

Introduction

Climate Change at the Forefront of the Structural Transformation of International Law

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I. Introduction

On 23 July 2025, the International Court of Justice (ICJ or Court) delivered its long-awaited Advisory Opinion on the *Obligations of States in respect of Climate Change*.¹ The Court was faced with a complex task. Amid vigorous debates over the efficacy and relevance of international law, it was called upon to define and reaffirm international law's capacity to guide state conduct in tackling an increasingly – in the Court's own words² – 'urgent' and 'existential' issue whose planetary proportions have arguably led to the emergence and solidification of a new geological epoch, the Anthropocene.³

The widely hailed landmark Opinion has just begun to spark an academic and political debate on the manner and the extent to which it strengthens

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1 ICJ, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025.

2 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 73, 456.

3 While it is still geologically disputed, the Anthropocene has firmly established itself in critical reflections and re-conceptualisations of international law. Among the many, see Jorge E. Viñuales, *The Organisation of the Anthropocene. In Our Hands?* (Brill Nijhoff 2018); Louis J. Kotzé, 'Earth system law for the Anthropocene: rethinking environmental law alongside the Earth system metaphor' TLT II (2020), 75-104.

For a social scientific perspective, see Eva Horn and Hannes Bergthaller, *The Anthropocene. Key Issues for the Humanities* (Key Issues in Environment and Sustainability, Routledge 2019).

the role of international law in global climate governance.⁴ Shortly after the publication of the Advisory Opinion, our blogpost symposium on *Völkerrechtsblog*, which forms the basis of this edited volume, aimed at intervening in this debate by emphasising the Opinion's systemic and structural implications for international law.⁵ This volume intends to highlight that the decisive 'ecologisation' of international law⁶ undertaken by the Court in this Advisory Opinion both reflects and advances the ongoing structural transformation of international law. It shapes a comprehensive legal order that reinforces the shared value of long-term, science-based climate protection grounded in multilateral cooperation. To this end, the Advisory Opinion clarifies that the Paris Agreement is not merely an isolated instrument of political coordination and interaction. Instead, it is embedded in a coherent international legal order, together with which it constrains state discretion and imposes concrete obligations on states to pursue a transition away from greenhouse gas emissions, in particular CO₂.

This edited volume is organised into four thematic clusters that illuminate how the Advisory Opinion constitutes a significant step in the structural transformation of international law. Each cluster addresses one foundational tension of the discipline of international law – some might say fault lines⁷ – which are at the heart of that transformation: the recalibration of international law between the co-existential protection of state

4 For the growing body of early commentary, in particular in the form of blog posts, see for instance a series of blogposts on EJIL:Talk! as well as the carefully curated blog-debate from the *Verfassungsblog* in cooperation with the Sabin Centre, Maria Antonia Tigre, Maxim Bönnemann & Antoine De Spiegeleir (eds.), *The ICJ's Advisory Opinion on Climate Change* (Verfassungsblogs, 2025) or online, <https://verfassungsblog.de/category/debates/the-icjs-advisory-opinion-on-climate-change-debates/>.

5 Cf. Khaled El Mahmoud, Jannika Jahn and Moritz Vinken (eds.), *Systemic Impacts and Structural Shifts: Climate Change and the Role of the ICJ Advisory Opinion*, *Völkerrechtsblog Symposium*, available at <https://voelkerrechtsblog.org/symposium/symposium-on-the-icj-climate-change-advisory-opinion/>.

6 Louise du Toit and Louis J. Kotzé, 'Reimagining international environmental law for the Anthropocene: An earth system law perspective' *ESG II* (2022), 1–10.

For a similar terminological approach to this ongoing process, see Sandrine Maljean-Dubois and Jacqueline Peel, 'The progressive "climatization" of international law', in Sandrine Maljean-Dubois and Jacqueline Peel (eds.), *Climate Change and the Testing of International Law* (Brill Nijhoff, 2023), 3–39.

7 Moritz Vinken, 'International Law's Fault Lines and Sediments: Geology as Method', *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper Series*, No. 2025–09, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5274030.

sovereignty and the cooperative regulation and management of community interests (II.), the continued contestation of the public-private divide (III.), the increasing reliance on the epistemic authority of science in international law and governance (IV.), and the ongoing re-negotiation of an increasingly heterogeneous postcolonial international legal order⁸ (V.). The volume also offers elements of comparative analysis of the three Advisory Opinions on climate matters handed down in 2025: those of the ICJ, the International Tribunal of the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACtHR). This enables the volume to identify the broader structural trends underlying these successive pronouncements and to highlight the specific role these Advisory Opinions have come to play in the development of international (climate) law. The introduction draws on the contributions to this volume and references them in the footnotes.

II. Recalibrating the Sovereignty/Community Interest Divide

At the centre of the ongoing structural transformation of international law lies its recalibration towards the protection of global (environmental) commons as an interest shared by the *community* of states. Prior to the Advisory Opinion(s), this process appeared to have stalled, especially with regard to climate change. Within the climate regime established under the UNFCCC, the ‘bottom-up’ architecture of the Paris Agreement seemed to confine the normative reach of international law primarily to procedural obligations, geared towards aspirational targets, rather than imposing substantive legal constraints.⁹ Moreover, customary international law and specialised areas of international law were often regarded as fragmented and contested in their applicability to the phenomenon of climate change. Indeed, many states conceived of the climate treaty regime as a *lex specialis* displacing other rules of international law. The ICJ’s Advisory Opinion repudiates these lines of argument, thereby (re-)positioning international law at the forefront of climate governance.

8 The use of the term of *postcolonial* international order attempts to encapsulate the simultaneity of the aspirations of the international legal order to overcome its colonial past but which is caught in – and to some extent perpetuates and translates – the lingering reverberation of past forms of colonial domination. In this sense, Sundhya Pahuja, ‘The Postcoloniality of International Law’ *HarvIntLJ* 46 (2005), 459-469.

9 For critical assessments of the qualification of the Paris Agreement as a bottom up structure, see for instance Christina Voigt, ‘The ICJ and the UN Climate Regime: Clarifying mitigation obligations under the Paris Agreement’, in this volume.

A first sub-cluster of contributions addressing the recalibration between state sovereignty and community interests accordingly focuses on the Advisory Opinion's identification and interpretation of the relevant subfields of international law and examines the manner in which the Court derived concrete climate obligations through the technique of systemic integration (1.). A second sub-cluster explores the further proceduralisation of international environmental law through the extension and refinement of procedural obligations¹⁰ and its future-oriented regulatory turn, and examines to what extent this reflects a normative commitment to the cooperative pursuit of shared interests (2.).

1. The Advisory Opinion and the Systemic Integration of International Law in the Context of Climate Change?

[T]he Court considers that the argument according to which the climate change treaties constitute the only relevant applicable law cannot be upheld and finds that the principle of *lex specialis* does not lead to a general exclusion by the climate change treaties of other rules of international law.¹¹

This reasoning enables the derivation of climate-related obligations beyond the Paris Agreement, drawing on other applicable rules of international law through systemic integration. It is on this basis, that the Court articulates a coherent legal framework composed of the 'most directly relevant' norms, from which a set of complementary obligations can be derived. These obligations do not flow solely from climate change treaties, but also from a broad spectrum of international legal sources: custom¹², the law of the sea¹³ and human rights.¹⁴ Through systemic integration, the Court identifies 'a single set of compatible obligations'¹⁵, and thus constructs an integrated international order with respect to climate change obligations.¹⁶

10 Cf. Heike Krieger and Anne Peters, 'Due Diligence and Structural Change in the International Legal Order', in: Heike Krieger, Anne Peters and Leonhard Kreuzer (eds.), *Due Diligence in the International Legal Order* (Oxford University Press, 2020), 382.

11 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 171.

12 Phillip Paiement and Corina Heri, 'Strengthening International Climate Obligations Beyond Paris: Situating the ICJ's Opinion within a Comparative Legal Context', in this volume.

13 Rozemarijn Roland Holst, 'Climate Change Law and the Law of the Sea: Systemic Impacts of the ICJ and ITLOS Advisory Opinions Read Together', in this volume.

As far as the climate change treaties are concerned, the ICJ intervenes on a number of intensely debated questions. It clarifies the relationship between the existing climate change treaties¹⁷ and strengthens the role of decisions taken by the Conference of the Parties (COP) serving as the meeting of the Parties to the Paris Agreement (CMA) by acknowledging their potential legal bindingness.¹⁸ In this context, the Court dispels uncertainty regarding the Paris Agreement's dual temperature goal by considering 'the 1.5°C threshold to be the parties' agreed primary temperature goal [...] under the Paris Agreement'¹⁹. More importantly, the Court clarifies the obligations arising from the Paris Agreement, especially with regard to mitigation. It limits the discretion of parties in defining their nationally determined contributions (NDCs) and in implementing them by a set of concrete obligations of conduct and of result, which must be exercised with *stringent due diligence*.²⁰

Moreover, the Advisory Opinion engages in an in-depth cross-judicial dialogue with the ITLOS and the IACtHR. Several contributions to this volume take a comparative perspective on the three Advisory Opinions and demonstrate that the ICJ sought to produce an Advisory Opinion that is in harmony with the two others. They reveal how cross-judicial dialogue not only fosters normative integration across jurisdictions, but also acts as a powerful tool in the construction of a more coherent body of international climate law.²¹ Moreover, they highlight the merit of a more detailed investigation into the evolving normative function of Advisory Opinions and their normative influence on the development of the international legal order, specifically in relation to climate change. Through persuasive legal reasoning, careful management of stakeholder expectations, and robust engagement with the jurisprudence of other international bodies, the Court

14 Helen Keller, 'A Right to a Clean, Healthy and Sustainable Environment – or Perhaps not (yet)?', in this volume; Malavika Rao, 'Climate Displacement in the ICJ's Advisory Opinion: Recognised but not Resolved', in this volume.

15 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 165.

16 Andrej Lang and Denise Koecke, 'Rising to the Occasion: The World Court as Architect of a Harmonious International Climate Law Framework', in this volume.

17 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 194, 225.

18 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 140, 184.

19 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 224.

20 Voigt (n. 9), in this volume.

21 For instance, Khaled El Mahmoud, 'One Climate, Many Courts: The ICJ Advisory Opinion on Climate Change, Systemic Integration, Cross-Judicial Law-Making, and Interjudicialism', in this volume.

has laid a normative foundation that may guide future litigation and policymaking efforts in the area of climate change law.²² For instance, both the ICJ and the IACtHR affirm the justiciability of climate harm and the applicability of international legal responsibility to climate-related breaches of international obligations, albeit through distinct lines of reasoning. While the ICJ places emphasis on strengthening the doctrinal foundation of climate obligations, the IACtHR focusses on enhancing the accessibility and effectiveness of climate justice through procedural innovations and rights-based reasoning.²³

2. The Proceduralisation of International Environmental Law and its Turn to the Future

Early manifestations of the proceduralisation of international environmental law date back several decades.²⁴ While proceduralisation has often been depicted as a means of substituting substantive agreement with diplomacy,²⁵ thereby diluting the substance and force of international law, others have argued, conversely, that it may exert a stabilising effect on the international legal order.²⁶ In this view, proceduralisation can help redress power imbalances, enhance legal and political accountability, and, importantly, create space for the incremental development of substantive norms.²⁷ As contributions to this volume suggest, the Advisory Opinion further advances proceduralisation through its pronounced reliance on due diligence.²⁸ At the same time, proceduralisation in this context reinforces substantive obligations and enables international law to assume a more future-oriented regulatory role.

22 Andreas Kulick, 'Great Expectations', in this volume.

23 Juan Auz, 'The Legal Consequences of Climate Harm: Complementarity Between the Advisory Opinions of the International Court of Justice and the Inter-American Court of Human Rights', in this volume.

24 Cf. Martti Koskenniemi, 'Peaceful Settlement of Environmental Disputes', *Nord. J. Int'l L.* 60 (1991), 73.

25 Koskenniemi (n. 24), 78, 85.

26 See Krieger and Peters (n. 10), 382-384.

27 See Krieger and Peters (n. 10), 382-384.

28 See Jutta Brunnée, 'The Advisory Opinion on Obligations of States in Respect of Climate Change: Harm Prevention under Customary International Law', in this volume; elaborating the close connection between due diligence and international law's proceduralisation, Krieger and Peters (n. 10), 363-364.

Due diligence functions as a cross-cutting regulatory technique governing all legal climate obligations of states arising under international law.²⁹ In fact, the core of the obligations identified by the Court require parties to act with due diligence – whether it concerns the obligation to prepare NDCs under Article 4(1) of the Paris Agreement, the duty to pursue domestic mitigation measures under Article 4(2), or other obligations of conduct enshrined in the Paris Agreement.³⁰ A due diligence standard also underpins customary international duties, such as the obligation to prevent significant environmental harm and the duty to cooperate.³¹

The Court offers a reading of due diligence that refines the substantive dimensions of the procedural obligations under the Paris Agreement and customary international law. It recognises that the procedural obligations of the Paris Agreement and of the harm prevention rule are constitutive for the pursuit of the substantive goals of harm prevention and the 1.5°C temperature goal. Vice versa the procedural obligations are normatively charged with these substantive goals. This leads to a form of proceduralisation that acknowledges the deep intertwinement of substance and procedure.³²

This form of proceduralisation is also a legal response to climate change's futurity, which necessitates regulation under factual uncertainty. While climate law as interpreted by the Court requires timely action, it nevertheless leaves flexibility in reacting to future challenges and does not foresee substantive obligations of result. There are many areas of international law that are characterised by international law's turn to the future, but climate governance is one of the most prominent examples. The ICJ's Advisory Opinion marks the latest effort to operationalise this regulatory turn to the future.³³ Most strikingly in this context, the Court recognises intergenerational equity as an interpretative principle:

29 On the proliferation of due diligence standards beyond international environmental law, see Anne Peters, Heike Krieger and Leonhard Kreuzer (eds), *Due Diligence in the International Legal Order* (Oxford University Press, 2020).

The use of the notion of 'regulatory technique' in regard to due diligence aims at underscoring its impact on the overall structure of the legal framework. For this use, see Krieger and Peters (n. 10) 351.

30 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 245 et seq., 252 et seq., 258, 262.

31 Brunnée (n. 28), in this volume.

32 Jutta Brunnée (n. 28), in this volume.

33 Jochen Rauber, 'Custom, Entrenchment, Interpretation – How the ICJ's Advisory Opinion on Climate Change Contributes to International Law's Turn Toward the Future', in this volume.

[...] intergenerational equity is a manifestation of equity in the general sense and thus shares its legal significance as a guide for the interpretation of applicable rules.³⁴

This entails a future-oriented regulatory turn which refines the traditional conception of state sovereignty, recasting States as trustees of future generations' interests in the functioning of the climate system and subjecting carbon sovereignty to justification under international law.³⁵ This interpretive refinement is driven by a normative vision of the cooperative pursuit of common interests.

In support of this normative vision, the ICJ's Advisory Opinion as well as the Advisory Opinions by ITLOS and the IACtHR rely on certain narratives on the temporality of international climate law.³⁶ By embracing a specific understanding of climate change's temporal situatedness, through the creation of temporal boundaries of the phenomenon of climate change, the Advisory Opinions delimit the jurisdictional scope for international law and strongly influence our climate 'imaginaries'.

III. International Law beyond the State: A Careful Recalibration of the Public/Private Divide

At first glance the Advisory Opinion the Court seems to move within the classical confines of the Public / Private distinction. It does not address the private sector directly. Instead, it importantly recognises that the obligations of States in light of climate change include the obligations to regulate the conduct of private actors.³⁷

Another central manifestation of the Public / Private divide that the advisory proceedings seem to challenge more fundamentally, concerns modes of public participation. In this context the divide appears as the

34 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 157.

35 Jannika Jahn and Nele Suchantke, 'The ICJ Advisory Opinion on Climate Change: From Carbon Sovereignty to Trusteeship of the Climate Commons', in this volume.

36 David Scott, 'Timing the Environment in International Law: Reflections on Temporality in the Three Advisory Opinions on Climate Change', in this volume.

37 Harro van Asselt, 'The Private Life of the ICJ Advisory Opinion on Climate Change', in this volume.

distinction between public norm-setters and private norm-takers.³⁸ A number of contributions to this volume investigate how this distinction is cautiously softened, as non-State actors have shaped both the process and the substance of the Advisory Opinion. In this regard, the Advisory Opinion illustrates the role that civil society organisations and individuals may play in shaping the international legal order. For example, Vanuatu, the state that initiated the Advisory Opinion, was counselled by NGOs and students. And even though the Court formally stuck to its procedural rules and the formal boundaries of standing, allowing only States and international organisations to present written or oral statements, the proceedings show how civil society and individuals indirectly partook in the interpretation of legal vocabulary and standards.³⁹ In this context, the significance of narrated stories is revealed. Viewed through a narratological lens the ICJ's Advisory Opinion and its proceedings have acted as an archive of narrated microhistories which records the lived experiences of those most affected by climate change and which might compensate the absence of a factual *in concreto* assessment by the Court.⁴⁰

IV. The Integration of Science into Law

International law has increasingly been called upon to regulate complex factual scenarios and uncertain risks, a development closely linked to the emergence of what has been described as a global risk society.⁴¹ Scientific expertise has thus become a central component of international risk regulation.⁴² International climate change governance is *the* paradigmatic example of this development. The Court devotes a considerable part of its

38 For an overarching account, see Jan Sändig, Jochen von Bernstorff, Andreas Hasenclever (eds.), *Affectedness and Participation in International Institutions* (Routledge, 2020).

39 Lillian Robb and Vishal Prasad, 'Both a "Global" and an "International" Court of Justice', in this volume.

40 Rashmi Dharia, "'Vanishing Yams", A Food Microhistory in the Climate Change Advisory Opinion', in this volume.

41 Ulrich Beck, *Risikogesellschaft* (Suhrkamp, 1986); Ulrich Beck, *Weltrisikogesellschaft* (Suhrkamp, 2008).

42 Jacqueline Peel, *Science and Risk Regulation in International Law* (Cambridge University Press, 2010); Monika Ambrus, Rosemary Rayfuse and Wouter Werner (eds.), *Risk and the Regulation of Uncertainty in International Law* (Oxford University Press, 2017).

Advisory Opinion to climate science. It addresses the epistemic authority of science in international law with a view to the temperature target that constitutes the normative hook for state obligations under the Paris Agreement. In order to illustrate the centrality of (climate) science for international law's regulatory grip on climate change, the Court begins its Advisory Opinion by telling the (hi)story of the emergence of international environmental and climate law as a reaction to and a product of the solidification of scientific knowledge on environmental degradation.⁴³

A substantive part of the Advisory Opinion then deals with establishing the scientific consensus on climate change.⁴⁴ For this, the ICJ relies 'primarily on the IPCC reports, which participants agree'⁴⁵ to 'constitute comprehensive and authoritative restatements of the best available science about climate change'⁴⁶. The Court thus reinforces the IPCC's epistemic authority. The establishment of a scientific consensus around the scientific assessments provided by the IPCC is of crucial importance to the reasoning, as the Court assigns a central role to science in the formation and the legitimization of normative benchmarks. In doing so, the Court displays hitherto unknown levels of epistemic deference.⁴⁷

V. Re-negotiation of the postcolonial international legal order

An aspect of international law's struggle to overcome the reverberations of its colonial past manifests itself in the increasingly unsatisfactory legal distinction between 'developed' and 'developing' countries. As international climate law occupies a central place in the ongoing re-negotiation of this distinction,⁴⁸ the Court's Advisory Opinion had to also address this fault line. This meant tackling the conflict between the major emitting states and the vulnerable states that have contributed least to climate change, yet bear its most severe consequences, both in terms of the legal duties involved and

43 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 50–71.

44 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 72–87.

45 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 74.

46 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 284.

47 Katalyn Sulyok, 'On the Science-Coloured Glasses of the ICJ: Harmfulness, Wrongfulness, and Climate Accountability', in this volume.

48 Among many, Sigrid Boysen, *Die postkoloniale Konstellation* (Mohr Siebeck, 2021).

the legal consequences arising from those obligations.⁴⁹ The participation of numerous small and highly vulnerable states from the Global South — many of whom engaged with the Court for the first time — underscores the significance that these states attributed to the proceedings as part of their broader pursuit of climate justice.⁵⁰ The Court acknowledges the significant contribution of industrialised countries to climate change⁵¹ and signals that states refusing to act on climate protection may incur international responsibility.⁵² Whether this also extends to historical emissions, however, is left open.

By emphasising equity and the principle of common but differentiated responsibilities and respective capabilities as interpretative principle,⁵³ the Court makes clear that it is seeking fair and flexible answers to the question of who should bear the cost of climate protection. This flexibility becomes particularly tangible in the Court’s pronouncement that

‘the addition of the phrase “in the light of different national circumstances” [...] does not change the core of the principle of common but differentiated responsibilities and respective capabilities; rather, *it adds nuance* to the principle by recognising that the status of a State as developed or developing is not static. It depends on an assessment of the current circumstances of the State concerned.’⁵⁴

Thus, the Court follows the steps already taken by the Paris Agreement toward a dynamic differentiation capable of reflecting shifting realities.⁵⁵

Finally, the Court took note of the potential legal implications of climate change for the right to self-determination. However, it refrained from elaborating on them, notwithstanding their demonstrated significance in

49 Lovleen Bhullar, ‘The Advisory Opinion on Climate Justice and the “Global North-South Divide”’, in this volume.

50 Robb and Prasad (n. 39), in this volume.

51 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 150.

52 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 421.

53 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 151.

54 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 225. [emphasis added].

55 Christina Voigt and Felipe Ferreira, “Dynamic Differentiation”: The Principles of CBDR-RC, Progression and Highest Possible Ambition in the Paris Agreement’ TEL 5 (2016), 285–303.

the ILC Study Group's recent report on sea-level rise in relation to international law.⁵⁶

VI. Conclusion

As mentioned above, this edited volume transforms a blogpost symposium into a more structured collection of early assessments of the ICJ's Advisory Opinion on the obligations of States in respect of climate change. Instead of an isolated focus on the Advisory Opinion's significance for international law's role in the struggle of climate change, it aims to offer a first round of shorter scholarly reflections which, taken together, read the Advisory Opinion as a significant catalyst in the ongoing structural transformation of international law. They also identify a range of technical and systemic gaps as well as silences in the Court's reasoning. These 'shortcomings' of the Advisory Opinion on the one hand indicate avenues for further scientific engagement and contestation. They point to the critical pressure points in the Court's systemic construction, aspects which find themselves still at the contested fringes of the ongoing structural transformation of international law. The contributions demonstrate a variety of approaches – ranging from doctrinal, to normative and more critical perspectives.

In light of the contributions of this collection, it seems to us editors that the Court has understood its task—at least in part—as one of ordering international law: offering a structural framework capable of coherently *managing* global climate governance. As we elaborate in greater detail in the conclusion, this vision conceives international law primarily as a regulatory architecture for the cooperative and future-oriented governance of the global commons. International law emerges as an order of shared, future-oriented responsibility. Conversely, one aspect that we believe remains at the contested frontier of this structural transformation, is the question of whether this regulatory architecture will also provide practically viable avenues for redistribution, individual state liability, and compensation or whether it will instead solidify around its managerial function in enforcing states' collective obligations towards the international community of present and future generations.

56 Dave-Inder Comar, 'The ICJ's Historic Nod to Self-Determination and Climate Change Impacts', in this volume.