

The ICJ's Historic Nod to Self-Determination and Climate Change Impacts

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I. Introduction

This chapter analyses the July 2025 Advisory Opinion from the International Court of Justice (ICJ), *Obligations of States in Respect of Climate Change* (Advisory Opinion),¹ with respect to the principle and right of self-determination. While the ICJ did not explicitly rely on the principle and right of self-determination in its core discussion of ‘the most directly relevant applicable law,’² the ICJ did not completely ignore it. In discussing the specific impacts of sea-level rise, the Court observed the possibility of ‘adverse consequences’ on vulnerable States, including forced displacement and impacts on territorial integrity and permanent sovereignty over natural resources. ‘[S]ince these principles are closely connected with the right to self-determination, sea level rise is not without consequences for the exercise of this right.’³

While the Court’s discussion in paragraph 357 is brief, it is also remarkable. The Court’s conclusion that certain climate change impacts, particularly sea-level rise, will have consequences on the self-determination of affected States represents a novel application of the right to self-determination by the Court beyond its prior treatment in the context of decolonisation (e.g., *Western Sahara* (1975),⁴ *Chagos Archipelago* (2019)⁵) or occupation (*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*

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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), para. 114.

3 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 357.

4 ICJ, *Western Sahara*, Advisory Opinion of 16 October 1975, ICJ Rep., 12.

5 ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, ICJ Rep., 95.

(2024)⁶). The Court further appears to be aligning its own jurisprudence with the conclusions of the International Law Commission (ILC) and related recommendations from the International Law Association (ILA) concerning the relevance of self-determination in protecting the existence and survival of peoples from climate impacts. In that sense, paragraph 357 represents the Court's opening statement of a potentially much larger doctrinal exploration of climate change and self-determination in the years ahead.

II. Self-Determination in Relation to Existential Climate Impacts

The relevance of self-determination in relation to climate change impacts, particularly for vulnerable States, has been identified by the ILA and the ILC as part of their overlapping but separate assessments on sea-level rise. In a 2024 report focused on statehood and sea-level rise,⁷ the ILA specifically identified self-determination as an 'important element' in shaping decisions related to the preservation of statehood and the protection of rights of the population, concluding that the right of self-determination 'becomes particularly significant for peoples affected by sea level rise when most or all of the territory of low-lying SIDS becomes uninhabitable or submerged.'⁸ Separately, the ILC released its final conclusions on sea-level rise and international law in 2025, capping a six-year review conducted by an open-ended Study Group. In their final consolidated report, the Co-Chairs of the Study Group articulated that the right to self-determination was 'a fundamental principle' to be taken into account under all three subtopics reviewed by the Study Group: the law of the sea, statehood, and the protection of persons.⁹ The final report of the Study Group itself concluded that the right to self-determination supports the continuity of statehood in the context of climate change-related sea-level rise and that peoples cannot be

6 ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion of 19 July 2024.

7 International Law Association, 'Athens Conference (2024): International Law and Sea Level Rise', (2024), 49.

8 International Law Association (n. 7), 23.

9 ILC, 'Sea-level rise in relation to international law: Final consolidated report of the Co-Chairs of the Study Group on sea-level rise in relation to international law, Patrícia Galvão Teles, Nilüfer Oral and Juan José Ruda Santolaria', (2025) A/CN.4/783, para. 409.

deprived of the continuity of statehood without their consent.¹⁰ Respect for self-determination also requires good faith consultation as to alternative solutions that can preserve the identities of peoples and their international legal personality.¹¹ Fundamental principles of international law, including that of self-determination, 'should not be undermined by climate change-related sea-level rise.'¹²

The ICJ acknowledged the work of the ILC in the Advisory Opinion¹³ and affirmed certain aspects of its conclusions, for example, that UNCLOS does not require States parties 'to update their charts or lists of geographical co-ordinates that show the baselines and outer limit lines of their maritime zones once they have been duly established' in the context of climate-change related sea-level rise.¹⁴ The separate opinions and declarations appended to the Advisory Opinion suggest a level of disagreement regarding the proper analysis of self-determination, statehood, and sea-level rise, with some expressing a degree of dissatisfaction on the lack of engagement on the topic. Vice President Sebutinde, noting that the issue of self-determination had been raised by many States (including small island States) in the context of sea-level rise and statehood, advocated for a more thorough discussion of self-determination and climate change impacts including 'confirming in the operative paragraph 457 the obligation incumbent upon all States to take all necessary measures to protect the right of the most vulnerable States to self-determination.'¹⁵ Judge Aurescu urged more analysis related to UNCLOS and the law of the sea, including with respect to the ICJ's conclusion that there is no obligation under UNCLOS to update charts or lists of geographical co-ordinates that show the baselines and outer limit lines of their maritime zones once they have been duly established.¹⁶ Judge Aurescu suggested that this conclusion could be derived, among other things, 'from the obligation to respect the right

10 ILC, 'Final report of the Study Group on sea-level rise in relation to international law', (2025) ILCYB, Vol. II, Part Two, paras. 38, 39.

11 ILC, Final report on sea-level rise (n. 10), para. 39.

12 ILC, Final report on sea-level rise (n. 10), para. 53.

13 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 361.

14 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 362.

15 Separate Opinion of Vice-President Sebutinde, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 8.

16 Separate Opinion of Judge Aurescu, *Obligations of States in Respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 2.

to self-determination (closely connected, inter alia, with territorial integrity and permanent sovereignty over natural resources).¹⁷

In contrast, Judge Tomka wrote in his declaration that he would have preferred a ‘more prudent approach’ on the question of statehood and self-determination.¹⁸ In his view, self-determination and statehood were ‘heavily tied to territory’; therefore, the inexistence of land from climate change impacts ‘would tend to result in the demise of that [impacted] State as a subject of international law.’¹⁹ Judge Tomka conceded that ‘a growing number of States’ had expressed to the ILC the view that ‘statehood may survive even in the case of the total disappearance of territory.’²⁰ However, the discussions before the ILC were not sufficient in Judge Tomka’s view to indicate ‘a collective *opinio juris* reflecting a new rule of custom’ that was ‘judicially cognizable’. For jurists and scholars holding the same views as Judge Tomka, more will be needed from States, including ‘a firm and public position on this issue’ before it can be said that ‘a customary rule has crystallized around this point.’²¹

III. Doctrinal Implications Moving Forward

Despite the brevity of the Advisory Opinion’s reference to self-determination, paragraph 357 nevertheless contains significant doctrinal implications concerning self-determination and climate change, particularly in relation to ‘forced displacement of populations’ from sea-level rise and impacts on the principles of ‘the territorial integrity of States and their permanent sovereignty over their natural resources.’ First, the Court’s conclusion that ‘sea level rise is not without consequences for the exercise of [the right to self-determination],’ while cursory, represents a historic expansion of its jurisprudence related to self-determination and confirmation of its applicability outside the contexts of decolonisation and occupation (which the Co-Chairs of the ILC Study Group also affirmed in their final consolidated report).²² While some scholarship has argued that self-determination’s role

17 Separate Opinion of Judge Aurescu (n. 16), para. 3.

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

19 Declaration of Judge Tomka (n. 18), para. 8.

20 Declaration of Judge Tomka (n. 18), para. 6.

21 Declaration of Judge Tomka (n. 18), para. 6.

22 ILC, Final consolidated report of the Co-Chairs (n. 9), para 295.

is narrow or even irrelevant in addressing climate change impacts (for example, Stoutenburg's conclusion in 2015 that the right was inapplicable on the issue of territorial loss and statehood in the context of sea-level rise),²³ the ILC, ILA, and now the ICJ have expressly shifted the doctrine towards application of the right to self-determination in the face of climate impacts. And even while the ICJ did not explicitly mention self-determination in its review of applicable legal obligations,²⁴ self-determination is necessarily implicated through the ICJ's references to the Charter of the United Nations (UN Charter),²⁵ the International Covenant on Civil and Political Rights (ICCPR),²⁶ and the International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁷ which each demand the dual protection and promotion of self-determination as a fundamental element of the international legal order (for example, in Articles 1(2) and 55 of the UN Charter, and common Article 1 of the ICCPR and ICESCR).

Second, the Court's conclusion that climate change impacts and sea-level rise will have consequences for self-determination serves to further develop the substantive law of self-determination. The ICJ recently summarised the law of self-determination in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (2024) in a manner that could be directly relevant to issues of sea-level rise and climate impacts more generally. In that Advisory Opinion, the ICJ concluded that territorial integrity and permanent sovereignty over natural resources were fundamentally interwoven with self-determination,²⁸ and that self-determination further protects a people 'against acts aimed at dispersing the population and undermining its integrity as a people.'²⁹ The ICJ further held that self-determination 'is the right of a people freely to determine its political status and to pursue its economic, social and

23 Cait Storr, 'Islands and the South: Framing the Relationship between International Law and Environmental Crisis', *EJIL* 27 (2016), 519–540 (525–526).

24 See, e.g., ICJ, *Obligations of States in respect of Climate Change* (n. 1), paras. 172, 457.

25 Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945), 1 UNTS XVI.

26 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

27 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

28 ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (n. 6), paras. 237, 240.

29 ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (n. 6), para. 239.

cultural development,³⁰ in turn connected to international legal concepts enshrined in UNGA Resolution 1514(XV) (1960),³¹ the 1970 Friendly Relations Declaration,³² and the ICCPR and ICESCR. Similarly, in the climate Advisory Opinion, paragraph 357 explicitly references territorial integrity and permanent sovereignty over natural resources, and its mention of forced displacement can be directly connected to protecting the ‘integrity’ of a people. The Court’s current jurisprudence on self-determination can be clearly and logically extended to address the adverse or existential impacts of climate change on vulnerable peoples and States.

Third, the activation of self-determination in relation to climate change impacts may, as a practical matter, help promote the existence and survival of vulnerable peoples and States in a rapidly changing climate system, including Indigenous Peoples. While the Advisory Opinion referenced Indigenous Peoples as a vulnerable group,³³ it stopped short of any discussion of specific doctrinal protections that may apply to Indigenous Peoples under international law, including Indigenous existence and survival and related principles of self-determination as recognised, inter alia, by Articles 3 and 4 of the United Nations Declaration on the Rights of Indigenous Peoples.³⁴ For many Indigenous Peoples, climate change represents an immediate existential threat wrought by emitter States, threatening their self-determination and cultural integrity.

Fourth, comments from States submitted to the ILC on the issue of continuity of statehood (collected in paras 148–299 of the final consolidated report of the Co-Chairs of the ILC Study Group), as well as the discussion contained in the separate opinions and declarations of the ICJ Advisory Opinion itself, all point towards a larger reexamination of the law of self-determination in the context of adverse climate change impacts. If self-determination is necessarily implicated by issues of displacement and loss of territory and resources from climate change, then the door is seemingly now open for claims of breach of self-determination from injured peoples and States. Such claims may be cognisable not just by small island and low-lying States impacted by sea-level rise; a State rendered permanently

30 ICJ, *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (n. 6), paras. 233, 241.

31 UNGA Res 1514 (XV) of 14 December 1960, A/RES/1514(XV).

32 UNGA Res 2625 (XXV) of 24 October 1970, A/RES/2625(XXV).

33 ICJ, *Obligations of States in respect of Climate Change* (n. 1), para. 382.

34 UNGA Res 61/295 of 13 September 2007, A/RES/61/295 (annex) (‘United Nations Declaration on the Rights of Indigenous Peoples’).

uninhabitable by extreme heat³⁵ would also face similar issues of displacement and loss of resources (including subsistence resources protected by common Article 1, section 2 of the ICCPR and ICESCR) underscored by the ICJ in paragraph 357. Arctic Indigenous Peoples, now experiencing significant environmental degradation of cold Arctic conditions, are arguably being 'displaced' from such cold conditions through irrevocable loss of cultural life, even if physical displacement does not take place.³⁶ The positive obligation to promote self-determination contained, *inter alia*, in common Article 1, section 3 of the ICCPR and ICESCR may further impose an affirmative obligation on States to promote the desired will of impacted peoples and States with respect to their international legal personality and ongoing existence and survival. Ultimately, such solutions will only work to the extent that States are willing to cooperate to effectuate them, which includes the critical task of actually stopping the emissions-generating conduct that is now producing such existential risks.

35 Daniel J. Vecellio, Qinqin Kong, W. Larry Kenney, and Matthew Huber, 'Greatly enhanced risk to humans as a consequence of empirically determined lower moist heat stress tolerance', *PNAS* 120 (2023), 1–9.

36 Dave-Inder Comar, 'Displaced from the cold: Threats to the self-determination, including the cultural self-determination, of Sámi Indigenous Peoples in the Nordic region from climate change impacts', in: Miriam Cullen and Matthew Scott (eds), *Nordic Approaches to Climate-Related Human Mobility* (Routledge 2024), 101–116.

