Timing the Environment in International Law: Reflections on Temporality in the Three Advisory Opinions on Climate Change

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I. Introduction

In the closing paragraph of its *Advisory Opinion on the Obligations of States in respect of Climate Change* (one set to be quoted for years to come), the ICJ recalled that 'it has been suggested that these advisory proceedings are unlike any that have previously come before the Court'. While able to answer the legal questions put before it by the General Assembly, the Court acknowledged that climate change represents 'more than a legal problem': it is 'an existential problem of planetary proportions that imperils all forms of life and the very health of our planet', one which '[i]nternational law…has an important but ultimately limited role in resolving'.[1]

I find this hesitancy fascinating. In this paragraph, the ICJ acknowledged a fundamental gap between law and climate justice—a limit to how far law and legal responsibility can ultimately take us in protecting our planet. Yet this paragraph also expresses a feeling I think many of us share. Climate change occurs at such a large, abstract level that it is impossible for us to comprehend its full scale and history. We live in a 'fossil modernity' powered by fuels compacted over millennia in the past, turned into plastics and residues that will remain on the planet for thousands of years after our deaths.[2] How can you begin to conceptualise your personal responsibility for something that monumental, never mind the legal responsibility of states?

In their 2013 book *Hyperobjects: Philosophy and Ecology after the End of the World,* philosopher Timothy Morton designates climate change a titular

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1 ICJ, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 456.

2 Andreas Folkers, 'Fossil Modernity: The Materiality of Acceleration, Slow Violence, and Ecological Futures', Time and Society 30 (2021), 223–246.

'hyperobject': something so massively distributed across space and time that it is impossible for us to relate to it fully:

> [O]ne hundred thousand years? It's unimaginably vast. Yet there it is, staring me in the face, as the hyperobject global warming. And I helped cause it. I am directly responsible for beings that far into the future, insofar as two things will be true simultaneously: no one then will meaningfully be related to me; and my smallest action now will affect that time in profound ways.[3]

In this chapter, I want to argue that one of the primary ways in which international law articulates this problem of the 'hyperobject' is through *time*: more specifically, through the creation of temporal boundaries that delimit climate change's start, translating and 'slicing up' the impossibly vast temporality of the climate into the smaller scale of legal responsibility.[4] Following how the ICJ, ITLOS, and Inter-American Court of Human Rights have positioned law and climate change 'in' time, this chapter aims to show not only the different bordering functions of time for each Advisory Opinion, as a kind of jurisdictional scope for international law's grasp on the climate, but also position this as the starting point for a map of something like the climate 'imaginary' of international law—what it is that different legal regimes and courts and tribunals visualise, integrate, and exclude from their minds when they try to think about our changing climate in the terms of the law.

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3 Timothy Morton, *Hyperobjects: Philosophy and Ecology after the End of the World* (University of Minnesota Press 2013), 60. Note that Morton advocates the use of 'global warming' over 'climate change'—ibid, 7–8: 'Whatever the scientific and social reasons for the predominance of the term *climate change* over *global warming* for naming this particular hyperobject, the effect in social and political discourse is plain enough. There has been a decrease in appropriate levels of concern… *Climate change* as substitute enables cynical reason (both right wing and left) to say that the "climate has always been changing," which to my ears sounds like using "people have always been killing one another" as a fatuous reason not to control the sale of machine guns.' [emphasis original].

4 Thinking here again with Morton (n. 3), 70: 'That's why you can't see global warming… We only see snapshots of what is actually a very complex plot of a super complex set of algorithms executing themselves in a high-dimensional phase space. When the weather falls on your head, you are experiencing a bad photocopy of a piece of that plot. What you once thought was real turns out to be a sensual representation, *a thin slice of an image*, a caricature of a piece of global climate. [Global warming] is a real object, but one that occupies higher dimension than objects to which we are accustomed.' [emphasis added].

II. Establishing the legal time of climate change at the ICJ

At first blush, the ICJ's Advisory Opinion appears to dodge the question of temporality entirely. At paragraph 97, the Court notes that temporality was raised as an issue for both of the questions before it: for question (a), this related to 'crystallization and identification' of relevant obligations to protect the climate system; and for question (b), the need to establish an international obligation 'in force' at the time in which the allegedly wrongful conduct occurred. The Court found that while these temporal questions 'may be particularly relevant for an *in concreto* assessment of the responsibility of States for breaches of obligations pertaining to the protection of the climate system', their specific determination fell outside the scope of the present Advisory Opinion.[5]

Nevertheless, the Court elsewhere provides suggestions as to where it would border the legal start of climate change. In its description of the context of the request for an advisory opinion, the Court begins in December 1968, with General Assembly resolution 2398 (XIII), which the Court identifies as the starting point for the context of the Advisory Opinion before it.[6] From there, the Court then ties awareness of climate change to the reports of the IPCC, created in 1988 to report every five to seven years on the state of knowledge on climate change and recognised by states as 'the best available science on the causes, nature and consequences of climate change'.[7] Considering that this 'best available science' is identified as core to states' obligations of due diligence obligations,[8] the duty to prevent,[9] and risk assessments and environmental impact assessments under the precautionary approach,[10] future litigation on these matters will need to wrestle with how the historical state of knowledge about climate change can be translated into legal obligations at different points in time—that is to say, as an application of the intertemporal doctrine, a point raised in a number of State submissions but unremarked upon by the ICJ.[11]

5 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 97. A similar exclusion is made for attribution and causation at ibid, para. 423.
6 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 51.
7 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 74.
8 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 137, 254, 258, 284.
9 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 278.
10 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 298.
11 On the use of science here by the ICJ, particularly as relates to the (in part temporally-organised) distinction between 'harmfulness' and 'wrongfulness', see Katalin

While this temporal framing may seem uncontroversial, States had presented divergent views on the matter during written and oral submissions.[12] Large polluters such as the USA,[13] Australia,[14] France,[15] Russia,[16] and the UK[17] had argued for a tighter temporal frame, beginning only in 1992, with the UNFCCC as the *lex specialis* that should govern climate change at the expense of other rules of international law. In contrast, a number of less-developed States, more vulnerable to the immediate impacts of climate change, argued that climate change was 'inseparable from our shared colonial histories' (the Melanesian Spearhead Group),[18] not only in the

Sulyok, 'On the Science-Coloured Glasses of the ICJ: Harmfulness, Wrongfulness, and Climate Accountability', in this volume. For recent productive engagements with intertemporal law, see Steven Wheatley, 'Revisiting the Doctrine of Intertemporal Law', Oxford J. Legal Stud. 41 (2021), 484–509; Rémi Fuhrmann and Melissa Schweizer, 'Ending The Past: International Law, Intertemporality, and Reparations for Past Wrongs', GLJ (2025), 1-21; Sara Wissmann, 'Before *Re*construction: *De*constructing the Prayer of Intertemporality' (forthcoming, on file with author).

12 For more on state submissions before the ICJ, see David M Scott, 'Time and Temporality before the ICJ in the Advisory Opinion on Obligations of States in Respect of Climate Change', EJIL: Talk!, 14 February 2025; David M Scott, 'The Challenge of Time' (18 June 2025). Queen Mary Working Paper No. 452/2025, available at SSRN: https://ssrn.com/abstract=5309578.

13 Submissions of the United States of America, Verbatim record 2024/40, 4 December 2024, describing the UN climate change regime as 'the only international legal régime specifically designed by States to address climate change' (44, para. 21), with '[a]ny other legal obligations relating to climate change mitigation…interpreted consistently with the obligations States have under this treaty régime' (40, para. 7).

14 Submissions of Australia, Verbatim record 2024/36, 2 December 2024, stating that the UN climate treaties are 'the central instruments that provide the framework for international co-operation' (36, para. 5).

15 Submissions of France, Verbatim Record 2024/41, 5 December 2024, noting that awareness of climate change, for the purposes of international law, would begin with the UN General Assembly's resolution on the 'Protection of global climate for present and future generations of mankind' and the 1992 Rio Declaration on Environment and Development (14–15, para. 26).

16 Submissions of Russia, Verbatim record 2024/40, 4 December 2024, stating that 'any legal consequences arising from breaches of "climate obligations" due to harm caused to the climate system can only be invoked from the moment the relevant treaties of the UNFCCC system entered into force for that State' (61, para. 63).

17 Submissions of the United Kingdom, Verbatim Record 2024/48, 10 December 2024, describing the Paris Agreement as 'not only, as a matter of international law, the most relevant applicable international instrument for addressing the challenge, but also, as a matter of fact, the most realistic framework for the concerted action necessary to respond to the crisis' (43–44, para. 13).

18 Submissions of the Melanesian Spearhead Group, Verbatim Record 2024/35, 2 December 2024, 102, para. 7.

'colonialism and racism which largely inform our level of development and vulnerabilities' in the present (the Cook Islands)[19] but also the historical fact that the 'developed' position of industrialised States was 'powered by colonial exploitation' (Timor-Leste) in the first place.[20]

The ICJ tracked a course between these positions. While rejecting the *lex specialis* arguments that would have limited responsibility for climate change to only recent and future acts, the Court also resisted calls to extend climate change back to encompass its roots in colonial exploitation, with its 1968 starting point locating the start of any claim after the process of formal decolonization.[21] In this light, it is also notable that the right to self-determination—featured in many States' submissions—receives only a cursory mention in relation to sea level rise.[22] As such, climate change is rendered by the ICJ as a shared, contemporary responsibility of all States, rather than the outcome of a differentiated and unequal historical process that is already imperilling the presents and near-futures of particular States and peoples—a point forcefully criticised in the Separate Opinions of Judge Sebutinde, Judge Yusuf, and Judge Charlesworth.[23]

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19 Submissions of the Cook Islands, Verbatim Record 2024/42, 5 December 2024, 11–12, para. 9.

20 Submissions of the Democratic Republic of Timor-Leste, Verbatim Record 2024/51, 12 December 2024, 25, para. 13.

21 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), paras. 162–171.

22 ICJ, *Obligations of States in Respect of Climate Change*(n. 1), para. 357. For substantial discussions of self-determination in oral submissions, see, among others, Submissions of the Melanesian Spearhead Group (n. 18), 103–106, paras. 1–11; Submissions of the Republic of Fiji, Verbatim Record 2024/40, 4 December 2024, 71–72, paras. 18–20; Submissions of the Marshall Islands, Verbatim Record 2024/42, 5 December 2024, 29–30, paras. 6–9; Submissions of Papua New Guinea, Verbatim Record 2024/43, 6 December 2024, 25–26, paras. 10–14; Submissions of Kiribati, Verbatim Record 2024/43, 6 December 2024, 47, paras. 22–25; Submissions of Micronesia, Verbatim Record 2024/45, 9 December 2024, 24–26, paras. 20–27; Submissions of Nauru, Verbatim Record 2024/46, 9 December 2024, 11–13, paras. 13–18; Submissions of Tuvalu, Verbatim Record 2024/51, 12 December 2024, 52–56, paras. 3–21.

23 For example, Separate Opinion of Vice-President Sebutinde, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 5: '[c]limate justice requires, at the very least, a recognition that there is an imbalance between the major polluters (constituting a small number of developed or industrialized countries) and the majority of States (comprising least developed and small island States) whose GHG emissions are negligible'. Separate Opinion of Judge Yusuf, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 20: '[t]he disparities in historical and current contributions of various groups of States to climate change and the distinctions in the responsibilities they bear, over which the Advisory Opinion tries to draw a formalistic veil, is fully recognized and

III. Temporal fragmentation across three tribunals

The work done by the ICJ's temporal boundaries becomes sharper when we compare its Advisory Opinion against those given by ITLOS and the Inter-American Court of Human Rights.

In the ITLOS Advisory Opinion, climate change is understood on a much tighter, narrower scale. At paragraph 47, ITLOS begins its legal history of climate change with UN General Assembly resolution 43/53 of 6 December 1988—passed *after* the drafting of UNCLOS.[24] This creates a different relationship between the law of the sea and climate change. Rather than asking which new obligations must be found to apply to climate change, ITLOS instead asks how climate change can be understood within the existing boundaries of UNCLOS. This means that the Advisory Opinion is not oriented towards preventing the extinction of humanity at large (indeed, the ITLOS Advisory Opinion is almost totally devoid of the existential language that the ICJ uses when describing climate change),[25] and instead asks only how ongoing climate change can be understood and domesticated within the existing parameters law of the sea, with the meaning of the treaty evolving to meet the new challenges presented by climate change.

The Inter-American Court of Human Rights' Advisory Opinion, on the other hand, posed a very different temporality. For the Inter-American Court, we do not simply face an 'urgent' risk from climate change in the future, as the ICJ describes our situation,[26] but are in fact *already living*

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well established in contemporary international law relating to the protection of the climate system'. And Separate Opinion of Judge Charlesworth, *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025, para. 28: emphasising that 'States' obligations to apply the treaty and customary principles of equality and non-discrimination entail that heightened attention must be paid to the situation of climate vulnerable groups'. For discussion, see also Julia Dehm, 'The Evasion of Historical Responsibility?: Colonialism, Temporality and Reparative Justice in the ICJ's Climate Advisory Opinion', Verfassungsblog, 4 September 2025.

24 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, para. 47.

25 The only real recognition of these stakes comes at ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (n. 24), para. 122, where the Tribunal notes that 'climate change is recognized internationally as a common concern of humankind'.

26 ICJ, *Obligations of States in Respect of Climate Change* (n. 1), para. 137.

in a 'climate emergency'.[27] This drawing back leads to two significant differences in the Inter-American Court's treatment of climate change. First, the characterisation of climate change as an already existing harm leads to a much earlier historical starting point: not in the twentieth century legal sources of the OAS, but in *1750*, when human activities first began to influence the global climate.[28] Second, as a consequence, the historical 'complexity' of the climate emergency demands different measures in the present 'to address the *structural* circumstances that led to it', with the Inter-American Court specifically calling for a move towards sustainable development.[29] Rather than casting climate change as a universal, future threat, then, the Inter-American Court looks for structural responses that can undo the past and present harm already occurring.

Does ITLOS's more specific and timebound approach give easier purchase for achievable and measurable action? Is the ICJ simply setting the minimum stage for other courts and tribunals to drive forward real progress? Or is it only the Inter-American Court that properly grasps the significance of our changing climate for the present and the future? Scholars can debate the benefits and drawbacks of each approach.[30] But as legal action on the climate builds on the foundations of these three Advisory Opinions, these temporal differences not only show different ways of thinking about the climate within these regimes, but may also manifest in distinct obligations, with each regime attributing responsibility for historical contributions at different points in time. This has the potential

27 Inter-American Court of Human Rights, *Requested by the Republic of Chile and the Republic of Colombia: Climate Emergency and Human Rights*, Advisory Opinion of 29 May 2025, case no. OC-32/25, Chapter V, 16–79.

28 Inter-American Court of Human Rights, *Requested by the Republic of Chile and the Republic of Colombia: Climate Emergency and Human Rights* (n. 27), para. 46.

29 Inter-American Court of Human Rights, *Requested by the Republic of Chile and the Republic of Colombia: Climate Emergency and Human Rights* (n. 27), para. 369 [emphasis added]. See also paras. 204–216.

30 See, among the many blogposts and symposia prompted by the ICJ Advisory Opinion, Mario Prost, 'Disaster Passing as Miracle? A Critical Take on the ICJ's Climate Advisory Opinion', EJIL: Talk!, 14 August 2025; Jorge Alejandro Carrillo Bañuelos and Susan Ann Samuel, 'Judicial Convergence on Climate Change', Verfassungsblog, 16 September 2025; Margaretha Wewerinke-Singh, 'Harmonizing Sources, Hardening Duties', Verfassungsblog, 11 August 2025.

to fragment rather than systemically integrate the law relating to climate change, following the bedrock of these different temporal imaginaries.[31]

IV. International law on a warming planet

So far, I have tried to show an 'internal' view of how climate change is domesticated within the bounds of international law through time—how time can be operationalised to assign or deny particular forms of legal responsibility. But these temporal borderings also have a significant 'external' effect. In giving a definition to 'climate change', they 'synchronise' diverse histories, processes, and future trajectories according to the needs and rationales of *legal* responsibility, in a way that might not do full justice to climate change and its impact on our planet.[32] Grappling with the manifestation of those existential stakes, as expressed through the discipline's sense of time, is thus one clear way to bring into focus what international law's 'important but ultimately limited role in resolving' our climate crisis will be, in contrast to other disciplines and modes of thought.[33]

It is, of course, hard to know what to do when faced with a looming future of extreme climate change. Prior ways of living no longer make sense —established practices need to be adapted or salvaged as sea levels rise. Law, like everything else, is fumbling in the shadow of the hyperobject. As Morton writes:

> [H]yperobjects are impossible to handle just right… [W]e have no time to learn fully about hyperobjects. But we have to handle them anyway.

31 Sarah Thin, 'Playing Fast and Loose with Article 31(3)(c) VCLT: Lessons on Systemic Integration from the ITLOS Climate Change Opinion', NILR 72 (2025), 31–57; Sarah Thin, 'From Paris with Love: The Systemic Integration of Environmental Law in the Interpretation of UN Human Rights Treaties', NQHR 43 (2025), 150–171.

32 On synchronisation, see Helge Jordheim and Espen Ytreberg, 'After Supersynchronisation: How Media Synchronise the Social', Time & Society 30 (2021), 402–422; Scott, 'Time and Temporality before the ICJ' (n. 12). On the difficulties of law as a producer of historical 'truth', see Marko Milanović, 'Establishing the Facts about Mass Atrocities: Accounting for the Failure of the ICTY to Persuade Target Audiences', Geo. J. Int' l L. 47 (2016), 1321–1378; Barrie Sander, *Doing Justice to History: Confronting the Past in International Criminal Courts* (Oxford University Press 2021). On law and its distinct relationship to time, see Reinhart Koselleck, 'History, Law, and Justice' in: Reinhart Koselleck, *Sediments of Time: On Possible Histories* (Stanford University Press 2018), 117–136.

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

> This handling causes ripples upon ripples. Entities that are massively distributed in time exert downward causal pressure on shorter-lived entities.[34]

These legal temporalities provide an insight into the ways in which international lawyers make sense of the world in which they work today. Thinking through how the 'causal pressure' of climate change exerts itself on international law brings to the fore how our discipline thinks about itself during environmental collapse: which concepts survive, which change, and which practices are upheld or sanctioned into the future.[35]

34 Morton (n. 3), 67.

35 See also Jochen Rauber, 'Custom, Entrenchment, Interpretation: How the ICJ's Advisory Opinion on Climate Change Contributes to the International Law's Turn toward the Future', in this volume.