Judicial Convergence on Climate Change

The Advisory Opinions of the ICJ, the IACtHR, and the ITLOS

Jorge Alejandro Carrillo Bañuelos & Susan Ann Samuel

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In just over a year, three of the world's most prominent courts have addressed States' legal obligations in the context of climate change. In May 2024, the International Tribunal for the Law of the Sea (ITLOS) issued its advisory opinion in response to a request by the Commission of Small Island States. A year later, the Inter-American Court of Human Rights (IACtHR) followed with a landmark opinion, requested by Chile and Colombia. Finally, in July 2025, the International Court of Justice (ICJ) delivered its much-anticipated advisory opinion at the request of the United Nations General Assembly.

These three advisory opinions represent a historic milestone in international law. They reaffirm that States have international obligations to address the climate crisis. These obligations are grounded in environmental law, human rights law, the law of the sea, and customary international law. Although each court examined various questions from its own unique institutional and legal standpoint, their conclusions showed a significant convergence on several key issues, including the role of science, the standard of due diligence, the duty to cooperate, the role of private actors, the importance of human rights, and the need for reparations. This blog post explores each court's consideration of these issues.

The role of science

Science played a critical role in all three advisory proceedings.

Notably, the three courts placed substantial emphasis on the findings of the Intergovernmental Panel on Climate Change (IPCC). The ICJ referred to IPCC reports as "the best available science on the causes, nature and consequences of climate change" (para. 74). This statement was particularly relevant in the interpretation of the standard of due diligence (paras. 345-349). ITLOS also referenced the work of the IPCC to identify the best available science and underscored its relevance in determining the appropriate measures to prevent, reduce, and manage marine pollution resulting from greenhouse gas (GHG) emissions (paras. 208-212).

These conclusions were not surprising, considering that several States, organizations, and other actors emphasized the relevance of science and the role of the IPCC reports during the advisory proceedings. Members of the ICJ even met with a group of authors of the IPCC reports before the oral proceedings commenced. While both the ICJ and ITLOS recognized the importance of the IPCC's work in determining the legal obligations of States, they did not clarify how States should define the best available science beyond these assessment reports.

The advisory opinion from the IACtHR addressed this gap. The IACtHR provided a set of criteria to determine what constitutes the best available science. These criteria include assessing whether the knowledge is up-to-date, whether it is based on peer-reviewed methodologies and practices, and whether it adheres to internationally recognized scientific standards, where such standards are available (para. 486). The IACtHR further highlighted the importance of integrating scientific knowledge with local, traditional, and indigenous knowledge (para. 476) (see also here). And it reaffirmed the importance of Article 7.5 of the Paris Agreement, which provides that climate action "must be guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems."

These conclusions on the relevance of science can shape domestic and international litigation. As illus-

trated by an increasing number of domestic climate litigation cases, courts will use science as a benchmark for evaluating the adequacy and ambition of climate policies and commitments. At this point, the best available science clearly indicates that current mitigation and adaptation efforts are insufficient. Countries are not on track to achieve the objectives of the Paris Agreement. That is why the ICJ, IACtHR, and ITLOS confirmed that States are required to take urgent action; this is not optional.

Stringent due diligence

The obligation to prevent transboundary environmental harm was a key topic addressed in the advisory opinions. All three courts affirmed that States must use all the means at their disposal to avoid activities within their territory or under their jurisdiction that could cause significant damage to the environment of another State. This obligation also applies in the context of climate change (ICJ, para. 273; IACtHR, para. 277; ITLOS, para. 250).

The ICJ emphasized that States must fulfil their obligation to prevent significant harm to the environment by acting with due diligence. According to the ICJ, thisstandard of conduct varies based on specific circumstances, including "the obligation in question, the level of scientific knowledge, the risk of harm and the urgency involved" (para. 254). Similarly, the IACtHR and ITLOS established that the standard of due diligence depends on factors such as scientific and technological information, relevant international rules and standards, the risk of harm, and the level of urgency involved (IACtHR, para. 232; ITLOS, para. 239).

During the ICJ oral hearings, the majority of participants affirmed that the no-harm rule applies in the context of climate change, and that States must act with due diligence. It was reasonable to expect a similar position from the ICJ. What was perhaps less expected, however, was the ICJ's conclusion that due diligence involves the maintenance of a "heightened degree" of vigilance and prevention (para. 138). The IACtHR reached the same conclusion and even introduced the concept of "heightened due diligence" concerning climate-related threats to human rights (para. 233). Similarly, ITLOS emphasized that the standard of the due diligence obligation "needs to be stringent" in the context of climate change (para. 241).

The standard of due diligence is especially relevant when analyzing the obligation to prepare, communicate, and maintain Nationally Determined Contributions (NDCs) under the Paris Agreement. Article 4 of the Paris Agreement requires each party to submit NDCs that outline their efforts to reduce GHG emissions and adapt to the impacts of climate change. The ICJ emphasized that the standard of due diligence applied to the preparation of NDCs is also stringent, which means that "each party has to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement" (para. 246). As noted in another contribution to this blog series (by Niklas S. Reetz), this obligation is *erga omnes partes*, meaning that all Parties to the Paris Agreement may invoke the responsibility of other Parties for their failure to meet this requirement (ICJ, paras. 440-441).

The applicable standard to assess the NDCs of different countries will vary depending on factors such as the countries'historical contributions to cumulative GHG emissions and their level of development (ICJ, para. 247; IACtHR, para. 327). However, in any case, these climate pledges must represent a progression over time and reflect the highest possible ambition. This means that NDCs "must become more demanding over time" and adequately contribute to achieving the temperature goals established by the Paris Agreement (ICJ, paras. 241-249).

Notably, the IACtHR linked this analysis to the principles of progressive realization and non-regression in human rights law (IACtHR, para. 324). This means that any rollback of climate policies must be exceptional, justified by objective criteria, and adhere to the standards of necessity and proportionality (IACtHR, para. 222).

Multiple domestic courts have used similar arguments to invalidate or strike down NDCs that are considered not sufficiently progressive or ambitious. With three advisory opinions affirming that, to satisfy

a heightened due diligence, NDCs must represent a progression and reflect the highest possible ambition, more plaintiffs will likely challenge inadequate contributions in domestic courts, and those courts may require countries to provide more robust justifications for their NDCs.

Duty to cooperate

The ICJ, IACtHR, and ITLOS concluded that States must cooperate in protecting the climate system. The ICJ emphasized that this obligation has a customary nature and serves as "the very foundation of meaningful international efforts with respect to climate change" (ICJ, para. 302). Under the Paris Agreement, cooperation involves not only achieving a collective temperature goal but also providing financial assistance, transferring technology, and implementing capacity-building initiatives (ICJ, para. 262, IACtHR, para. 265; ITLOS, paras. 336-339).

The Paris Agreement alreadyrecognized the importance of these forms of cooperation in supporting developing countries with their mitigation and adaptation strategies. However, current efforts to provide such assistance are still insufficient to address the widespread impacts of climate change. Developing countries require more support.

All three courts established that cooperation goes beyond political will; it is a legal obligation. As such, any international commitments related to financial assistance, technology transfers, and capacity-building must comply with a standard of due diligence (ICJ, para. 259; IACtHR, para. 257). This conclusion could significantly influence negotiations under the Conference of the Parties (COP) and encourage States to adopt more ambitious and accountable forms of action.

Private actors

Several domestic climate litigation cases, such as *Milieudefensie et al. v. Shell*, highlight the crucial role of private actors in tackling the climate crisis. Unsurprisingly, the ICJ, IACtHR, and ITLOS all concluded that States have an obligation to regulate the activities of private actors as a matter of due diligence. In particular, the international courts concluded that States must regulate, supervise, and control activities under their jurisdiction that may pose environmental risks (ICJ, para. 276; IACtHR, para. 347-348). This includes establishing mechanisms to investigate, prosecute, and sanction private actors who fail to comply with climate laws and regulations, particularly those that limit GHG emissions (IACtHR, para. 356; ITLOS, para. 284). Accordingly, a State may be responsible where "it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction" (ICJ, para. 428)

This conclusion is particularly relevant in the context of fossil fuel production and consumption, the granting of fossil fuel exploration licences, or the provision of fossil fuel subsidies. These activities are among the primary contributors to climate change. Both the ICJ and the IACtHR emphasized that States must take appropriate actions to protect the climate system from GHG emissions resulting from these activities. The IACtHR even concluded that States must impose stricter obligations on high-emission industries (ICJ, para. 427; IACtHR, paras. 350-351).

The IACtHR also distinctly stressed the importance of collaboration between States and private actors in the creation and dissemination of reliable climate-related information. The Court stated that such cooperation is essential for combating greenwashing, addressing misinformation, and supporting the efforts of environmental and human rights defenders (para. 529). Similarly, the ICJ and ITLOS acknowledged the importance of access to climate information, although their analyses focused primarily on the obligation to cooperate (ICJ, para. 260; ITLOS, para. 312).

Human rights obligations

All three advisory opinions discussed the importance of human rights in the climate crisis, albeit in different levels of detail. None of the courts accepted the *lex specialis* argument presented by several States during the proceedings to derive legal obligations solely from the climate treaties.

ITLOS briefly acknowledged that climate change raises human rights concerns (para. 66). As Corina Heri noted in another post in this symposium, the ICJ and the IACtHR examined this issue more thoroughly. Both courts emphasized that climate change can impair the enjoyment of several human rights, including the right to life, the right to health, and the right to an adequate standard of living.

Notably, both the ICJ and IACtHR also reaffirmed that the human right to a clean, healthy, and sustainable environment is essential for the enjoyment of other human rights (ICJ, para. 393; IACtHR, paras. 272-274). The IACtHR went even further by stating that the right to a healthy environment protects nature for its intrinsic value, and that recognizing the rights of nature aligns with the American Convention on Human Rights (paras. 273-286). David Boyd, the former UN Special Rapporteur on the human right to a clean, healthy, and sustainable environment, has already explored the implications of this recognition by the IACtHR and the ICJ in other contributions to this blog series.

Lastly, both the ICJ and IACtHR also reaffirmed that human rights treaties may apply extraterritorially when a State exercises jurisdiction outside its territory (ICJ, para. 394; IACtHR, paras. 277-288).

These conclusions are likely to initiate important discussions about the need to strengthen NDCs and promote the recognition and enforcement of the right to a healthy environment.

Reparations

The advisory opinions reaffirmed the importance of reparations in the context of climate change.

The ICJ emphasized that "every internationally wrongful act of a State entails the international responsibility of that State" (para. 445). An example of an internationally wrongful act would be the failure to regulate GHG emissions, which constitutes a breach of the customary obligation to exercise due diligence. The wrongful act can also derive from the breach of treaty obligations, such as the obligation to prepare, communicate, or implement NDCs (para. 444).

The ICJ further recognized that, when a State fails to fulfill its international obligations related to climate change, it incurs responsibility and triggers "a panoply of legal consequences" (para. 445). These include cessation and non-repetition, restitution, compensation, and satisfaction.

The ICJ and the IACtHR discussed these legal consequences in detail. For instance, both courts emphasized that restitution refers to the restoration of the situation that existed before the commission of a wrongful act. In the context of climate change, this may involve restoring ecosystems and biodiversity.

Both courts also concluded that States must provide compensation when restitution is materially impossible. This compensation covers the damage inflicted on the environment "in and of itself" as well as the impairment or loss of environmental goods and services (ICJ, paras. 451-453; IACtHR, paras. 556-558).

ITLOS did not directly address issues regarding responsibility and liability. Still, it aligned with the other courts in recognizing that restitution for environmental harm can be difficult or even impossible, as such damage is often irreversible (ICJ, para. 451; ITLOS, para. 398; IACtHR, paras. 228, 363). This underscores the importance of the precautionary principle.

Lastly, the IACtHR set itself apart by highlighting that reparations must be based on the best available science and consider the vulnerabilities of affected populations, aiming to strengthen their resilience and adaptive capacity beyond restitution (paras. 557).

While reparations can involve complex questions of causation and other evidentiary hurdles, the conclusions in these advisory opinions offer a robust foundation for future claims.

Conclusion

These advisory opinions represent more than just parallel judicial developments; they mark a turning point in the legal architecture governing climate action. The message from the world's highest courts is unequivocal: States must act urgently.

By emphasizing the role of science, human rights, the responsibilities of private actors, the importance of reparations, and the necessity of strict due diligence,

these opinions provide powerful tools for individuals, communities, and advocacy groups seeking to hold governments and other actors accountable. They offer a framework for advancing climate justice and embedding legal responsibility into climate action.

Ultimately, the effectiveness of these advisory opinions will depend on how their principles and arguments are implemented in binding rulings, legislation, policy-making, and transnational advocacy. Their true challenge is determining whether international law can move from abstract guidance to tangible, transformative change—ensuring accountability, empowering communities, and safeguarding the right to a healthy environment for current and future generations.

ABOUT THE AUTHORS

Jorge Alejandro Carrillo Bañuelos
Jorge Alejandro Carrillo Bañuelos is a Senior Law Clerk at the Mexican Supreme Court and a member of the Sabin Center's Peer Review Network of Climate Litigation.Jorge Alejandro Carrillo Bañuelos is a Senior Law Clerk at the Mexican Supreme Court and a member of the Sabin Center's Peer Review Network of Climate Litigation.

Susan Ann Samuel
Susan Ann Samule is a PhD Researcher at the University of Leeds - School of Politics and International Studies in the United Kingdom, a Research Fellow at the Earth System Governance Project, and a member of the Sabin Center's Peer Review Network of Climate Litigation.Susan Ann Samule is a PhD Researcher at the University of Leeds – School of Politics and International Studies in the United Kingdom, a Research Fellow at the Earth System Governance Project, and a member of the Sabin Center's Peer Review Network of Climate Litigation.

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