One Climate, Many Courts:

The ICJ Advisory Opinion on Climate Change, Systemic Integration, Cross-Judicial Law-Making, and Interjudicialism

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I. Introduction

On 23 July 2025, the International Court of Justice ('ICJ' or 'Court') issued its Advisory Opinion on the *Obligations of States in respect of Climate Change*, marking a significant moment in the evolving landscape of international climate change law.[1] Notably, the ICJ engaged in sustained and explicit dialogue with the 2024 Advisory Opinion of the International Tribunal for the Law of the Sea ('ITLOS' or 'Tribunal'), alongside recent pronouncements by regional human rights courts, such as the European Court of Human Rights and the Inter-American Court of Human Rights, as well as quasi-judicial institutions, such as the Human Rights Committee. These cross-references evidence a maturing judicial practice of cross-institutional engagement.[2]

Yet, this chapter focuses specifically on ITLOS, examining how its 2024 Advisory Opinion informed, shaped, and, in some respects, structured the ICJ's own legal reasoning. It analyses the manner in which the Tribunal's interpretations were integrated into the ICJ's opinion to support a more coherent and cross-regime legal framework for addressing climate change. In doing so, it reflects on the broader implications of this judicial convergence for an emerging phenomenon, which may be termed *'cross-judicial law-making'*.

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

2 Shotaro Hamamoto, 'Judicial Cross-Referencing', in: Hélène Ruiz Fabri (ed), *Max Planck Encyclopedia of International Procedural Law* (2022).

II. The ICJ's Engagement with ITLOS' Advisory Opinion

The ICJ's reliance on ITLOS' reasoning can be broadly categorised into two dimensions: first, the application of rules, principles, and standards of general international law, and second, the interpretation of specific obligations under UNCLOS. This convergence reflects a broader pattern of mutual judicial engagement. While the ICJ has drawn extensively on ITLOS' interpretations, ITLOS has likewise relied on the jurisprudence of the ICJ in its 2024 Advisory Opinion, most notably in relation to environmental impact assessments ('EIAs').[3] These reciprocal references underscore the growing convergence between the two courts, contributing to a coherent body of international jurisprudence. While reference to the ICJ as the *principal judicial organ* of the UN is to be expected given its preeminent position in the international legal order, the ICJ's reliance on ITLOS marks a more notable development, signalling an increasing normative authority accorded to its judicial determinations.[4]

1. Rules, Principles, and Standards of General International Law

The ICJ expressly endorsed the ITribunal's articulation of *due diligence* as a core element of States' obligations of conduct.[5] The Court affirmed that due diligence is not a fixed or uniform standard but one that varies in light of contextual factors, including the gravity of the threat posed, in this case, by climate change conduct.[6] In particular, the ICJ emphasised that the standard of due diligence applicable to the preparation of nationally determined contributions must be stringent, reflecting the severity and urgency of the climate crisis.[7] The ICJ, echoing ITLOS' reasoning, underscored that due

3 ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of 21 May 2024, paras. 356, 363, 398.

4 Cf. Lan Ngoc Nguyen, 'The Public Authority of the International Tribunal for the Law of the Sea', in: Hélène Ruiz Fabri and others (eds), *International Judicial Legitimacy* (Nomos 2020).

5 ICJ, *Obligations of States in respect of Climate Change* (n. 1), paras. 251–2; ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), paras. 233, 239–40.

6 ICJ, *Obligations of States in respect of Climate Change* (n 1), para. 254.

7 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 246.

diligence assumes particular significance where the relevant activities are predominantly undertaken by non-State entities.[8]

Furthermore, the ICJ clarified that the determination of what due diligence requires in a given case must be guided by *current standards*. Such standards may derive not only from binding sources (*e.g.*, treaties and customary international law) but also from non-binding instruments, including relevant decisions adopted by the Conferences of the Parties ('COPs') to the climate change treaties and recommended technical norms and practices, where appropriate.[9] In this regard, the Court reinforced the ITLOS' view that the due diligence standard is inherently 'variable', shaped by developments in both, law and practice.[10] Accordingly, States are expected to adapt their conduct in line with emerging scientific knowledge, policy frameworks, and evolving expectations of responsible environmental governance.

With respect to scientific knowledge, both the ICJ and ITLOS acknowledged the work of the Intergovernmental Panel on Climate Change ('IPCC') as representing the best available science, going so far as to recognise its reports as authoritative assessments of the state of scientific knowledge on climate change.[11] Both courts grounded their judicial determinations in this science, adopting a common approach that climate change obligations cannot be divorced from climate change science.[12] In this context, the ICJ further reinforced States' obligations by holding that they must 'use their best efforts, in line with the best available science' and went beyond the ITLOS by expressly linking the concept of 'best efforts' to 'best available practice'.[13] At the same time, ITLOS qualified the weight of science in determining State obligations, stating that '[h]owever, this

8 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 252.

9 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 300. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 239.

10 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 300..

11 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 74. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 208. See also Sulyok, 'On the Science-Coloured Glasses of the ICJ: Harmfulness, Wrongfulness, and Climate Accountability', in this volume.

12 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 284. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 208.

13 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 258.

does not mean that the science alone should determine the content of necessary measures', thereby tempering the otherwise broad effect of recognising IPCC reports as both authoritative and reflective of best available practice.[14]

Moreover, the ICJ aligned itself with the ITLOS in endorsing the view that the scope of a State's due diligence obligation is contingent on its capabilities and resources.[15] In doing so, both courts effectively wove the principle of common but differentiated responsibilities and respective capabilities into the fabric of the due diligence standard, thereby recognising that differentiation in obligations must reflect disparities in capacity. While both concluded that developed States are subject to a more exacting standard of conduct, the ICJ introduced a more nuanced understanding by stressing that capacity-based differentiation must be assessed on a case-by-case basis, rather than through a simplistic developed/developing State binary.[16] In addition, both tribunals affirmed that limitations in available means cannot excuse inaction or justify undue delay in implementing necessary measures.[17]

With respect to EIAs, the ICJ reaffirmed and aligned its reasoning with that of ITLOS, particularly regarding the standard and scope of risk evaluation. In doing so, the ICJ drew on its own established jurisprudence, while simultaneously adding to it by incorporating the reasoning developed by ITLOS. As articulated by ITLOS and endorsed by the ICJ, such an assessment must integrate 'both the probability or foreseeability of harm and its severity or magnitude'.[18] The ICJ underscored that due diligence requires consideration not only of immediate risks but also of those that may manifest over the long term, thereby reflecting the temporal dimension of environmental harm in climate-related contexts.[19] The ICJ further recog-

14 ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 212.

15 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 291. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 241.

16 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 292.

17 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 268. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3),para. 229.

18 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 275. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), paras. 239, 397.

19 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 274.

nised that a risk of significant harm may also result from the cumulative effects of multiple activities.[20] In this regard, it echoed ITLOS' position that activities which appear environmentally negligible in isolation may, in combination, produce substantial adverse effects.[21] Consequently, States are under a duty to assess not only the individual environmental implications of activities within their jurisdiction, but also their aggregate and interactive effects, taking into account broader systemic impacts.

The ICJ built upon ITLOS' recognition of the duty to cooperate as a fundamental principle of international environmental law, affirming its status as a rule of customary international law.[22] Notably, the ICJ clarified, again echoing ITLOS, that the duty to cooperate is not exhausted by the mere conclusion or implementation of treaty commitments; rather, it imposes a continuing obligation to pursue cooperative action in good faith, both within and beyond formal legal frameworks.[23]

The ICJ, aligning with ITLOS, acknowledged the complex interplay between treaty obligations under the climate change regime and customary international law.[24] Recognising the difficulty of determining in the abstract the precise extent to which climate treaties and their implementation inform the content and application of customary obligations, the Court held that full and good faith compliance with treaty commitments, '*as interpreted by the Court*', is a strong indicator that a State is substantially fulfilling its general customary duties to prevent significant environmental harm and to cooperate.[25] However, consistent with ITLOS' findings, the ICJ was careful to affirm that such compliance does not, in and of itself, exhaust

20 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 276.

21 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para 276; Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 365.

22 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 140. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 296.

23 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 304. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 223.

24 ICJ, *Obligations of States in respect of Climate Change* (n. 1), paras. 313–4. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), paras. 223, 297–99.

25 ICJ, *Obligations of States in respect of Climate Change* (n. 1), paras. 314.

or discharge the distinct obligations imposed by customary international law.[26]

2. Specific Obligations under UNCLOS

In its Advisory Opinion on climate change, the ICJ explicitly and implicitly acknowledged the relevance of ITLOS' prior interpretation of UNCLOS. The ICJ stated that while it 'is not obliged, in the exercise of its judicial functions, to model its own interpretation of UNCLOS on that of ITLOS, it considers that, in so far as it is called upon to interpret the Convention, it should ascribe great weight to the interpretation adopted by the Tribunal [,] [...] "[...] [in order] to achieve the necessary clarity and the essential consistency of international law, as well as legal security"' [ICJ, para. 338].[27] This formulation reflects a nuanced form of judicial deference, grounded in the *institutional authority* of ITLOS as a specialised tribunal.[28] It also discloses a broader methodological choice that permeates the Advisory Opinion: the ICJ seeks to anchor its reasoning in existing jurisprudence and to weave together the various strands of international obligations into a coherent tapestry, thereby promoting systemic integration and enhancing the consistency of the international legal order.

This broader methodological alignment is reflected in the ICJ's subsequent identification of 'the *most relevant* obligations of States under UNCLOS', a formulation that implies that the list it provides is not exhaustive.[29] This phrasing may be understood as an implicit reference to the ITLOS Advisory Opinion, which undertook a more comprehensive and systematic examination of climate change-related obligations under UNCLOS. While the ICJ does not expressly cite ITLOS at this point in the text, the selective manner in which it addressed specific UNCLOS obligations closely mirrors the structure and analytical framework of the ITLOS'

26 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 113. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3),paras. 297–99.

27 ICJ, *Obligations of States in respect of Climate Change* (n. 1), paras. 338.

28 *Cf.* Ingo Venzke, 'Understanding the Authority of International Courts and Tribunals: On Delegation and Discursive Construction', Theor Inq L14 (2013), 381-409. .

29 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 341.

advisory opinion.[30] The ICJ's statement thus appears to acknowledge the existence of a broader legal analysis already conducted by ITLOS, effectively positioning its own discussion as a targeted elaboration rather than a full exposition. In this sense, the ICJ both defers to and builds upon the Tribunal's more detailed treatment, implicitly reinforcing ITLOS' Advisory Opinion as *the* key interpretative reference point for understanding the application of UNCLOS in the climate context.

Consequently, the ICJ reproduced the reasoning and legal findings of ITLOS through *verbatim* citations and detailed incorporations of ITLOS' interpretation of key provisions, such as Articles 1(1)(4), 192, 193, 194(1) and (2), 197, and 206 UNCLOS.[31] Most notably, the ICJ followed ITLOS' view that anthropogenic GHG emissions qualify as 'pollution of the marine environment' under Article 1(1)(4), thus bringing climate change squarely within the protective scope of Part XII of the Convention.[32] The ICJ also reiterated ITLOS' conclusion that Article 192 entails both positive and negative obligations, and that Article 194 imposes a stringent obligation of conduct requiring States to take all necessary measures.[33] The Court likewise echoed ITLOS' finding that the sovereign rights recognised under Article 193 are circumscribed by environmental duties, and that Article 197 imposes an ongoing obligation of international cooperation that extends beyond treaty participation.[34]

30 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 340. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), paras. 161–79.

31 ICJ, *Obligations of States in respect of Climate Change* (n. 1), paras. 339–54.

32 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 340. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), paras. 161–79.

33 ICJ, *Obligations of States in respect of Climate Change* (n. 1), paras. 342–3. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), paras. 385, 387, 399.

34 ICJ, *Obligations of States in respect of Climate Change* (n. 1), paras. 344–5. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), paras. 187, 206–7, 241, 380.

II. Advisory Jurisdiction as a Site of Systemic Integration and 'Cross-Judicial Law-Making'

In light of this substantive cross-institutional engagement evident in the ICJ's Advisory Opinion, particularly its incorporation of legal reasoning from other international judicial bodies, one may discern the gradual emergence of a more coherent body of international climate change law. This development raises a pertinent and hitherto underexplored question concerning the functions of the advisory jurisdiction of international courts. Beyond its traditionally recognised roles, namely, the settlement of disputes, the facilitation of international governance, and the progressive development of international law,[35] might the advisory function also serve a further purpose, namely that of *systemic integration*[36]?

1. Systemic Integration

Such an integrative function, though not prominently addressed in international legal scholarship, merits closer examination in light of the complex nature of contemporary global challenges such as climate change, which inherently traverse multiple and often fragmented legal regimes. While mutual referencing and converging jurisprudential approaches among international courts and tribunals may, at first glance, appear as isolated instances of judicial dialogue, this evolving pattern of cross-referencing between international judicial bodies, such as the ICJ and ITLOS, reveals a more systemic process.[37] Unlike sporadic or context-specific exchanges, this form of engagement is recurrent, substantive, and directed toward the articulation of consistent principles, rules, and standards across fora and legal regimes. In building upon each other's reasoning to develop shared rules, principles, and standards, the courts move beyond dialogue and toward what may be conceptualised as *'cross-judicial lawmaking'*.

35 Andreas Kulick, 'Between Advice and Miracle: Expectations and Persuasiveness of ICJ Advisory Opinions', ICLR 27 (2025), 33-61.

36 Campbell Mclachlan, 'The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention', ICLQ, 54 (2005), 279-320.

37 Susan Ann Samuel and Jorge Alejandro Carrillo Bañuelos, 'The Role of Advisory Opinions in International Law in the Context of the Climate Crisis: The Dialogue between the ICJ, the ITLOS, the IACtHR, and the AfCtHPR', in: Maria Antonia Tigre and Armando Rocha (eds), *The Role of Advisory Opinions in International Law in the Context of the Climate Crisis* (Brill 2025), 122–128.

The term '*cross-judicial law-making*' thus refers to a process by which multiple international judicial bodies contribute to the development, clarification, and integration of legal norms in response to a shared regulatory gap or an underdeveloped normative field. Cross-judicial law-making may arise in relation to cross-sectoral challenges, such as climate change, which cut across the traditional boundaries of discrete legal regimes (*e.g.,* environmental law, human rights law, the law of the sea, investment law) and expose *lacunae* or fragmentation within the existing governance architecture.[38] In such cases, some branches of international law may already provide partial legal frameworks, while others, though normatively relevant, may not yet have engaged with the issue, thereby creating a normative deficit. This fragmented legal landscape invites judicial engagement from multiple institutions with varying institutional mandates, jurisdictions, and expertise.

Significantly, cross-judicial law-making does not require that international courts be seized with identical legal questions, nor does it presuppose concurrent advisory proceedings or formal coordination.[39] Rather, it may emerge organically as different courts, when called upon to issue Advisory Opinions, respond to overlapping normative dimensions of the same underlying global problem. Through mutual referencing, convergent reasoning, or the transposition of rules, principles, and standards across legal regimes, courts contribute incrementally to the construction of a coherent legal response. In this regard, both, the ICJ and ITLOS, have emphasised that 'when several rules bear on a single issue, they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations'.[40]

In that sense, cross-judicial law-making represents a form of judicially mediated norm development.[41] Drawing conceptually on the notion of '*transjudicialism*', which describes horizontal dialogue among domestic

38 Rita Guerreiro Teixeira and Patrícia Galvão Teles, 'Advisory Opinions and the Development of International Law: An Opportunity for Climate Change Law?', in: Maria Antonia Tigre and Armando Rocha (eds), *The Role of Advisory Opinions in International Law in the Context of the Climate Crisis* (Brill 2025), 47–52.

39 Samuel and Bañuelos (n. 37) 121.

40 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 165. Cf. ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 136.

41 Cf. Robert Howse and Ruti Teitel, 'Cross-Judging Revisited', N.Y.U. J. Int'l L. & Pol. 46 (2014), 867-874.

courts, this emerging phenomenon among international judicial bodies may be termed '*interjudicialism*'.[42]

2. International Courts as Reactants in the Catalysis of Systemic Integration

However, any catalytic process depends on the presence of reactants, and in the evolving field of international climate change law, the principal reactants have been international judicial institutions themselves. Rather than operating as passive fora for legal interpretation, courts, such as the ICJ, have taken an active role in sustaining processes of systemic integration. While advisory proceedings before the ICJ or ITLOS can only be initiated by certain entities – and behind such initiatives regularly lie the political decisions of States and, in some cases, the influence of civil society – once seized, courts retain discretion as to whether, and to what extent, they engage with the jurisprudence of other judicial bodies.[43] By choosing to cross-reference and align their reasoning, the ICJ and ITLOS deliberately contributed to the consolidation of a coherent legal framework across fragmented regimes, thereby giving practical effect to the principle of systemic integration. Thus, through their advisory jurisdictions, these courts have not only clarified the content of States' legal obligations across distinct legal regimes but have also begun to articulate a convergent legal grammar for addressing the cross-sectoral challenges posed by climate change.[44]

42 Cf. Anne-Marie Slaughter, 'A Typology of Transjudicial Communication', U. Rich. L. Rev., 29 (1994), 99-137.

43 Maria Antonia Tigre and Armando Rocha, 'Symposium on the Contours and Limits of Advisory Opinions: Competing Perspectives and Dialogue in Climate Change Advisory Opinions', AJIL UNBOUND 117 (2023), 287 (289). It appears to be broadly accepted in scholarly literature that systemic integration does not constitute a binding legal obligation upon international courts and tribunals. Rather, it is more appropriately understood as an ethical responsibility, guiding judges from different fora to engage in dialogue, consider each other's reasoning, and, where appropriate, align their interpretative approaches in the interest of fostering coherence within the international legal order.

44 See Lang and Köcke, 'Rising to the Occasion: The World Court as Architect of a Harmonious International Climate Law Framework', in this volume.

III. Conclusion

The ICJ's willingness to incorporate ITLOS' reasoning into its own analysis reveals a pragmatic and cooperative judicial posture, one that recognises that normative coherence and legal certainty across regimes are strengthened by acknowledging the interpretative authority of specialised adjudicatory bodies. This approach does not signify institutional subordination, nor does it compromise the ICJ's interpretative autonomy. Rather, it reflects a broader *cooperative epistemology* in international adjudication, one in which judicial bodies, while maintaining their distinct mandates, engage in a process of mutual reinforcement to promote systemic integration.