International Law's Administrative Law Turn and the Paris Agreement

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In the recent *Advisory Opinion on States' Obligations in respect of Climate Change* (AO, 2025) various remarks by the International Court of Justice (ICJ) lean into an increasingly "administrative" law turn in international law. Administrative law, particularly in the common law, often focuses on the acceptability of the procedures through which government decisions are made. For instance, administrative law may require rationality, reasonableness, certain types of means-to-ends relationships, and the taking into account of mandatory relevant considerations. Government decision-making which does not meet the demands fails administrative law review and may be set aside.

We are increasingly seeing these sorts of tests or standards for governmental decision-making within international law. This might be because the growing interconnection between international and domestic legal systems calls for interstitial rules that mediate between legal systems (Krisch, 2010), leading to the identification of a range of standards for governmental conduct embedded within existing international legal rules (Foster, 2021). This is an independent phenomenon, although it could be linked with the development of a broader "global administrative law" addressing accountability within international law and institutions (Kingsbury, Krisch, and Stewart).

Perhaps it should be no surprise that international climate law is now giving rise to such "administrative law" style tests and standards. After all, if it is to be effective, international climate law must inevitably reach into domestic law spheres.

In this blog post, we investigate this phenomenon by looking at the ways in which States' preparation, communication, and maintenance of their Nationally Determined Contributions (NDCs) under the Paris Agreement are coming to be characterised by requirements or standards with a domestic administrative law tone. The post begins by detecting in the ICJ's reasoning the standards of 'holism', and of 'due regard' for future generations, in both of which we see administrative law resonances. We then discuss the ICJ's remarks on the relationship between States' domestic measures and the objectives of NDCs, and on the standards inhering in the principles of progression and ambition, as well as touching on the underpinning standard of due diligence.

Holism

"Holism", as we are calling it, is perhaps the most recently articulated benchmark for NDCs. The ICJ found that the Paris Agreement requires a "capable of achieving" means-to-ends relationship as the test for NDCs' *collective* relationship with the Agreement's temperature target. Specifically, if they are to meet the underlying standard of due diligence, states' NDCs when taken together *as a whole* must be *capable of achieving* the Paris Agreement's goal of limiting global warming to 1.5°C (paras. 245, 249, 457(3)(A)(f)). This is a sound judicial determination, as ultimately what counts in practical terms is what NDCs can achieve globally. We use the term 'holism' to capture the novel collective or global character of the standard.

Among the mechanisms for achieving holism is the requirement in Article 4(9) that NDCs must be informed by the outcomes of five-yearly Global Stocktakes. Indeed, Decision 4/CMA.1 explicitly states that information on how a Party's preparation for its NDC was informed by the Global Stocktake should be included in its NDC (Annex 1, para. 4(c)). The Global Stocktake outcome is intended to provide a summary on opportunities to enhance action and clarify best practices. These can then be translated by states into

national trajectories and policies. The troubling thing, of course, is that the 2023 Global Stocktake recognised that "Parties are not yet collectively on track" towards achieving the Paris Agreement goals (243Decision 1/CMA.5, para. 25).

The requirement for holism appears not to dictate any specific "sharing" of the carbon budget. However, it does appear to require the world to find ways to work together, using all practical means to transition to a non-carbon-based global economy. Thus, to meet the standard of holism, states will need to ramp up cooperation in existing and new fora by all means possible, including through international technical and financial means and also, logically, through international economic law (Vidigal and Claussen; Vadi and Collins;Villars Framework). Indeed, the ICJ specified that states have customary international law and treaty-based duties to cooperate to combat climate change.

Due Regard for Future Generations

The ICJ's findings on "due regard for the interests of future generations" are strong examples of the turn toward identifying requirements for states to follow certain procedures in governmental decision-making. According to the ICJ, international law requires states actively to consider the interests of future generations, and the long-term implications of their conduct, when making decisions. These considerations "need to be *taken into account* where states contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law" (para. 157, emphasis added). This will require a specific step in states' decision-making processes.

The ICJ's remarks that the principle of intergenerational equity requires due regard for the interests of future generations are an important feature of the Advisory Opinion. Preparedness to give due consideration and weight to the interests of future generations in present day decision-making is critical to dealing with climate change. The ICJ grounded this requirement of due regard for future generations in equity within the law (equity *infra legem*). Further, intergenerational equity is an expression of the idea that "present generations are trustees of humanity tasked with preserving dignified living conditions and transmitting them to future generations" (para. 156).

AsRauber has astutely pointed out, the requirement of due regard for future generations does not appear to be limited to the climate context. This may apply across all domains, including the depletion of biodiversity and well beyond. Due regard is both procedural and potentially substantive. For instance, there could be associated substantive constraints on state conduct requiring avoidance of "manifestly excessive adverse impacts" on the interests of future generations (Foster, 2024).

Domestic measures

As well as setting an NDC, each State also has a critically important due diligence obligation under Article 4(2) of the Paris Agreement to pursue domestic measures with the aim of achieving the objectives of its NDC. The ICJ held that this requires States to be proactive and pursue measures that are *reasonably capable of achieving* their NDCs (paras. 253, 457 (3)(A)(g)). This is again a "capable of achieving" test. As compared with the test as applied in relation to holism, fulfilment of the test in relation to domestic measures is more likely within an individual state's control and can be assessed by examining states' internal governmental measures.

We observe that another, complementary, way to approach this is to focus on the concept of "intention" in Article 4(2)'s provision that "Each Party shall prepare, communicate and maintain successive nationally determined contributions *that it intends to achieve*." There is no explicit obligation in the Paris Agreement to implement and achieve a State's NDCs, although there is a good faith obligation that Parties *intend* to do so (Rajamani, 2016). But what does it mean for a State to "intend" to achieve its NDC? Can international law hold a state to account for not having this intention?

Theordinary definition of intention is "something you want and *plan* to do." For instance, previously the ICJ has looked to see if there is a plan when determin-

ing whether the intention to commit genocide has been present (Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro, 2007, (paras. 373, 376). We say this knowing that combatting climate change is a desirable intention, whereas the commission of genocide is abhorrent. This should be taken into account when applying and developing tests for "intention," but the core idea of an appropriately calibrated plan still appears useful. Where states have an appropriate plan and scheme of budgets and/or initiatives for how their NDCs will be achieved this may help establish their intention.

Progression and Ambition

The ICJ also helpfully clarified the status of Article 4(3)'s provision that each successive NDC will represent both a "progression" beyond the state's previous NDC, and its "highest possible ambition," reflecting its common but differentiated responsibilities and respective capabilities in the light of different national circumstances. The ICJ advises that these references are "prescriptive," meaning that these are requirements of NDCs (para. 240). The NDCs of states that are performing their obligations with due diligence will conform with these requirements.

The ICJ held that the requirement for progression means that a state's NDC "must become more demanding over time" (para. 241). The ICJ then introduces a further ends-means capability test, stating that an NDC must "be *capable of making an adequate contribution"* to achieving the temperature goal (paras. 242, 457(3)(A)(e)).

Assessing an NDC will call for a range of reference points. Pertinently, to facilitate clarity, transparency, and understanding of an NDC's substantive contribution, each state party is directed to address a range of matters in accordance with the Parties' Decision 4/CMA.1 (and Article 4(8) Paris Agreement). As well as reviewing "headline" numerical targets, assessing NDCs may involve looking at their scope, coverage, and inclusion of supplementary objectives (Mayer, 2023). *Inter alia*, Voigt has suggested that establishing "best efforts" in this context involves showing that a "comprehensive assessment of all mitigation options in all relevant sectors" has been undertaken (Voigt, 2023).

Requiring the undertaking of such prior analysis as a step in states' decision-making processes is again reminiscent of international law in other fields. In *Whaling in the Antarctic (Australia v Japan; New Zealand Intervening)*, Japan had not sufficiently analysed the need for lethal whaling, and this undermined Japan's case that its whaling programme was for the purposes of scientific research (para. 137). Similarly, in the climate context, states may struggle to demonstrate the appropriateness of their NDCs if they have failed to analyze the full suite of climate mitigation options available to them.

Further, each Party to the Paris Agreement must also explain how the Party considers that its NDC is fair and ambitious in the light of its national circumstances (Annex 1, para 6), as well as how the NDC contributes towards achieving the objective of the Convention (Annex 1, para. 7).

Due diligence

The ICJ recognized that the Paris Agreement parties' Article 4(2) obligations to prepare, communicate, and maintain successive NDCs are procedural obligations of result (paras. 235-236). The ICJ also addressed the *substantive* dimension of these obligations, concluding that they are obligations of conduct to be performed to a due diligence "best efforts" standard. Thus, even though the due diligence standard does not itself have so much of a domestic administrative law "ring" about it, we address it in this blog post.

Throughout the advisory opinion, due diligence is recognised as a central and unifying feature of the international law complex governing climate change. The ICJ held that both the Paris Agreement and customary international law obligations call for "stringent" due diligence, given the state of the climate crisis. The practical implication is that it would make little sense for a state to exit the Paris Agreement, as the Agreement's core obligations deeply overlap with the due diligence requirement in the customary international law on prevention of environmental harm,

which binds parties and non-parties alike. Indeed, the ICJ advised that customary international law requires even non-parties to engage in conduct equivalent to that under the Paris Agreement.

Due diligence is subject to differentiation among states based on their common but differentiated responsibilities and respective capabilities (CBRD). The CBDR principle has long been a feature of international environmental law, including climate change law. In the Paris Agreement, the principle became, in Article 4(3), 'common but differentiated responsibilities and respective capabilities in the light of national circumstances' (CBDR-RC-ILONC). The ICJ recognised that CBDR-RC-ILONC requires a dynamic assessment (Voigt and Ferreira, 2016). The capability and national circumstances of each state to address climate change differ, and will continue to change over time. Importantly, this means states fall on a spectrum rather than dividing into two groups of developed and developing countries (para. 150).

Conclusion

The ICJ has helpfully confirmed that parties to the Paris Agreement do not have unfettered discretion in relation to their NDCs (paras. 242, 245, 249, 270). Once submitted, NDCs are going to be increasingly open to scrutiny (Declaration of Judge Tladi, para. 7).

The tests we have analysed above can help generate accountability for government action through domestic advocacy and litigation (Voigt, 2025), complementing practices of justification, assessment, and response provided through the Paris Agreement (Campbell-Duruflé, 2018). For example, perhaps one of the fascinating questions arising is, if progression and highest possible ambition are prescribed qualities for successive NDCs, might the PAICC have to assess whether NDCs demonstrate these qualities? Would this fall within the PAICC's mandate underDecision 20/CMA.1 (Art. 15, para. 22(a)(i))?

Further, if a successive NDC, by definition, must demonstrate progression and highest possible ambition, would an NDC that did not do so still qualify as a successive NDC? There are precedents for finding that instruments lacking essential qualities, failing to consider matters they ought to, or marred by methodological flaws, do not count. For example, in the World Trade Organization case of Australia – Measures Affecting the Importation of Apples from New Zealand, 2010, both the Panel and Appellate Body found against Australia in part because the process Australia had not completed could not be considered a 'proper" risk assessment (ABR paras. 255, 261).

Moreover, if multiple NDCs were seemingly lacking in the required qualities, would this constitute a systemic issue? And might the PAICC refer the matter back to the CMA, and provide a recommendation, consistent with its mandate? If so, this could increase international political pressure for greater substantive commitment to addressing climate change through national contributions and lead to renewed attention to methods for bringing this about. Meanwhile, domestic challenges in national jurisdictions around the world employing administrative law "readings" of the international legal rules like those canvassed above could be expected to bring the pressure onto governments at home.

The idea that the climate change regime could increasingly come to feature public or administrative law analogies has been foreseen by others (Hey, 2001). However, the reality appears to be more decentralised than predicted: much remains within the power of individual states as the primary locus of decision-making and control. However, at base, there can be no mistaking the legal requirements for states to do their utmost, both individually and collectively, to address climate change, and the emerging administrative law style tests discussed above will be important engines to help advocate for action.

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