Strengthening International Climate Obligations Beyond Paris: Situating the ICJ's Opinion within a Comparative Legal Context

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I. Introduction

The ICJ's Advisory Opinion on the Obligations of States in respect of Climate Change[1] concludes a 15-month period of rapid developments in the crystallization of international law as it pertains to the climate emergency. Beginning with the first climate rulings of the European Court of Human Rights (ECtHR) – most notably, the *KlimaSeniorinnen* judgment[2] – in April 2024, later the 2024 Advisory Opinion of the International Tribunal of the Law of the Sea (ITLOS)[3] and then the Advisory Opinion of the Inter-American Court of Human Rights (IACtHR)[4] just two months ago, considerable clarity has been achieved as to the obligations arising from diverse subfields of international law. In the present post, we explore the ICJ's Advisory Opinion, issued on 23 July 2025. To better understand the Opinion and its innovations, we compare it to the findings of other international courts across three focal areas, namely the consolidation of the 1.5°C maximum warming threshold (II.), production-side obligations (III.) and reparations for climate-related harm (IV.). We show that, in

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1 ICJ, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, No. 187.

2 ECtHR (Grand Chamber), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, judgement of 9 April 2024, no 53600/20.

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, case no. 31.

4 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights*, 29 May 2025, AO-32/25.

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these three areas, the ICJ removed crucial barriers to effective, meaningful international climate obligations – but that more work is certainly needed to hold States accountable for their impacts on the global climate.

II. Consolidating the 1.5°C Maximum Warming Threshold

A first development that transcends recent international climate cases and opinions is the consolidation of the 1.5°C warming threshold as the key benchmark for evaluating States' obligations with respect to climate change mitigation. The Paris Agreement infamously included a dual maximum warming target, with the objective of both '[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels'.[5]

Domestic courts had struggled to translate the dual objectives into concrete obligations. For example, the Dutch *Urgenda* case imposed a 25 % emissions reduction obligation that favoured the 2°C maximum warming threshold[6] and the German *Neubauer* decision[7] emphasized the awkwardly indeterminate objective enshrined in the Paris Agreement, with its aim of staying 'well below 2°C and preferably 1.5°C'. However, the IPCC's evolving scientific accounts of the harm associated with 1.5°C of warming, combined with the Parties' commitments in the 2021 Glasgow Climate Pact,[8] have since shifted emphasis towards the 1.5°C threshold despite its more aspirational phrasing in the Paris Agreement.

These latter sources informed the ICJ's decision to definitively consolidate the more ambitious warming threshold. The Court stated that it 'considers the 1.5°C threshold to be the parties' agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement' and that this threshold is associated with the current 'best

5 Paris Agreement, 12 December 2015, 3156 UNTS 79, Art. 2(1)a.

6 For the final judgment in this case, see Dutch Hoge Raad, *The Netherlands v. Stichting Urgenda*, judgement of 13 January 2020, ECLI:NL:HR:2019:2007.

7 German Federal Constitutional Court, Order of 24 March 2021, 1 BvR 2656/18 and others, BVerfGE 157, 30.

8 Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, 'Glasgow Climate Pact', Decision 1/CMA.3, 13 November 2021, as published in FCCC/PA/CMA/2021/10/Add.1, 8 March 2022.

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available science'.[9] As such, 1.5°C, and not 2°C, is to be used in evaluating the sufficiency of States' actions with respect to their Paris Agreement obligations. As a reflection of 'best available science', the 1.5°C threshold also strongly informs States' obligation to prevent significant harm to the environment,[10] although the ICJ stopped short of explicitly defining warming beyond 1.5°C to constitute 'significant harm' in terms of the customary no-harm rule clarified elsewhere in the opinion.[11] This consolidation around the 1.5°C maximum warming objective reflects similar conclusions in the IACtHR and ITLOS opinions, as well as the *KlimaSeniorinnen* judgment.[12] The rapid transition from a 2°C to 1.5°C threshold in the past five years is all the more remarkable given that 2024 was the first year above 1.5°C,[13] which, if continued over the coming years, would mark the beginning of the failure to meet the Paris Agreement objective and prevent irreversible, far-reaching harm.

At the same time, the crystallization of the 1.5°C threshold raises questions about the legal consequences of climate-related harms which occur at warming levels *under* 1.5°C. Scholars have already noted how the use of such a threshold can prevent accountability for climate-related harms that are already ongoing, as well as distract from questions of equity associated with the historic, cumulative emissions that have particularly profited a small group of States at the expense of the global climate system.[14] The ICJ did observe that, in general, 'the accumulation of GHG emissions in the atmosphere is causing significant harm to the climate system and other parts of the environment'.[15] It also noted, concerning reparations, that 'what constitutes a wrongful act is not the emissions in and of themselves but actions or omissions causing significant harm to the climate system

9 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 224.
10 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 278.
11 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), especially paras. 272–300.
12 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 4), para. 509; ITLOS, *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law* (n. 3), para. 243; ECtHR, *KlimaSeniorinnen* (n. 2), para. 436.
13 Emanuele Bevacqua, Carl-Friedrich Schleussner and Jakob Zscheischler, 'A Year Above 1.5 °C Signals that Earth is Most Probably Within the 20-year Period that Will Reach the Paris Agreement Limit', *Nature Climate Change* 15 (2025), 262–265.
14 Juan Auz and Phillip Paiement, 'The Neocolonial Violence of the 1.5°C Threshold', Open Global Rights, 5 October 2023.
15 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 278.

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in breach of a State's international obligations'.[16] This suggests that the evaluation of whether a State is committing an internationally unlawful act by failing to act diligently in their effort to prevent significant harm via direct or indirect contributions to GHG emissions remains a question to be evaluated separately from – though informed in part by – the Paris Agreement obligations of pursuing mitigation to remain under 1.5°C. But such a clarification is not explicitly found in the Advisory Opinion.

III. Bringing Attention Towards Production-side Obligations

A second area in which the ICJ's Advisory Opinion marked a stark departure from the text of the Paris Agreement is in the recognition of State obligations related to the production of fossil fuels – a disruptive and controversial but vitally important finding.[17] The Paris Agreement's Art. 4 obligations around Nationally Determined Contributions exclusively focus on States' commitments to achieve 'economy-wide absolute emissions reduction', referring to all sectors of fossil fuel consumption, but with no commitments related to fossil fuel production. While the COP28 outcome document highlighted the need to transition away from fossil fuels and related subsidies,[18] few fossil fuel-producing States focus on reducing fossil fuel production in their most recent NDCs.[19]

Nonetheless, the ICJ remarked unequivocally that the '[f]ailure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which

16 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 429.

17 Jannika Jahn and Marlene Letsch, 'Progress Through Disruption? What Role for the ICJ in the Advisory Opinion on Climate Change', EJIL:Talk!, 22 January 2025; Andrej Lang and Denise Koecke, 'Rising to the Occasion: The World Court as Architect of a Harmonious International Climate LawFramework', in this volume; Marisa McVey and Annalisa Savaresi, 'The ICJ Advisory Opinion on Climate Change: A Business and Human Rights Perspective', Opinio Juris, 4 August 2025.

18 Conference of the Parties serving as the meeting of the Parties to the Paris Agreement, 'Outcome of the First Global Stocktake', draft decision -/CMA.5, 13 December 2023, FCCC/PA/CMA/2023/L.17, para. 28(d) and (h).

19 Natalie Jones, 'What NDCs 3.0 Are (and Aren't) Saying About Fossil Fuel Production', IISD Insight, 6 June 2025.

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is attributable to that State'.[20] It derived this finding based on its own well-established case-law that 'the conduct of any organ of a State must be regarded as an act of that State'.[21] Although not explicitly drawing on a legal comparison, this too, parallels the IACtHR's Advisory Opinion.[22] It is a remarkable development that stands in contrast to a predominant trend in climate litigation, which has tended to focus on consumption-related obligations of States. The ICJ builds on this production-side obligation to further specify that States have an obligation to regulate the activities of private actors engaged in both production and consumption of fossil fuels as part of their 'regulatory due diligence'.[23]

The ICJ's finding on regulatory due diligence obligations is particularly impactful in the context of litigation against influential production-side private actors (for instance, claims against BNP Paribas[24] and TotalEnergies[25] in France, Mercedes-Benz[26] and BMW[27] in Germany, and ING[28] and Royal Dutch Shell[29] in the Netherlands). Oil and gas companies, financial sector actors and other major economic actors who mainly contribute to climate change through the Scope 3 emissions associated with the consumption of their eventual products often face minimal legislative or regulatory frameworks requiring the reduction of their Scope 1, 2 and 3 emissions. Instead, the respective States have chosen to largely use market mechanisms to trigger consumption reductions. The question here is whether the ICJ has laid the groundwork for treating these responses as situations in which States have failed to act diligently to regulate the production-side private actors in

20 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 427.

21 ICJ, *Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), merits, judgement of 19 December 2005, ICJ Reports 2005, 168, para. 213, citing ICJ, *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion of 29 April 1999, ICJ Reports 1999 (I) 87, para. 62.

22 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 4), para. 353.

23 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 428.

24 Tribunal judiciaire de Paris, *Notre Affaire à Tous, Les Amis de la Terre, and Oxfam France v. BNP Paribas*, summons of 23 February 2023.

25 Paris Court of Appeal, *Greenpeace France and Others v. TotalEnergies SE*, judgment of 18 June 2024, no. RG 23/14348.

26 Landgericht Stuttgart, 13 September 2022, 17 O 789/21 (*Metz et al. v Mercedes-Benz*).

27 Oberlandesgericht München, 12 October 2023, 32 U 936/23 (*Metz et al. v BMW*).

28 *Milieudefensie v. ING Bank and Others*, summons of 16 January 2025.

29 The Hague Court of Appeal, *Milieudefensie and Others v Royal Dutch Shell PLC and Others*, 12 November 2024, ECLI:NL:GHDHA:2024:2100.

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their jurisdiction; in other words: a situation of regulatory failure. If so, that would have a tremendous impact on both the legal consequences for those States, as well as for the production-side private actors themselves, who argue that their compliance with existing regulatory frameworks affords them a 'safe haven' from civil liability related to harm resulting indirectly from their actions.

IV. Reparations for Climate-related Harm

A third notable area in which the ICJ's Advisory Opinion expanded on the international climate regime concerns reparations. This issue relates to long-standing debates on compensation and redistribution taking place under the United Nations Framework Convention on Climate Change (UNFCCC) umbrella.[30] For example, the Paris Agreement was adopted in the understanding that its provision on loss and damage, Article 8 of the Agreement, 'does not involve or provide a basis for any liability or compensation'.[31] In recent years, this starting point has been complemented by the operationalization of loss and damage funding mechanisms that operate on a pledge-based (voluntary) basis.[32] As estimates of the economic and non-economic loss and damage associated with climate change continue to mount, these mechanisms remain grossly inadequate to compensate climate-vulnerable States, raising serious equity concerns.[33]

The Court was asked to consider whether the customary rules on State responsibility, which go beyond what is provided for in the Paris Agreement, apply to breaches of climate-related obligations – or whether the application of these rules is instead precluded by the climate treaties, as a *lex specialis*. In considering this, the Court held that, because the relevant provisions of the Paris Agreement do not concern responsibility or the

30 United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107.

31 Conference of the Parties to the UNFCCC, 'Adoption of the Paris Agreement', Decision 1/CP.21, 29 January 2016, FCCC/CP/2015/10/Add.1, para. 51.

32 For a discussion of recent developments, see Adrián Martínez Blanco and Patrick Toussaint, 'Addressing Loss and Damage at COP29 and Beyond: Priorities and Uncertainties in the Future of Loss and Damage Finance', Völkerrechtsblog, 13 November 2024.

33 On non-economic loss and damage, see Alejandra Padin-Dujon, 'What is "Non-Economic" Loss and Damage (NELD)?', Grantham Institute Explainers, 20 June 2023.

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settling of disputes, they do not exclude the application of customary rules on reparation. The Court went on to clarify issues of attribution (including concerning fossil fuels and private actors, as discussed above) and causation, and held that the main mitigation obligations set forth in the climate change treaties apply *erga omnes*, meaning that any State can bring proceedings against infringements of these collective obligations. It then clarified the legal consequences arising from breaches of climate-related obligations, including duties to perform the obligations breached, to put an end to the wrongful act (including by amending domestic law), and the duty of reparation, which can include obligations of restitution (restoring infrastructure and ecosystems), financial compensation and satisfaction (for example, formal apologies or educating society about climate change).[34]

Here, too, the ICJ's findings are explicitly rooted in the Court's own past case-law, without relying on comparative legal arguments. Situating these findings comparatively shows that the ICJ's Advisory Opinion goes beyond that of the ITLOS – which was not asked to consider responsibility or liability – and also beyond the *KlimaSeniorinnen* judgment of the ECtHR, which awarded only modest costs and expenses. The IACtHR, by contrast, transcended the loss and damage debate, and like the ICJ explored a broad range of measures required to provide reparation. The IACtHR has a strong track-record in this regard, having recognized obligations to provide financial compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.[35] Its climate Advisory Opinion highlighted the need to provide victims with effective redress, restore ecosystems, fund conservation, provide adequate medical care, and reduce vulnerability.[36] And, by declaring planetary habitability a norm of *jus cogens*,[37] the IACtHR likewise seems to have recognized that it gives rise to obligations *erga omnes*.

34 Previously, on compensation, see ICJ, *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua), compensation, judgement of 16 December 2015, ICJ Reports 2018, 5.

35 For an analysis, see Juan Auz, 'The Political Ecology of Climate Remedies in Latin America and the Caribbean: Comparing Compliance between National and Inter-American Litigation', JHRP 16(1) (2024), 182–207.

36 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 4), paras. 556–559.

37 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 4), para. 291.

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There are, however, some notable differences between the two opinions. First, the IACtHR derived its findings on reparations from the human right to an effective remedy, and not from customary law as the ICJ did.[38] Secondly, as a human rights court, the IACtHR focused on the rights of individuals, communities and nature; the ICJ, although contemplating the possibility of reparations claims for breaches of human rights law in the abstract, was predominantly focused on reparation between States, and left the issue of individual claims to specialized treaty regimes.[39] Thirdly, the IACtHR contemplated the possibility of debt relief for States, something the ICJ was wary of.[40] And last but not least, the IACtHR's opinion takes a contextual and vulnerability-sensitive approach to reparations, mentioning that they must be based on both science and (Indigenous and traditional) knowledge, and must guarantee effective access to justice for the individuals and communities concerned.[41] By contrast, in its remedial considerations, the ICJ not only refused to differentiate among States based on their level of vulnerability to the impacts of climate change,[42] but also did not engage with the barriers to justice facing vulnerable individuals.

This comparison shows that, while throwing the door wide open to reparations claims on the interstate level – subject, of course, to States' acceptance of its jurisdiction[43] – the ICJ retained ambiguity around available remedies for affected peoples and individuals. This highlights the continued value of the work of human rights treaties and courts, as an important complement to interstate proceedings.

V. Conclusion

The ICJ's Advisory Opinion definitively announced a new era of international climate change law, an era in which the UNFCCC, Paris Agreement

38 For a discussion see Juan Auz, 'The Inter-American Court of Human Rights' Advisory Opinion on the Climate Emergency: A Global South Contribution to Climate Governance', EJIL:Talk!, 18 July 2025.

39 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 111, 433 and 449.

40 Contrast IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 4), para. 208, with ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 262.

41 IACtHR, *Advisory Opinion on Climate Emergency and Human Rights* (n. 4), para. 559.

42 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 109–110.

43 Article 36 of the ICJ Statute (Statute of the International Court of Justice, 24 October 1945, XV UNCIO 355).

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and Kyoto Protocol are but few of many relevant instruments framing the obligations of States with respect to climate change. In doing so, the Court addressed make-or-break issues for international obligations in this context that have emerged in the past two years of international adjudication, including but not limited to the themes addressed here: the consolidation of the 1.5°C maximum warming threshold, the recognition of production-side obligations, and finally, the identification of diverse remedies available when States fail to perform the climate obligations they have *erga omnes*. While the Court does not rely on comparative argumentation in these three contexts, it is nevertheless apparent that the substance of its findings did not emerge in a vacuum. Instead, they consolidate ongoing legal developments and debates, yielding extensive alignment with the findings of other international adjudicators – especially the IACtHR – regarding all three themes explored here. Ultimately, the Court delivered a remarkable opinion that performs a challenging task of maintaining the successful elements of the Paris Agreement while contextualizing them in a much further-reaching set of diverse obligations, the latter of which seriously bring into question the sufficiency of climate and energy policies of developed States around the world.

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