Part I:
Recalibrating the Sovereignty/Community Interest Divide

1. The Advisory Opinion and the Systemic Integration of International Law through Climate Change

Rising to the Occasion:

The World Court as Architect of a Harmonious International Climate Law Framework

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I. Introduction

Climate change litigation has, at last, reached the World Court, with the International Court of Justice ('ICJ') issuing its highly anticipated Advisory Opinion on the Obligations of States in respect of Climate Change ('AO').[1] The Court held, in a nutshell, that States have binding legal obligations under both treaty and customary international law to prevent, reduce and control greenhouse-gas emissions[2]) and 'failure… to take appropriate action to protect the climate system … may constitute an internationally wrongful act'.[3]

To evaluate the ruling, this chapter takes an institutional perspective and asks which legal and political challenges the issue of climate change poses for the ICJ and how the Court responded to this challenge. It traces the distinctive institutional role for the ICJ in conversation with the initial voices articulated in the international legal blogosphere in response to the AO.

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1 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of of 23 July 2025.
2 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 347.
3 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 427; cf. also 221.

More specifically, the chapter identifies and responds to three distinctive positions among those varied voices.

First, skeptics had, prior to the AO, raised concerns about the merits of addressing climate change through the ICJ, pointing to the multiple pitfalls and political minefields of an advisory opinion.[4] In the aftermath of the AO, Bodansky and Biniaz have expressed concern that the opinion may 'have unintended chilling effects on the conduct of global climate diplomacy' and undermine the positive and important advancement of the Paris Agreement.[5] Although this stream of scholarship brings a keen sense of legal realism to the broader debate and points to important legitimacy-related constraints of international courts confronted with the climate crisis as well as the uncertain political consequences of climate rulings, it seems doubtful that the most urgent challenge of our time is the one issue in which we should forego the contributions of courts in clarifying what the law is. Put differently, the ICJ can and did, in fact, make a valuable contribution to addressing climate change; at the same time, it is true that defining a proper role requires taking into account the limits of the judicial function and its interaction with the political process.

Second, on the other side of the spectrum, many legal scholars expected a bolder and more activist role of the ICJ given the urgency of the climate crisis and criticized the Court for not going far enough. Prost, for example, describes the AO as 'a weak opinion' that is 'riddled with omissions, inconsistencies and banalities' and laments the inability of legal scholarship 'to distinguish genuine progress from mediocrity'.[6] This critique, however, tends to overlook that the necessary legal adaptations to the climate challenge need to be reconciled with legal stability and continuity, and cannot overcome the consensual structure of international law.

Third, the AO has been celebrated as a pivotal moment or turning point in climate governance that represents 'a watershed moment in the global

4 See, e.g., Daniel Bodansky, 'Advisory Opinions on Climate Change: Some Preliminary Questions', RECIEL 32 (2023), 185; Jianping Guo, Wanqiang Li and Haoyu Tian, 'The climate advisory opinion: A medicine with side-effects?', Marine Policy 156 (2023), Article 105817; Maria Antonia Tigre and Armando Rocha, 'Competing Perspectives and Dialogue in Climate Change Advisory Opinions', AJIL Unbound 117 (2023), 287.

5 Daniel Bodansky and Susan Biniaz, 'The ICJ's Advisory Opinion on Climate Change: Does It Throw a Wrench into the Negotiator's Toolbox of Diplomatic Problem-Solving Techniques?', EJIL:Talk!, 23 September 2025.

6 Mario Prost, 'Disaster Passing as Miracle? A Critical Take on the ICJ's Climate Advisory Opinion', EJIL:Talk!, 14 August 2025.

struggle for climate justice',[7] 'the start of a new era of climate accountability at a global level',[8] or a 'historic legal victory for small States'.[9] While this portrayal of the AO as a substantial victory for the cause of climate justice may be useful as part of a climate mobilization strategy, it overstates the limited role and impact that an advisory opinion of the ICJ can have for the broader struggle against climate change.

This chapter contends instead that properly assessing the AO requires, at the outset, to temper our expectations and to appreciate the delicate legal and political balance the ICJ was required to strike between the magnitude of the climate crisis as an existential global threat and the judicial prudence required of the World Court that remains dependent on state consent and legitimacy. It sets forth the argument that the ICJ has largely risen to the occasion not by providing 'a complete solution to the climate change problem',[10] but by defining its role as architect of systemic integration in international climate law, forging a harmonious international legal framework on climate change that integrates the diverse sources of international law and prior rulings of international courts and tribunals into a coherent legal architecture (III.). In doing so, the Court lived up to its role as a global public forum in the climate change advisory proceedings (II.). In addition, the Court managed to navigate its institutional limits and the political sensitivities of international climate change adjudication by establishing general climate change obligations, while avoiding controversial determinations on the responsibilities of specific States, and by relying on pre-existing legal notions and well-established principles such as the duties of due diligence and cooperation (IV.). One caveat is the Court's ambiguous treatment of the right to a clean, healthy and sustainable environment, likely reflecting a formulaic compromise between judicial ambition and restraint (V.).

7 Margaretha Wewerinke-Singh, 'ICJ Advisory Opinion and the Future of Climate Responsibility', IISD-SDG Knowledge Hub, 11 September 2024.

8 Katie Kouchakji, 'Climate crisis: ICJ's historic opinion sets the tone for future litigation', IBA Environment Correspondent, 1 August 2025, citing Danilo Garrido, legal counsel at NGO Greenpeace International.

9 Natricia Duncan, 'Caribbean leaders hail ICJ climate ruling as 'historic' win for small island States', The Guardian, 25 July 2025, citing Ralph Gonsalves, the prime minister of St Vincent and the Grenadines.

10 Declaration of Judge Tladi, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 38.

II. The ICJ and the Advisory Process as a Global Public Forum

The ICJ is institutionally and procedurally well-positioned to fulfill an architectural role. As opposed to other international courts adjudicating specific bodies of international law such as the United Nations Convention on the Law of the Sea ('UNCLOS'), in the case of ITLOS, or regional human rights treaties, in the case of the Inter-American Court of Human Rights ('IACtHR') and the European Court of Human Rights ('ECtHR'), the ICJ covers international law generally. The ICJ was, accordingly, tasked with comprehensively laying down the obligations of States with respect to climate change under public international law by the General Assembly ('GA'). For this purpose, the procedural build-up to advisory opinions in general – and to the climate change proceedings in particular – confers valuable 'process-based legitimacy' on the ICJ.[11]

The GA's request seeking the Opinion was bolstered with the authority of a majority vote, being co-sponsored by 132 States [12]. In total, 96 States delivered oral statements during the widely covered public hearings before the ICJ in December 2024 – the broadest participation in the Court's history. Moreover, civil society actors have extensively participated in the proceedings – from initiating the General Assembly's Request, over campaigning among States, to issuing written and oral statements.[13] Finally, the Court furthered the authoritative nature of its opinion by adopting it unanimously – as only the fifth of all 29 advisory opinions delivered by the ICJ so far.

The broad participation of the community of States in these advisory proceedings 'unlike any that have previously come before the Court'[14] and its institutional character as 'the principal judicial organ of the United Nations' (Art. 92 UN Charter) vested the Court with distinct authority and legitimacy. Against this background, the Court was predestined to act as a global public forum on the climate change obligations of States and to establish a coherent legal framework integrating diverse state perspectives ranging from historically high-emitting States to particularly vulnerable

11 Daniel Bodansky (n. 4), 191.

12 See UNGA Res 77/276 of 29 March 2023; ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 47.

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

14 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 456.

small island nations.[15] An added advantage of the advisory process was that its legally non-binding outcome spared the Court from the higher stakes and jurisdictional hurdles of legally binding contentious proceedings.

III. Building a Harmonious International Climate Law Framework

As indicated at the outset, the Opinion outlines the contours of a harmonious international legal framework on climate change that integrates the diverse sources of international law and prior rulings of international courts and tribunals into a coherent legal architecture.

1. Systemic Integration

The main interpretive tool utilized by the ICJ was the principle of systemic integration – though not explicitly referred to as such. With its help, the Court did not only systematically integrate the climate treaties into the workings of the international legal order, thus maintaining its coherence and integrity, it also rejected the argument of big emitters, such as the US, Japan, and Russia, that the climate change treaties would constitute *leges speciales* and therefore displace other rules of international law.[16]

The Court noted based on the findings of the International Law Commission that the application of the *lex specialis* principle requires either 'some actual inconsistency' between the international treaty obligations and customary principles or 'a discernable intention that one provision is to exclude the other'.[17] The Court could not ascertain either.[18] Neither did

15 For the proposition that International courts provide a forum for 'public debate about ideas, public norms, and societal values', see Emilie Hafner-Burton, Sergio Puig and David Victor, 'Against Secrecy: The Social Cost of International Dispute Settlement', Yale J. Int'l L. 42 (2017), 279 (288); see also Rozemarijn Roland Holst, 'Taking the Current when It Serves: Prospects and Challenges for an ITLOS Advisory Opinion on Oceans and Climate Change', RECIEL 32 (2023), 1 (4): advisory proceedings could 'go some way towards accommodating the diversity and multilateral character of interests involved'.

16 See United States of America, Written Statement (ICJ, Obligations of States in Respect of Climate Change, 22 March 2024), para. 4.1; Japan, Written Statement (ICJ, Obligations of States in Respect of Climate Change, 22 March 2024), paras. 14–18.

17 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 167.

18 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 168-170.

'the object and purpose of the climate change treaties [...] contradict other rules or principles of international law' nor did these treaties intend to 'replace such other rules or principles',[19] considering that 'the preambles of the UNFCCC and the Paris Agreement themselves contain references to other rules and principles'.[20] By rejecting the *lex specialis* argument ,[21] the Court simultaneously dismissed a conception of international law as a conglomerate of self-contained regimes. Rather than entrenching an atomistic fragmentation between specialized climate change law and general international law, the Court's reasoning reflects a shift towards the systemic integration of international law.[22]

Instead, the Court noted 'that it is a generally recognized principle 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',[23] thereby utilizing harmonious interpretation to present treaty law and custom as a complimentary skein.[24] Hence, climate change treaties and general customary principles, or international human rights law for that matter, are not so different as to displace one another; they are rather so similar, as to invite harmonious rapprochement.[25]

The systemic integration between the different international legal rules operates in both directions: '[T]he obligations arising from the climate change treaties, as interpreted herein, and State practice in implementing them inform the general customary obligations, just as the general customary obligations provide guidance for the interpretation of the climate change treaties'.[26] Similarly, 'international human rights law, the climate

19 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 169.
20 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 169.
21 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 171. See also Joint Declaration of Judges Charlesworth, Brant, Cleveland, and Aurescu, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 2.
22 Angela Wewerinke-Singh, 'Harmonizing Sources, Hardening Duties', Verfassungsblog, 11 August 2025.
23 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 165.
24 Joint Declaration of Judges Charlesworth, Brant, Cleveland and Aurescu (n. 21), para. 9.
25 On the relationship between climate change treaties and custom, see Julian Arato and Justina Uriburu, 'Treaty and Custom in the ICJ's Climate Change Opinion', EJIL:Talk!, 24 July 2025; on the relationship with international human law, see Corina Heri, 'Human Rights in the ICJ's Climate Opinion', Verfassungsblog, 1 August 2025.
26 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 313.

change treaties and other relevant environmental treaties […] inform each other'.[27]

A manifestation of the mutual interaction between treaty and custom is, according to the Court, that a 'compliance in full and in good faith by a State with the climate change treaties […] suggests that this State substantially complies with the general customary duties'.[28] Put differently: Compliance with the Paris Agreement creates a rebuttable presumption of compliance with the general customary duties to prevent significant environmental harm and to co-operate.[29]

This approach has been criticized as reading like '*lex specialis* by another name',[30] allegedly downgrading 'the autonomous force of customary law'.[31] There is, however, a substantial difference between using *lex specialis* as a rule to resolve a conflict of norms and pursuing a harmonious integration of different sources of law. Whereas the former formalistically results in one legal source displacing the other, the latter operates more flexibly through a rebuttable presumption that 'gives room for nuance and complexity.'[32] More specifically, it enables 'treaty and customary obligations to enrich one another', making both 'more robust'.[33] On the one hand, climate change treaties may, for example, enrich the customary principle of due diligence by providing more specific 'standards that may enable or facilitate the identification and application of the diligence that is due in specific instances [under customary international law]'.[34] On the other hand, embedding the rather weak Paris Agreement, with its sweeping deferral to state discretion and its lack of formal enforcement mechanisms, into the more robust structures of general customary law may give 'more teeth' to its obligations. Overall, the Court's holistic integration of treaty and custom as well as of international human rights and environmental law in the Opinion, is likely to produce significant legal consequences yet to be discerned in legal discourse and in contentious proceedings in the following months and years.

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27 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 404.
28 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 314.
29 Arato and Uriburu (n. 25).
30 Mario Prost (n. 6).
31 Mario Prost (n. 6).
32 Declaration of Judge Nolte, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 13.
33 Arato and Uriburu (n. 25).
34 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 313.

2. Global Minimum Baseline

The ICJ's approach towards the rulings of other international adjudicatory bodies – such as the UN Human Rights Committee, ECtHR, ITLOS, IACtHR – on the matters of climate change further exemplifies the architectural role the Court assumed. The ICJ was in a challenging position, risking to contradict previous international rulings and thereby creating 'confusion and undermine the credibility and authority of international courts and tribunals'.[35] Seemingly aware of this risk, the Court carefully steered clear of contradictory pronouncements. It did so by drawing generously on the climate change jurisprudence of ITLOS, as well as selectively on regional human rights courts, and the Human Rights Committee. Aiming 'to achieve the necessary clarity and the essential consistency of international law, as well as legal security',[36] the ICJ notably departed from its usual restraint in referencing other international bodies.[37] This judicial cross-fertilization arguably enriches the coherence of the international legal order.

While stating not to be bound by the ITLOS' interpretations, the Court transposed the Tribunal's notion of 'stringent due diligence' from the narrower context of maritime pollution to the broader field of climate change law, applying it, for instance, to the obligations under the Paris Agreement.[38] It not only reaffirmed the findings of this previous ruling but also universalized its contents for non-members of the UNCLOS, productively cross-fertilizing the law of the sea and the international climate law regime.

For example, the Court recognized the IACtHR's Advisory Opinion No. 32,[39] issued only a few weeks prior to the ICJ's ruling, albeit without engaging with its substance. Although some of the Inter-American Court's findings – *inter alia* irreversible harm to the environment being a *ius cogens* crime[40] or the expansion of extraterritorial jurisdiction for transboundary human rights violations[41] – are notably more progressive than those of the Court, the latter neither reasserted nor negated them in substance.

35 Laurence Boisson de Chazournes, 'The Advisory Function of the International Court of Justice: Various Facets', ASIL Proceedings (2024), 192 (194).
36 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 338.
37 Andreas Kulick, 'Great Expectations', in this volume.
38 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 252.
39 IACtHR, *Climate Emergency and Human Rights*, Advisory Opinion of May 29, 2025, AO No. 32/25.
40 IACtHR, *Climate Emergency and Human Rights* (n. 39), para. 293.
41 IACtHR, *Climate Emergency and Human Rights* (n. 39), para. 278.

It contended itself with 'legitimizing the rights-based approach to climate change',[42] providing an authoritative back-up and encouragement for human rights bodies such as the IACtHR, but also the ECtHR or the Human Rights Committee, to develop their climate change jurisprudence.

In the end, the ICJ was conscious that it is not – and cannot be – a human rights court.[43] This explains, for example, why the AO did not, aside from generally asserting that States' human rights obligations under universal human rights treaties may apply extraterritorially depending on the specific circumstances[44], delve into matters of extraterritorial jurisdiction for human rights violations arising from greenhouse gas emissions, thereby safeguarding the human rights courts' room to maneuver. Whereas the IACtHR is very forward in recognizing that persons outside the territory of the respondent State may be under the American Convention's jurisdiction if the harm emanates from within that State's territory,[45] the ECtHR has outwardly dismissed arguments in this direction.[46] The ICJ can impossibly provide a universal answer to questions of extraterritoriality; any substantial involvement would have simultaneously over- and underscored what human rights bodies have established in their jurisprudence.

The ICJ consequently opted for a global minimum baseline approach that avoided pronouncements on the precise scope of regional or specialized treaty commitments. This approach acknowledges the distinct normative space occupied by regional and specialized regimes, while integrating them into a broader global framework of climate obligations. Since the Court kept the door open to regional groups of States – such as the those of the American Convention – to adopt a higher standard of climate protection, the diverging approaches of those Courts present an opportunity, rather than a threat to the uniformity of international law.[47]

42 Corina Heri (n. 25).
43 Corina Heri (n. 25).
44 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 394-402.
45 Corina Heri (n. 25).
46 ECtHR, Duarte Agostinho and Others v. Portugal and Others, Application No. 39371/20.
47 Helen Keller, 'A Right to a Clean, Healthy and Sustainable Environment – or perhaps not (yet)?', in this volume.

IV. A Middle Ground Between Backlash-provoking Specificity and Issue-skirting Generality and Between 'Making' and 'Applying' the Law

One of the challenges for the ICJ was to thread the needle between overly specific, highly ambitious and innovative duties, and cautious general holdings that fail to advance the legal landscape.[48] It did so by establishing concrete and robust climate change obligations without controversially venturing into how States ought to specifically design their climate change policies.

More specifically, the Court affirmed in a reasoned manner that violations of climate protection obligations compel States to provide reparations,[49] despite some States arguing that the diffuse nature of climate change would preclude the general application of the rules of reparation.[50] At the same time, the ICJ confined itself to establishing the general framework of state responsibility in relation to climate change, while reserving an '*in concreto* assessment' of the responsibility of individual or groups of States to a 'case-by-case' analysis to be undertaken in future contentious litigation .[51] It wisely refrained from imposing more specific state obligations, such as enumerating concrete measures to reduce greenhouse gas emissions as part of States' nationally determined contributions (NDCs) or spelling out how damages from floodings in small-island States are to be calculated.

This does not, of course, imply that emitting States should escape international responsibility. But establishing such responsibility presupposes a concrete dispute between specific parties that meets jurisdictional requirements, rigorous fact-finding through formal evidentiary mechanisms, and detailed legal analysis refined through adversarial engagement – all hallmarks of contentious proceedings, and not the advisory process. Or, in Cass Sunstein's words, *one case at a time*.[52]

In addition, the Court succeeded, at least for the most part, in making legal adjustments necessitated by climate change in an evolutive and measured way. It did so by basing the international climate change framework on pre-existing and generally accepted legal principles such as the duty

48 Daniel Bodansky (n. 4), 192; Aref Shams, 'Tempering Great Expectations: The Legitimacy Constraints and the Conflict Function of International Courts in International Climate Litigation', RECIEL 32 (2023), 193 (201).

49 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 449-450.

50 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 434.

51 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 161.

52 For this judicial approach, see Cass Sunstein, *One Case at a Time: Judicial Minimalism on the Supreme Court* (Harvard University Press 1999).

to prevent or the duty to cooperate rather than introducing new and avant-gardist notions exclusively tailored to the specifics of climate change. For example, the ICJ expanded the customary rule to prevent significant (transboundary) harm to the environment. Some States indeed submitted that this duty remains limited to situations of direct cross-border harm.[53] The Court, however, broadened its scope, holding that the customary duty to prevent significant harm to the environment also applies with respect to the climate system and other parts of the environment'.[54]

Although the phenomenon of climate change requires profound modifications of 'our habits, comforts and current way of life',[55] it is doubtful that a bold act of judicial disruption by the ICJ would have served the global climate movement well. It would have likely provoked strong backlash by high-emitting States and stretched the legal and legitimacy-related limits of the World Court. Instead, its judicial role is better served by reconciling the legal adjustments necessitated by climate change with the need for legal stability and continuity. In the final paragraph of its Opinion, the Court reflects its institutional constraints accordingly, noting 'the limits of its judicial function' and the 'important but ultimately limited role [of international law] in resolving this [climate change] problem'.[56]

V. Right to a Clean, Healthy and Sustainable Environment

In order to specify with a concrete example how to strike – or not to strike – the fine line between overly ambitious lawmaking and progressive development of the law, this final section analyzes the Court's pronouncement on the right to a clean, healthy and sustainable environment. Although the ICJ has mostly done well to maneuver between these two poles, its holdings on the matter of the proposed right to a clean, healthy and sustainable environment are less convincing.

The Court derives the right from its recognition in human rights instruments ,[57] domestic systems,[58] and a General Assembly Resolution.[59]

53 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 133.
54 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 134.
55 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 456.
56 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 456.
57 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 390.
58 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 390.
59 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 392.

While the Opinion starts out to describe something resembling *opinio iuris* among the international community, the ICJ stopped short of expressly denoting an autonomous right to a clean, healthy and sustainable environment as customary international law. It stressed instead its close interrelationship with other human rights 'such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing', holding that it was 'a precondition for', 'inherent in' or 'essential for the enjoyment of other human rights'.[60]

What this ultimately means is already subject to debate in international legal scholarship. It appears that almost any position conceivable on the right to a clean, healthy and sustainable environment can be read into the Advisory Opinion: the right being custom, emerging custom (which is arguably most aligned with the holdings of the Court), a human right on its own, an accessory (horizontal) principle within the human rights domain, authoritative soft law, possibly even less than that. This ambivalence in the Court's reasoning is likely a reflection of a formulaic compromise between the majority and the more ambitious minority of judges. Judge Bhandari, for example, asserts that a right to a clean, healthy and sustainable environment exists under customary international law and criticizes the Court for failing to 'ultimately affirm[]' its existence or to 'clarify its normative status'.[61]

Without entering into a detailed analysis of existing state practice, there are good reasons for the ICJ, from a holistic perspective, not to recognize a new customary right to a healthy environment at the current stage of legal development.[62] Although the Court plays an important role in identifying customary international law – what it recognizes as custom 'is often regarded as determinative'[63] – it needs to exercise this delicate judicial authority judiciously so as not to undermine it. In the process of developing customary law, the ICJ should not stand at the forefront of international

60 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 393.

61 Separate Opinion of Judge Bhandari, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 3; see also Separate Opinion of Judge Aurescu, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, paras. 27–46; Declaration of Judge Tladi (n. 10), paras. 24–33.

62 It's a different matter – on which we take no position – to argue that a right to a healthy environment should be created on the global international stage through treaty or state practice.

63 Gleider Hernández, 'International Judicial Law-Making', in: Catherine Brölmann and Yannick Radi (eds.), *Research Handbook on the Theory and Practice of International Lawmaking* (Edward Elgar Publishing 2016), 200 (207).

legal innovations but serve as a 'consolidating force'[64] that ratifies a broad and sufficiently robust consensus. The fact that the IACtHR – a regional human rights court – has affirmed the right to a healthy environment as an autonomous right does not mean that the ICJ – a global inter-state court – ought to do the same.[65] The inescapable reality is that the ICJ crucially depends on – and cannot substitute for – a broad political consensus among states.

Once the ICJ chose not to take that route, it would have arguably been more prudent to engage less – or perhaps not at all – with the right to a clean, healthy and sustainable environment. While it appears the Court sought, with its elaboration, to bolster the emerging custom given its 'importance',[66] the passages on the right are arguably the most aspirational and least doctrinally grounded in the entire Opinion.[67] The Court's scarce and repetitive pronouncements neither contribute to a substantial resolution of the issues surrounding substantive and procedural status of the right, nor do they add much legal clarity. It is not surprising that numerous commentators and individual judges have criticized that neither the current status of this right under international law, nor whether it is a self-standing norm is clarified.

VI. Conclusion

In sum, the ICJ has – for the most part – demonstrated the necessary self-awareness of its institutional role and limits. Its emphasis on setting up a harmonious international climate law framework is doctrinally sound, yet sufficiently bold. In so doing, the Court has reaffirmed its role as an architect of an integrated legal order capable of confronting the 'ongoing climate crisis'.[68]

64 Gleider Hernández (n. 63), 207.
65 But see Corina Heri (n. 25).
66 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 391.
67 Critical Andreas Kulick, 'Great Expectations', in this volume.
68 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 456.