

SUMMARY OF THE ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE (ICJ) DATED 23 JULY 2025

Nuran Haydar Celik, page 121-134

ABSTRACT

This article provides a comprehensive summary of the International Court of Justice's (ICJ) advisory opinion on the obligations of states concerning climate change, issued on 23 July 2025. The ICJ recognizes climate change as an existential threat and affirms binding legal duties of states under both treaty and customary international law. These duties include emission reductions, adaptation measures, regulation of private actors, and support for vulnerable countries. The Court emphasizes the principle of due diligence, international cooperation, and the human right to a clean, healthy, and sustainable environment. Furthermore, the opinion clarifies state responsibility for climate-related harm and outlines the framework for remedies under international law. This study aims to evaluate the key and significant determinations of the decision from an international law perspective paragraph by paragraph and to briefly present the obligations outlined by the court along with their sources, as well as the responsibilities arising therefrom.

Keywords: *ICJ, Climate Change, State Obligations, State Responsibility, Due Diligence, Lex Specialis, Erga Omnes*

Dr. Nuran Haydar Celik

*Research Assistant,
University of Basel*

e-mail: nuran.haydar@gmail.com

UDK:

341.645.2:502.17
341.645.2:551.583

Date of received:
11.07.2025

Date of acceptance:
10.08.2025

Declaration of interest:

The authors reported no conflict of interest related to this article.

1. Introduction

The advisory opinion stems from an initiative by the island state of Vanuatu and other small states particularly affected by climate change, which in March 2023 succeeded in the adoption of UN General Assembly Resolution 77/276. With the approval of all 193 member states, the General Assembly tasked the International Court of Justice (ICJ) to issue an advisory opinion on the questions formulated in the resolution. The Secretary-General of the United Nations officially transmitted this decision to the Court on 12 April 2023. The hearings took place from 2 to 13 December 2024, with participation from 96 states and 11 international organizations, making it the largest hearing in the history of the ICJ to date. The 140-page advisory opinion was announced on 23 July 2025 and addresses the following questions:

“(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?”

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”

The following section (2) presents the Court’s answers to these questions in a coherent flow, along with their justifications and legal bases. Following the order pursued by the Court, all state obligations determined based on the sources of international law and the resulting responsibilities, as well as the main answers to the key questions raised by the parties during the proceedings, will also be briefly outlined.

In the conclusion section (3), a general overview and key takeaways will be provided, particularly highlighting points that are important for the legal community and international politics. This section aims to benefit legal professionals and practitioners working on the case.

2. Highlights According to Paragraphs

Jurisdiction and Discretion (paras. 37–49)

The Court first establishes that it has jurisdiction to issue the requested advisory opinion and concludes that there is no compelling reason not to grant the requested opinion.

Context (paras. 50–87)

Within the framework of the Advisory Opinion, the Court reviews the current state of international climate policy with its historical background, in which Resolution 77/276 was adopted, including concluded agreements, held conferences, and adopted resolutions. It then provides a scientific basis defining key terms such as “climate,” “climate change,” and “pollution.” Global trends are discussed, particularly the accelerated greenhouse gas emissions and their impacts. Finally, the Court relies on the 2023 Summary for Policymakers of the Intergovernmental Panel on Climate Change (IPCC) to emphasize that the possibility of securing a livable and sustainable future is rapidly diminishing and that measures taken in the coming years will have long-term effects spanning millennia.

Interpretation of the Questions (paras. 93–106)

Regarding question (a), the Court clarifies that the General Assembly, by referring to obligations “under international law,” intends a comprehensive interpretation encompassing all relevant sources of international law and not limiting itself to specific areas of law. The Court explains the material scope by describing the international legal obligations of states to protect the climate system and the environment from anthropogenic greenhouse gas emissions and the resulting legal consequences in case of breaches. The territorial scope is global, without spatial limitation, as emissions are caused worldwide by human activities. Regarding the temporal scope, the opinion does not address individual responsibility of specific states but focuses on the general duties of all states and the consequent legal implications.

Regarding question (b), the Court explains that it is only tasked with identifying general legal consequences and not to determine the specific responsibility of individual states or groups of states. Such an assessment requires a case-by-case analysis (in concreto assessment). Therefore, the Court confines itself to outlining the general international legal framework of state responsibility and sketching the resulting legal consequences.

Legal Consequences for Particularly Affected States and Individuals (paras. 109–111)

The Court states that customary international law on state responsibility does not distinguish between particularly affected or vulnerable states and other injured states. All fundamentally have the right to the same legal remedies. Geographic or development-related challenges (e.g., sea level rise) fall under the applicable primary rules of international law.

Regarding the effects on current and future generations, the Court clarifies that individual claims against states can only be made based on the relevant primary obligations of states.

Relevant Legal Framework for Answering Question (a) (paras. 113–161)

To answer question (a), the Court identifies a series of legal sources as “most directly relevant applicable law”: the UN Charter; three climate change treaties (UNFCCC, Kyoto Protocol, Paris Agreement); the Law of the Sea Convention; the Vienna Convention and Montreal Protocol for the protection of the ozone layer; the Biodiversity Convention; the Desertification Convention; customary international law, especially the prohibition of significant environmental damage and the duty to cooperate; as well as key human rights treaties.

Additionally, guiding principles such as sustainable development, common but differentiated responsibilities (to fairly distribute the burdens of climate protection based on historical emissions and current capacities of states), equity, intergenerational equity, and the precautionary principle (scientific uncertainty must not delay cost-effective measures in the face of serious or irreversible damage) are addressed. The Court does not consider the “polluter pays” principle as part of the applicable law in this advisory opinion. Nevertheless, it does not exclude that forms of strict liability could develop.

On the Applicability of the *lex specialis* Principle (paras. 162–173)

The Court finds that for the application of the *lex specialis* principle, not only must the same subject matter be dealt by two provisions, but there must also be an actual inconsistency or the intent to exclude one provision by the other. It finds no such inconsistency between the climate change treaties and other international law rules. On the contrary some treaties contain references to other international rules and principles. The Court

thus rejects the argument that the climate change treaties constitute the only relevant law. The *lex specialis* principle therefore does not lead to a general exclusion of other international law rules.

Specific State Obligations from Various Legal Sources (paras. 174–404)

The Court details the obligations of states: under the framework of climate change treaties, customary international law on climate change, other environmental agreements, the law of the sea, and international human rights law.

Obligations of States within the Climate Change Treaty Framework:

1. Climate Change Treaty Framework:

Consisting of the UNFCCC, Kyoto Protocol, and Paris Agreement as legally binding treaties to reduce anthropogenic greenhouse gas emissions. These treaties are interpreted taking into account the principles of common but differentiated responsibilities and respective capabilities (CBDR), precautionary principle, sustainable development, equity, and intergenerational equity. Decisions of the treaty bodies (COP, CMA) are relevant for interpretation and may create binding obligations.

2. Relationship of the Treaties:

The three treaties are compatible and complementary; the Kyoto Protocol and Paris Agreement specify the general obligations of the UNFCCC (United Nations Framework Convention on Climate Change). Conflicts are resolved according to general rules of treaty interpretation.

3. Obligations under the UNFCCC:

- Ultimate Objective (Art. 2): Stabilization of greenhouse gas concentrations to prevent dangerous anthropogenic interference.
- Obligations: Differentiation between industrialized countries (Annex I) and developing countries with differentiated commitments.
- Mitigation obligations: The Court finds that certain obligations under Article 4(1), such as developing, updating, and publication of national inventories of anthropogenic greenhouse gas emissions, as well as formulating of national programs and communication to the COP, are “obligations of result”. Other obligations in this paragraph are “obligations of conduct” requiring parties to do their best to achieve

certain mitigation goals without guaranteeing a specific outcome. Industrialized countries have stricter duties, e.g., reduction to 1990 levels.

- Adaptation obligations: Formulation, implementation, publishing and regularly updating of measures to facilitate adequate adaptation to climate change are legally binding obligations. Industrialized countries should support vulnerable states financially and technologically.
- Cooperation obligations: Duty of international cooperation with due diligence.

4. Obligations under the Kyoto Protocol:

Still legally relevant after 2020; unmet emission targets may constitute breaches of international law.

5. Obligations under the Paris Agreement:

- Objective: Limiting global warming to well below 2 °C, preferably 1.5 °C (legally binding objective, confirmed by CMA decisions as interpretative instruments).
- Obligation to prepare, communicate, and maintain Nationally Determined Contributions (NDCs), which should be submitted, registered, and whose implementation must be traceable every five years (legally binding obligations of result and conduct). The content of NDCs must show a progressive increase in ambition and reflect the highest possible effort. Compliance with NDCs is measured by due diligence standards, which vary by country. The discretion of parties in preparing their NDCs is limited.
- Adaptation obligations: Measures to strengthen resilience and reduce vulnerability under due diligence.
- Cooperation duties: Financial support, technology transfer, and capacity building, supplemented by customary duty to co-operation.

Obligations of States under Customary International Law:

- *Prevention of Significant Environmental Harm:*

States are obliged to use all available means to prevent significant environmental harm (considering both likelihood and severity of damage), particularly to the climate system (an integral and vital part of the environment).

• *Due Diligence:*

- Rules and measures for rapid and sustainable reduction of greenhouse gases.
- Access to and analysis of scientific and technical data.
- Compliance with binding and non-binding standards as well as COP decisions.
- Common but differentiated responsibility according to states' capabilities.
- Acting despite scientific uncertainties in the face of potential harm.
- Risk assessment of planned emissions based on best science.
- Notification and consultation of other states about risks to the climate system.

• *Duty to Cooperate:*

Discretion in emissions regulation must not be used as an excuse for lack of cooperation

• *Relationship between Treaty Law and Customary Law:*

Treaty and customary obligations are autonomous but must be interpreted harmoniously; treaty compliance usually indicates fulfillment of customary duties, while non-parties to treaties ideally demonstrate compliance through cooperation. The customary duty to prevent significant environmental harm arising from cumulative impacts of several states applies to all states, including those not party to climate treaties.

Obligations of States under Other Environmental Treaties:

Vienna Convention for the Protection of the Ozone Layer, Montreal Protocol on Substances that Deplete the Ozone Layer (including Kigali Amendment), Convention on Biological Diversity, and UN Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification.

Obligations of States under the Law of the Sea and Related Issues:

1. Obligations under UNCLOS (United Nations Convention on the Law of the Sea):

- Protect, preserve, and not harm the marine environment.
- Take measures to reduce and control marine pollution.
- Continuously cooperate to develop rules, standards, and recommendations.
- Conduct environmental impact assessments for activities causing significant marine pollution, including beyond national jurisdiction.
- Consider obligations under UNCLOS, environmental and climate treaties, and customary law mutually.

2. Sea Level:

- Sea level rise must not affect maritime zones and rights. UNCLOS does not require adjustments to charts or geographical co-ordinates that show the baselines due to sea level rise. Loss of territory does not automatically lead to loss of statehood.

Obligations of States under International Human Rights Law:

- Protection of human rights from negative impacts of climate change.
- Guaranteeing the right to life, health, and an adequate standard of living.
- Ensuring a clean, healthy, and sustainable environment as a human right.
- Implementing measures to protect the environment and related human rights.
- Considering the territorial scope of human rights treaties, including outside the state territory when exercising jurisdiction.

Limits of the Answer to Question (b) (paras. 405–406)

The Court states that its task is to generally define the legal framework within which the conduct of states can be assessed to determine whether a state or group of states has violated its obligations under international law to protect the climate system — and what legal remedies are available to injured states in the event of such a violation.

Relevant Legal Framework for Answering Question (b) (paras. 407–420)

The Court finds that the obligations arising from climate treaties and customary international law are autonomous but interrelated. In cases of violations of these duties, general rules of state responsibility apply. Responsibility is not assessed based on the result but on due diligence: a state is responsible if it fails to take all reasonable measures to prevent significant harm to the climate system.

The Court notes that the rules on state responsibility do not vary depending on the type of unlawful conduct alleged, unless a clearly formulated *lex specialis* exists. Specific provisions in the climate framework, such as Articles 8 and 15 of the Paris Agreement, do not exclude the general rules on responsibility since they do not provide for binding liability or dispute resolution. Therefore, the general rules of state responsibility apply fully also in the climate context.

Responsibility for Violations of Climate Protection Obligations (paras. 421–431)

What matters for an internationally wrongful act is not the greenhouse gas emissions per se, but the violation of international obligations (concluded in the paragraphs above) — for example, through failure to act limit the quantity of emissions.

Only acts or omissions that can be legally attributed to a state give rise to its responsibility. The conduct of state organs is attributed to the respective states. Also, with private actors' activities occurring under its jurisdiction, the state has a duty to regulate — a breach of this due diligence obligation can be attributed to the state.

Despite the complex, cumulative nature of climate damage, it is scientifically possible to determine national contributions to emission levels.

Thus, any injured state can hold responsible any state that has contributed to climate damage through internationally wrongful act.

Causation in the Climate Change Context (paras. 433–438)

The Court emphasizes that establishing responsibility does not necessarily require proof of damage and that multiple causes do not exempt a state from its obligation to make reparation. The standard of “a sufficiently direct and certain causal nexus” between an alleged wrongful action or

omission and the alleged damage is flexible enough to accommodate the particular challenges of climate change. Causation requires both the scientifically supported attribution of a climate event to anthropogenic climate change and the specific attribution of the resulting damage to a state. Despite being more tenuous compared to local pollution, such a causal link can be established through a case-by-case examination (in concreto).

Erga Omnes Obligations in Climate Protection (paras. 439–441)

The Court states that the protection of global environmental commons such as the atmosphere and the high seas lies in the common interest of all states and therefore both customary international law duties to protect the climate system and the environment from anthropogenic greenhouse gas emissions, especially to avoid significant transboundary harm, and the central obligations under the UNFCCC and the Paris Agreement constitute a common concern of humankind or erga omnes partes; which benefits the international community as a whole. Consequently, all states may invoke the responsibility of other States for failing to fulfil them and demand compliance, since all have a legal interest in the protections in that sense.

Legal Consequences of Internationally Wrongful Acts in Climate Protection (paras. 444–455)

The Court states that it cannot specify precise legal consequences for a breach of climate protection obligations within the advisory opinion procedure, as these depend on the concrete violation and the nature of damage caused. In principle, however, all consequences provided for under international law concerning state responsibility may apply.

Ongoing Duty of Performance

- The breach does not extinguish the state's duty to perform.
- Duty of Cessation and Guarantees of Non-Repetition
- A continuing wrongful act must cease as long as the obligation exists.
- This includes the withdrawal of unlawful measures.
- The state must take all measures to comply with its obligations, e.g., emission reductions.

- Guarantees of non-repetition must be provided if necessary.

Duty to Make Reparation

- According to Art. 31 of the ILC (International Law Commission) Articles, the state must fully repair the damage caused by the wrongful act.

- Reparation aims to eliminate all consequences and restore the situation prior to the act.

- It may take the form of restitution, compensation, and/or satisfaction.

- Restitution is often difficult in environmental damage but includes, for example, reconstruction and ecosystem restoration.

- If restitution is impossible, the state must compensate; the amount depends on the case and when the precise extent of damage is uncertain it may be lump sum.

- Satisfaction can include formal apologies, public acknowledgment, or education of the society about climate change.

Final Remarks of the Court (para. 456)

The Court concludes by emphasizing that this advisory opinion contributes to the United Nations' and the international community's efforts, hoping that its findings serve as a legal basis and guidance for societal and political action to address the advancing climate crisis.

3. CONCLUSION

The ICJ describes climate change as an "existential threat" and clarifies in its advisory opinion that states have legal obligations to protect the climate. These duties are binding, substantive, comprehensive and enforceable. States must act diligently, update their national climate plans, regulate private actors, and support more vulnerable nations. Failure or neglect to act decisively may constitute an internationally wrongful act and trigger consequences under the law of state responsibility. Remarkably, the ICJ adopted the entire decision unanimously.

In addition to treaties in the field of environmental protection and climate change, the ICJ also recognizes the customary international law obligation to prevent significant environmental harm, as well as international human

rights law as "most directly relevant." In this regard, the ICJ stated that the rules of climate treaties do not render other norms of international law inapplicable; rather, there are no contradictions between the regulations, but they complement each other. Therefore, the principle of *lex specialis* does not apply in the field of climate protection.

States are contractually obligated to protect the climate system and other environmental areas from anthropogenic greenhouse gas emissions, reduce emissions, undertake adaptation measures, and cooperate; developed states must lead in limiting emissions and strengthening sinks; they must observe due diligence within the framework of common but differentiated responsibilities, continuously set and implement NDCs to achieve the 1.5°C target, provide adaptation, technical and financial support, and protect special environmental areas such as the ozone layer, biodiversity, terrestrial and marine environments. In this context, nationally determined contributions (NDCs) are not entirely at the discretion of the states. Rather, they are assessed under the aspect of due diligence.

As a contractual obligation, the ICJ further emphasized the following: UNCLOS does not require the adjustment of established maritime boundaries due to coastal changes, so maritime claims remain despite sea-level rise. Moreover, it clarified that the loss of a state's territory does not automatically mean the loss of statehood.

The ICJ found that the customary international law obligation to prevent significant environmental harm applies without limitation to the climate system and that all states, including non-party states (to climate change treaties), are obligated to protect present and future generations.

Due diligence includes: (1) introducing effective legal measures to reduce emissions; (2) active use of scientific and technological information; (3) consideration of binding and non-binding norms; (4) application of the principle of common but differentiated responsibilities; (5) preventive action despite scientific uncertainty; (6) comprehensive risk and impact assessments based on the best science; (7) prompt and good-faith information and consultation with other states in the case of transboundary risks. The ICJ also emphasized the duty of international cooperation to protect the climate system.

The ICJ described a clean, healthy, and sustainable environment as a prerequisite for the exercise of human rights such as life, health, food, water, and housing, as these are closely linked. It also reaffirmed the extraterritorial application of human rights treaties and highlighted that human rights, climate, and environmental law complement each other and must be considered jointly in implementation.

The ICJ made clear that states are internationally responsible for climate-damaging acts or omissions, such as inadequate protection against greenhouse gas emissions. In cases of violations of international obligations—whether treaty, customary, or human rights law—there arise obligations to cease the wrongful act, prevent its recurrence (non-repetition), and provide full reparation, including restitution, compensation, or satisfaction. This responsibility also applies to cumulative emissions and failures to regulate private actors and is *erga omnes*, i.e., owed towards the entire international community as a whole; meaning that any state has the right to bring a claim or take action in case of their breach.

REFERENCES

International Court of Justice. (2025, July 23). Obligations of States in respect of climate change (Advisory Opinion). Retrieved from <https://www.icj-cij.org/en/case/187>

International Court of Justice. (2025, July 23). Summary of the Advisory Opinion on the Obligations of States in respect of climate change. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-SUM-01-00-EN.pdf>

International Court of Justice. (2025, July 23). Press release: The Court delivers its Advisory Opinion on the Obligations of States in respect of climate change [Press release]. Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-PRE-01-00-EN.pdf>