emphasising the importance of co-operation as the very foundation of meaningful international efforts among all States sharing the climate system as a common resource. The International Tribunal for the Law of the Sea (ITLOS) opinion also characterised co-operation as a fundamental principle in the prevention of marine pollution.⁵¹

The ICJ Advisory Opinion makes clear that international co-operation is "indispensable" in preventing climate harm and achieving the collective temperature goal.⁵² "Un-coordinated individual efforts by States may not lead to a meaningful result".⁵³ States are free to select the means of co-operation, but whatever form this takes must meet the obligations of good faith and due diligence.⁵⁴ The principal forms of co-operation identified under the Paris Agreement are financial assistance, technology transfer and capacity-building.⁵⁵

The Court recalled that the conservation and management of shared resources must be based on shared interests and governed by the principle of good faith, referencing earlier advisory opinions and judgments, such as *Legality of the Threat or Use of Nuclear Weapons (1996)* and *Nuclear Tests (Australia v. France) (1974)*.⁵⁶

Beyond the Paris Agreement, the ICJ adds that the duty to co-operate reflects the interdependence of States. It requires more than transfer of finance or technology but also "efforts by States to continuously develop, maintain and implement a collective climate policy that is based on an equitable distribution of burdens and in accordance with common but differentiated responsibilities and respective capabilities (CBDR-RC)".⁵⁷

While the CBDR-RC principle allows some flexibility in national action, the ICJ rejects misuse of the principle as an excuse for inaction. The "duty to co-operate is an obligation of conduct...assessed against a standard of due diligence,"⁵⁸ transparency,⁵⁹ and good faith. Parties are expected to take into account relevant COP and CMA guidance, and the adequacy of assistance must be determined case-by-case.⁶⁰

Although decision 1/CP.21 clarifies that Article 8 does not provide a basis for liability or compensation, the Court affirms that providing support to enhance action and support on loss and damage is a legal obligation of co-operation, not a voluntary act of solidarity.⁶¹ Adequate financial, technological and capacity-building support must therefore be provided to ensure compliance with the Paris Agreement.

To illustrate this, the Court referred to sea-level rise as an example of the need for solidarity among States sharing a common threat. It said that States are interdependent and therefore there is a need for solidarity among peoples. The ICJ stressed that co-operation is not optional - it is a legal obligation.⁶²

D.

Obligations must be shared equitably in accordance with the principle of common but differentiated responsibilities and respective capabilities

The ICJ reaffirmed that the principle of CBDR-RC—which reflects States’ cumulative GHG emissions and their capabilities to adapt to and mitigate the adverse impacts of climate change⁶³—is a “cardinal principle” guiding implementation of the climate change treaties.⁶⁴ The Court clarifies that the Paris Agreement’s formulation of the principle—with the addition of “in light of different national circumstances”—does not alter its core meaning.⁶⁵

Applied to loss and damage, this means that the burdens of co-operation must be distributed equitably. States with the greatest responsibility for emissions and the greatest capability must contribute a larger share of action and support, so that developing countries least responsible for climate change are not left to bear its costs.

The Court interpreted the phrase “in the light of different national circumstances” as recognising that development status is not static.⁶⁶ Some Parties rely on this to argue for broadening the base of contributors to climate finance, including for loss and damage. However, Judge Xue, in her separate opinion, cautioned that the developed–developing distinction is not a matter of legal interpretation but of recognised international indicators. As long as a State is considered developing, it is not bound by the additional obligations of developed countries under the UNFCCC.⁶⁷

Judge Xue also warned that the Court’s reading could risk weakening the role of key principles of international law, including CBDR-RC, within the climate regime.⁶⁸

OBLIGATIONS MUST BE MET THROUGH RESPECTING, PROMOTING AND CONSIDERING HUMAN RIGHTS. THE ADVERSE EFFECTS OF CLIMATE CHANGE SIGNIFICANTLY IMPAIR THEIR EFFECTIVE ENJOYMENT

A.

Human rights and climate change are inseparable

The ICJ Advisory Opinion ‘unequivocally placed human rights at the centre of the applicable law on climate change’,⁶⁹ recognising that the adverse effects of climate change such as sea level rise, drought, and extreme weather may significantly impair the effective enjoyment of human rights. Climate harm violates human rights resulting in irreversible loss and damage disproportionately affecting women, Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations - as affirmed by the eleventh preambular paragraph of the Paris Agreement:⁷⁰

...climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

The Court drew on IPCC findings, the Inter-American Court of Human Rights advisory opinion and a broad spectrum of international human rights law to firmly establish the obligations of States and private actors to prevent climate harm in order to protect human rights of people and nature.⁷¹

B.

States have a legal duty to safeguard human rights

The environment is the foundation for human life and its protection is therefore a pre-condition for the enjoyment of human rights, whose promotion is one of the purposes of the United Nations.⁷² As duty holders, States are responsible for measures to safeguard human rights and failure to do so amounts to a breach of human rights.

C.

Climate obligations are erga omnes

The Court declared that obligations to protect the climate system and prevent significant harm are erga omnes, owed to the international community universally.⁷³ All States are entitled and arguably obliged to hold others accountable for failure to comply, potentially through third party measures (diplomatic protests, countermeasures) aimed at influencing compliance.⁷⁴

By including climate obligations as erga omnes, the ICJ places environmental protection beyond reciprocal or treaty-based obligation to fundamentally protecting collective interests which presents a doctrinal shift: climate change is treated as a threat to the international community as a whole, comparable to aggression, genocide, or self-determination. This aligns climate obligations with the Court's earlier jurisprudence on erga omnes norms (e.g., Barcelona Traction, East Timor), where protection of fundamental values (like self-determination, basic human rights) triggers universal legal concern.⁷⁵

D.

Co-operation on loss and damage is a binding obligation

Erga omnes status implies that States have not only negative duties (not to cause harm) but also positive duties to co-operate in addressing climate change, including loss and damage. The principle of co-operation in mitigation, adaptation, and addressing loss and damage is therefore a matter of legal duty, not policy discretion.

The Court tied climate obligations to human rights and the right of peoples to self-determination, noting that sea-level rise and climate harms jeopardize territorial integrity and sovereignty, which are essential for self-determination. **This strengthens the case that violations are not merely environmental but strike at the foundation of international legal order.**⁷⁶

E.

Human rights provide guidance for loss and damage response

The Court strengthened the application of human rights by specifically extending the suite of human rights triggered by the adverse effects of climate change. Their analysis on a number of rights provides important guidance for loss and damage response, and is relevant for finance provided by the FRLD and technical assistance delivered under the Santiago Network.

Human rights triggered by the adverse effects of climate change	
Right to a clean, healthy and sustainable environment	The precondition for and essential for the enjoyment of other human rights. This right is firmly anchored in international, regional, and domestic legal frameworks. It is broadly recognised in United Nations resolutions, human rights treaties, and in the constitutions of more than one hundred States.⁷⁷ The ICJ reinforces the interdependence and indivisibility of the right to a clean, healthy and sustainable environment as critical to the prevention of further harm to food and water security as well as an adequate standard of living and housing for present and future generations.⁷⁸

Human rights triggered by the adverse effects of climate change

Right to life	Climate change poses one of the most serious threats to the enjoyment of the right to life by both present and future generations. Life-threatening effects are worsening with global warming. Increased temperatures and extreme events heighten mortality risk.⁷⁹ States parties have a positive obligation under numerous instruments to preserve human life by protecting the environment⁸⁰ and marine life⁸¹ against the adverse effects of climate change caused by public and private actors.⁸² The right to life is a non-derogable and fundamental norm, its linkage with climate obligations supports their erga omnes character: all States have a legal interest in ensuring protection of life from climate threats.⁸³
Right to health	Climate change threatens the enjoyment of the right to health. Environmental degradation and climate-related disasters increase risks of disease, malnutrition, and other health burdens.⁸⁴ The court notes that heightened water scarcity are major contributors to malnutrition, as well as infant and child mortality and morbidity⁸⁵ with women and Indigenous Peoples more severely impacted by climate change.⁸⁶ The Opinion linked environmental determinants to health through related rights such as access to clean air, safe water and food⁸⁷. Climate change (through floods, droughts, vector-borne diseases, and heat stress) adversely affects human life,⁸⁸ health systems and public health infrastructure.⁸⁹ imposing a positive obligation on States to adopt mitigation and adaptation measures, regulate private actors and strengthen resilience measures.⁹⁰
Right to food and water security	The ICJ Advisory Opinion explicitly references food and water insecurity in connection with increasing weather and extreme climate events, particularly in least developed countries, and small island developing States. The ICJ raises the alarm on the extent of loss and damage already being experienced.⁹¹ Court reiterates Article 3, paragraph 1, of the UNFCCC of States obligation to protect the planet as "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn".⁹² The court across its decision fundamentally obligates States to uphold intergenerational equity for present and future generations. As millions of people are exposed to acute food insecurity and reduced water security,⁹³ the Court imposes immediate duty of States to co-operate⁹⁴ to ensure non-discriminatory access to food and water, protect vulnerable populations and prevent foreseeable harm through adaptation and mitigation.⁹⁵
Safe migration	States have obligations under the principle of non-refoulement where there are substantial grounds for believing that there is a real risk of irreparable harm to the right to life in breach of Article 6 of the ICCPR if individuals are returned to their country of origin.⁹⁶ Climate-related threats may compel households and communities to resort to migration, competition over natural resources, and other coping mechanisms, which may in turn heighten the risk of internal conflict and produce international repercussions. The Court further considers that the disappearance of territory gives rise to serious implications for the rights, security, and sovereignty of States.⁹⁷

Human rights triggered by the adverse effects of climate change

Right to self-determination	Drawing also on the IPCC and UNCLOS, it is clear that sea-level rise poses profound risks for States, particularly small island and low-lying coastal States. It does so by threatening forced displacement of populations, loss of territorial integrity, and challenges to the exercise of permanent sovereignty over natural resources. These consequences are inseparably linked to the right of peoples to self-determination. Sea-level rise is therefore not merely an environmental or territorial issue but one that directly implicates the continued capacity of affected States and their peoples to exercise this foundational right.⁹⁸
Right to an adequate standard of living, privacy, family and home	The right to privacy, family and home may be impacted by the State's failure to implement timely and adequate adaptation measures to address the adverse effects of climate change.⁹⁹
Rights of women, children and indigenous people	States' obligations to mitigate and adapt to climate change must specifically account for the differentiated and disproportionate risks and harms borne by women, children, Indigenous Peoples, and other vulnerable communities.¹⁰⁰

CONCLUSION

The following quote is from the paragraph immediately preceding the concluding findings of the ICJ in its Advisory Opinion. It conveys the historical significance of the opinion in the context of challenging times for international law and multilateralism at large - it comes with a message to address the ongoing climate crisis through social and political action.

456. Before concluding, the Court recalls that it has been suggested that these advisory proceedings are unlike any that have previously come before the Court. At the same time, as the Court concluded earlier, the questions put to it by the General Assembly are legal ones (see paragraph 40), and the Court, as a court of law, can do no more than address the questions put to it through and within the limits of its judicial function; **this is the Court's assigned role in the international legal order.** However, the **questions posed by the General Assembly represent more than a legal problem: they concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet.** International law, whose authority has been invoked by the General Assembly, has an important but ultimately limited role in resolving this problem. A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, a lasting and satisfactory solution requires human will and wisdom — at the individual, social and political levels — to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come. Through this Opinion, the Court participates in the activities of the United Nations and the international community represented in that body, with the hope that its conclusions will allow the law to inform and guide social and political action to address the ongoing climate crisis.¹⁰¹

ENDNOTES

1 **Loss and Damage, and losses and damages (IPCC):**

- Research has taken **Loss and Damage (capitalised letters)** to refer to political debate under the UNFCCC following the establishment of the WIM in 2013, which is to “address loss and damage associated with impacts of climate change, including extreme events and slow onset events, in developing countries that are particularly vulnerable to the adverse effects of climate change.”
 - **Lowercase letters (losses and damages)** have been taken to refer broadly to harm from (observed) impacts and (projected) risks and can be economic or non-economic (Mechler et al., 2018).
- 2 The term **responding** to loss and damage is not clearly defined, but Parties understand that it **includes a focus on addressing** loss and damage which means ex post and ongoing impacts of climate change, including recovery, reconstruction and rehabilitation action.
- 3 UN Charter, art 96.
- 4 Daily debriefs of the oral hearings are available in this compendium: [wy4cj.org/s/ICJAO-Daily-Debriefs-COMPENDIUM.pdf](https://www.unhcr.org/s/ICJAO-Daily-Debriefs-COMPENDIUM.pdf)
- 5 ICJ AO, para 74.
- 6 IACHR AO, paras 485-487.
- 7 WMO - World Meteorological Organisation. (2025), State of the Global Climate 2024 <https://wmo.int/publication-series/state-of-global-climate-2024>
- 8 See *ITLOS Advisory Opinion*; and *Report of the Special Rapporteur: the ocean and human rights*.
- 9 WMO - World Meteorological Organisation. (2025), State of the Global Climate 2024 <https://wmo.int/publication-series/state-of-global-climate-2024>.
- 10 Guardian. (2025), Planet’s first catastrophic climate tipping point reached, report says, with coral reefs facing ‘widespread dieback’ <https://www.theguardian.com/environment/2025/oct/13/coral-reefs-ice-sheets-amazon-rainforest-tipping-point-global-heating-scientists-report>
- 11 ICJ AO, para 73.
- 12 ICJ AO, para 224.
- 13 WMO (2025) <https://wmo.int/news/media-centre/wmo-confirms-2024-warmest-year-record-about-155degc-above-pre-industrial-level>; NASA (2025). <https://www.nasa.gov/news-release/temperatures-rising-nasa-confirms-2024-warmest-year-on-record/>
- 14 ICJ AO, paras 83, 87; and see *Summary of IPCC comments on losses and damages*.
- 15 ICJ AO, para 284: “The standard of due diligence may also become more demanding in the light of new scientific or technological knowledge.”
- 16 ICJ AO, paras 74, 224, 254, 258, 278-79.
- 17 IACHR AO, para 524.
- 18 IACHR AO, para 525.
- 19 IACHR AO, para. 347.
- 20 IACHR AO, paras 526-527.
- 21 IACHR AO, para 495.
- 22 ICJ AO, para 172.
- 23 ICJ AO, para 408-409.
- 24 ICJ AO, para 172.
- 25 ICJ AO, para 184.
- 26 ICJ AO, para 185.
- 27 ICJ AO, para 414.
- 28 ICJ AO, para 415.
- 29 ICJ AO, para 418.
- 30 ICJ AO, para 420.
- 31 ICJ AO, para 187.
- 32 ICJ AO, para 190.
- 33 UNFCCC, art 2; ICJ AO, para 191.
- 34 ICJ AO, para 195.
- 35 ICJ AO, para 195.
- 36 ICJ AO, para 94.

- 37 ICJ AO, para 425.
- 38 ICJ AO, para 427.
- 39 ICJ AO, para 444-456, 457(4).
- 40 ICJ AO, para 451.
- 41 ICJ AO, para 452-454.
- 42 ICJ AO, para 455.
- 43 ICJ AO, para 457.
- 44 ICJ AO, para 262.
- 45 ICJ AO, para 217.
- 46 ICJ AO, para 212.
- 47 ICJ AO, para 270.
- 48 ICJ AO, para 260.
- 49 ICJ AO, para 472(h).
- 50 ICJ AO, para 301.
- 51 ICJ AO, para 302.
- 52 ICJ AO, pg 4 of decision, paras 215, 305.
- 53 ICJ AO, para 141.
- 54 ICJ AO, para 262.
- 55 ICJ AO, para 262.
- 56 ICJ AO, para 141.
- 57 ICJ AO, para 306.
- 58 ICJ AO, para 218.
- 59 ICJ AO, para 306.
- 60 ICJ AO, para 218.
- 61 ICJ AO, para 364.
- 62 ICJ AO, para 364.
- 63 ICJ AO, para 148.
- 64 ICJ AO, paras 148, 179.
- 65 ICJ AO, para 226.
- 66 ICJ AO, para 226.
- 67 Separate Opinion of Judge Xue, para 68.
- 68 Separate Opinion of Judge Xue, para 65.
- 69 Margaretha Wewerinke-Singh, Annalisa Savaresi, Claudia Ituarte-Lima and Corina Heri, GNHRE, "Climate Justice at the ICJ: Human Rights Implications of the Advisory Opinion" see: <https://gnhre.org/?p=18413>
- 70 ICJ AO, para 374.
- 71 ICJ AO, para 326 - referring to Article 2 of the Convention on Biodiversity, 388 - Stockholm Declaration and Rio Declaration
ICJ AO, para 339 - referring to Climate Change, Advisory Opinion, ITLOS
- 72 ICJ AO, para 373.
- 73 ICJ AO, para 440.
- 74 ICJ AO, paras 441-443.
- 75 ICJ AO, para 441.
- 76 ICJ AO, paras 439-442.
- 77 ICJ AO, paras 389-392.
- 78 ICJ AO, para 87, 393.
- 79 ICJ AO, para 377.
- 80 ICJ AO, para 326 - referring to Article 2 of the Convention on Biodiversity, 388 - Stockholm Declaration and Rio Declaration.
- 81 ICJ AO, para 339 - referring to Climate Change, Advisory Opinion, ITLOS.
- 82 ICJ AO, para 377.
- 83 ICJ AO, para 456.
- 84 ICJ AO, para 55, 126; Vienna Convention for the Protection of the Ozone Layer, para 339; UNCLOS.
- 85 ICJ AO, para 384 (see Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, 15 January 2009, UN doc. A/HRC/10/61, para. 48).

- 86 ICJ AO, 384 see IPCC, Climate Change 2007 reports.
- 87 ICJ AO, paras 67, 379.
- 88 ICJ AO, para 73.
- 89 ICJ AO, para 210.
- 90 ICJ AO, para 376, 386.
- 91 ICJ AO, page 8.
- 92 ICJ AO, para 155
- 93 ICJ AO, para 67, 73, 78.
- 94 ICJ AO, 301-302, referring to water as a shared resource.
- 95 ICJ AO, para 210, 258.
- 96 ICJ AO, para 378 referring to the Human Rights Committee, *Teitiota v. New Zealand*, 24 October 2019, UN doc. CCPR/C/127/D/2728/2016, para. 9.11).
- 97 ICJ AO, para 67. While there is no freestanding “right to safe migration” in international law, the concept is grounded in: Human rights treaties (movement, dignity, non-discrimination, access to services), refugee and humanitarian law (protection from refoulement), migrant workers’ protections including ILO conventions (safe labor conditions) and soft-law frameworks (Global Compact on Migration).
- 98 ICJ AO, para 357, 382, 384, 441.
- 99 ICJ AO, para 381.
- 100 ICJ AO, paras 77, 382-386.
- 101 ICJ AO, para 456.

Cover image: Ralph Regenvanu, Vanuatu's minister of Climate Change, pictured at the solidarity march and watch party held by the Pacific Island Students Fighting Climate Change and World's Youth for Climate Justice (WYCJ) outside the International Court of Justice in the Hague, Netherlands, as the Advisory Opinion on the obligations of States with respect to climate change is delivered on the 23rd of July at 15:00 CEST / GMT+2. (Teo Ormond-Skeaping / Loss and Damage Collaboration)

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