



# From Promises to Obligations: Reclaiming Climate Justice through the ICJ's Advisory Opinion

*İhsan Faruk Kılavuz*

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**WRITTEN BY**

İhsan Faruk Kılavuz

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Erhan Ağırçöl

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ULUS, BEŞİKTAŞ

İSTANBUL / TÜRKİYE

**TRT WORLD LONDON**

PORTLAND HOUSE

4 GREAT PORTLAND STREET NO:4

LONDON / UNITED KINGDOM

**TRT WORLD WASHINGTON D.C.**

1819 L STREET NW SUITE 700 20036

WASHINGTON DC

**[researchcentre.trtworld.com](http://researchcentre.trtworld.com)**

## Introduction

**F**ew issues in contemporary global governance reveal the fragility of international cooperation and the limits of state sovereignty as starkly as climate change. What began as a scientific warning about rising temperatures has evolved into a defining political, legal, and moral challenge of the twenty-first century—one that transcends borders, questions the very foundations of development, and tests the capacity of humanity to collaborate in the face of shared peril. Climate change is no longer a distant environmental concern; it is a structural crisis that reshapes the global order, redistributes power, and exposes the deep inequalities embedded in the international system.

Despite decades of scientific consensus and multilateral negotiations, the global response has remained fragmented, constrained by national interests and short-term political horizons. The persistence of such paralysis raises fundamental questions: Why has humanity, despite possessing the knowledge and means to prevent catastrophe, failed to mobilise effectively? What does this failure reveal about the current architecture of international law and governance? And more importantly, can

law, morality, and politics converge to construct a more resilient and equitable global climate regime?

This paper approaches these questions by examining climate change not merely as an environmental or scientific problem but as a multidimensional phenomenon—one situated at the intersection of global politics, international law, and normative theory. It argues that the real challenge lies not only in reducing emissions but in reimagining the principles upon which collective action rests. As the world enters what may be termed a new “climate constitutional moment,” the July 2025 Advisory Opinion of the International Court of Justice (ICJ) stands out as a potential turning point. For the first time, an international judicial body has articulated the legal responsibilities of states concerning climate change and intergenerational equity, reframing inaction as a possible breach of international law rather than a matter of political discretion.

By exploring the scientific, political, and legal dimensions of this evolving landscape, this discussion paper contends that climate change governance must evolve from a regime of voluntary commitments toward one grounded in enforceable obligations and shared moral accountability.

## Understanding Climate Change as a Global Challenge

Climate change has emerged as one of the most pressing and complex challenges of the twenty-first century, transcending environmental boundaries to encompass political, economic, and social dimensions. It is no longer perceived solely as a scientific or ecological issue but as a multidimensional threat that touches upon global security, human rights, migration, development, and the very sustainability of the international order. The increasingly visible consequences of rising global temperatures—manifested in the form of extreme weather events, melting glaciers, sea-level rise, desertification, and biodiversity

loss—are profoundly transforming the planet's natural systems and human societies alike. (Georg Feulner, 2015) This transformation calls for an unprecedented level of international cooperation and political will, as no single state, regardless of its power or wealth, can single-handedly address the magnitude of this global phenomenon.

In this sense, climate change represents a defining test for global governance in the twenty-first century by demanding collective responsibility, equitable burden-sharing, and sustained multilateral engagement. (Pedro Mariani)



(Valeria Ferraro - Anadolu Agency)

# The Evolution of Climate Change as a Global Concern

The scientific understanding of climate change has evolved considerably over the past decades, transitioning from an environmental curiosity to a defining paradigm of international politics. Early warnings in the mid-twentieth century, which linked industrialisation and fossil fuel combustion to the accumulation of greenhouse gases in the atmosphere, gradually shaped the contemporary discourse around anthropogenic climate change. The works of scientists such as Svante Arrhenius, Charles Keeling, and later the Club of Rome's *Limits to Growth* report (1972) underscored the finite nature of Earth's ecological capacity and the destabilising effects of unrestrained industrial growth.

The establishment of the Intergovernmental Panel on Climate Change (IPCC) in 1988 marked a turning point, as it provided a scientifically authoritative platform to assess and communicate the risks associated with human-induced climate alterations. Through its successive assessment reports, the IPCC has consistently warned of the accelerating pace of global warming and its far-reaching consequences. Its findings—now backed by overwhelming scientific consensus—demonstrate that the window of opportunity to mitigate the worst outcomes of climate change is rapidly closing. (IPCC Report, 2023)

As a result, climate change has become institutionalised within global governance structures. The 1992 United Nations Framework Convention on Climate Change (UNFCCC) laid the foundation for international cooperation, recognising that states bear “common but differentiated responsibilities and respective capabilities” (CBDR-RC) in addressing climate change. This principle, central to international climate law, reflects an acknowledgement of historical inequalities between industrialised and developing nations and emphasises fairness as a prerequisite for global participation. (EBSC Report)

Later, the 1997 Kyoto Protocol operationalised this principle by setting legally binding emission reduction targets for developed countries, representing a milestone in environmental treaty-making. However, its limited scope and the absence of major emitters such as the United States and China highlighted the challenges of reconciling national interests with global imperatives.

Finally, the 2015 Paris Agreement marked a new phase of commitment, emphasising inclusivity, flexibility, and shared accountability through nationally determined contributions (NDCs). Unlike its predecessors, the Paris Agreement institutionalised a bottom-up model that encourages all parties—regardless of their development level—to submit emission reduction targets, thus fostering a more universal and adaptive governance architecture.

However, even as the institutional framework has expanded, implementation remains uneven. The gap between scientific imperatives and political realities persists. While global rhetoric increasingly aligns around “net-zero” ambitions, real-world emissions continue to rise. This disconnect underscores a more profound crisis of political will and collective responsibility that continues to hinder effective global action. Nevertheless, all international actors, particularly states, have a role to play in this regard.

# The Role of States and International Actors

States remain the primary actors in the global climate regime, yet divergent interests, capabilities, and political priorities shape their responses. Developed nations, particularly within the European Union, have taken the lead in establishing ambitious climate policies such as the [European Green Deal](#) and the “Fit for 55” package, aiming to achieve net-zero emissions by mid-century. These initiatives are not merely environmental measures but strategic endeavours that intertwine economic innovation, energy security, and geopolitical autonomy. For Europe, decarbonisation represents not only an environmental necessity but also a means of reducing dependency on external energy suppliers and fostering technological competitiveness in emerging green industries.

However, the actions of developed countries have been met with persistent criticism from the Global South, where governments argue that wealthy nations bear historical responsibility for the bulk of global emissions and therefore must contribute more substantially to climate finance and technology transfer. (Nishtha Singh, 2023) The [2009 Copenhagen Accord](#) and the subsequent establishment of the [Green Climate Fund](#) (GCF) were intended to channel resources toward developing countries, yet commitments have repeatedly fallen short of expectations. This shortfall has reinforced perceptions of inequity and eroded trust between North and South. (Schalatek, Bird, Brown, 2010)

Developing and least-developed countries face the dual challenge of pursuing economic growth while reducing emissions, a dilemma that encapsulates the structural inequalities of the global climate order. Industrialisation, urbanisation, and population growth continue to drive energy demand, often relying on carbon-intensive sources due to financial and technological constraints. For instance, while sub-Saharan Africa contributes less than four per cent of global emissions, it suffers disproportionately from droughts, floods, and agricultural disruptions caused by climate change. (Ritchie, 2023) Such asymmetry reveals the moral dimension of the climate crisis—often articulated through the lens of “climate justice”—which insists that those least responsible for the problem should not bear its heaviest burdens. (Beer, 2014)

On the other hand, beyond nation-states, international and regional organisations have played crucial roles in

mobilising collective climate action. The United Nations Environment Programme (UNEP), the World Bank, and the Organisation for Economic Cooperation and Development (OECD) have integrated climate considerations into broader development and economic policies. Similarly, regional institutions such as the African Union, ASEAN, and the European Union have developed frameworks for adaptation, resilience building, and sustainable development.

Non-state actors have also emerged as transformative forces in global climate governance. Multinational corporations are increasingly adopting carbon-neutral strategies; civil society organisations are amplifying climate advocacy through grassroots mobilisation; and transnational networks such as the Climate Action Network (CAN) are fostering policy diffusion and normative pressure. Moreover, the rise of environmental, social, and governance (ESG) criteria in global finance indicates a structural shift in how markets perceive environmental responsibility—not as a peripheral concern but as a determinant of long-term economic sustainability. As such, climate action has evolved beyond intergovernmental negotiation to become a multi-actor, multi-level process that encompasses governments, international institutions, the private sector, and civil society.

# Risks and Implications of Climate Inaction

The risks associated with inadequate climate action are both immediate and long-term, threatening ecological systems, human security, and the stability of global governance. From an environmental standpoint, climate inaction risks triggering irreversible tipping points, such as the collapse of polar ice sheets, the dieback of the Amazon rainforest, or the thawing of permafrost, which could release vast quantities of methane—a potent greenhouse gas—into the atmosphere. (ESA) These feedback loops would amplify global warming in self-reinforcing ways, drastically narrowing the scope for effective mitigation and adaptation.

From a socioeconomic perspective, climate change exacerbates pre-existing inequalities and vulnerabilities. Extreme weather events are expected to displace millions of people, generating what scholars have termed “climate refugees.” The World Bank estimates that by 2050, more than 200 million people could be internally displaced by climate-related factors. Such mass displacements risk destabilising regions already burdened by poverty, conflict, and weak governance. In this regard, climate change functions as a “threat multiplier,” aggravating underlying social, economic, and political tensions. It not only generates humanitarian crises but also reshapes the geography of human habitation, pushing entire populations toward new frontiers of vulnerability.

Economically, the consequences of inaction are staggering. The cumulative costs of climate-related disasters already exceed hundreds of billions of dollars annually and are projected to grow exponentially. Infrastructure damage, agricultural losses, and supply chain disruptions impose profound economic shocks that reverberate across borders. Developing economies, with their limited adaptive capacity, bear the brunt of these costs, deepening cycles of poverty and dependency. (Caglianese, 2019) Meanwhile, the global financial system faces mounting risks, as climate-induced shocks threaten investment portfolios, insurance markets, and fiscal stability.

Politically, climate inaction undermines governance and legitimacy. Governments that fail to protect citizens from environmental disasters face rising public discontent, protests, and erosion of trust in institutions. Moreover, the geopolitics of climate change introduces new fault lines in

international relations. Competition over scarce resources—such as freshwater, arable land, and critical minerals—could heighten tensions between states, while shifting climatic patterns may redefine strategic interests, particularly in regions like the Arctic, where melting ice is opening new trade routes and triggering geopolitical rivalries.

Consequently, the failure to act decisively against climate change is not merely an environmental oversight; it is a systemic risk that threatens the foundations of human security, economic stability, and international order. Addressing it requires more than technical fixes or market adjustments—it demands a fundamental rethinking of global priorities, economic models, and the moral underpinnings of collective responsibility. Climate change thus stands as a defining challenge of our age—one that tests not only the resilience of ecosystems but also the integrity and solidarity of the international community itself.

However, while the urgency of the climate crisis has fostered a broad international consensus on the need for decisive and coordinated action, the implementation of such commitments has often been shaped—and at times constrained—by political calculations and competing national interests.

# Politicisation of Climate Action: From Global Imperative to Partisan Rhetoric

Although the global debate on addressing climate change has persisted for decades, and negotiations have led to landmark agreements like the Kyoto Protocol and the Paris Agreement, these initiatives have thus far proven insufficient to mitigate the severe environmental risks confronting the planet. Despite broad scientific consensus on the causes and consequences of climate change, governments have failed to demonstrate unity regarding the distribution of responsibilities, the monitoring of emission-reduction targets, and mechanisms for compensating the most affected nations. (Maizland & Fong, 2025)

Among the key reasons for this failure is the politicisation of environmental action: instead of fostering a supranational and nonpartisan commitment to a shared ecological goal, climate initiatives have too often been reduced to instruments of everyday political contestation.

## *Climate Policies as Electoral Calculations*

Although the scientific evidence for anthropogenic climate change has long been unequivocal, the political will to confront it has been consistently undermined by partisanship, economic interests, and short-term electoral calculations. Instead of framing climate change as a global emergency demanding collective and sustained action, political leaders across the world have transformed it into a terrain of ideological contestation. What should have been a unifying, transnational endeavour to protect the planet has instead been fragmented into a series of national political narratives, often driven more by populist rhetoric than by scientific reasoning or ethical responsibility.

In the United States, for instance, climate policy has been deeply polarised along party lines. The withdrawal of the U.S. from the Paris Agreement under the Trump administration in 2017 exemplified how environmental governance can be reversed with a single change in political leadership. Trump not only questioned the credibility of climate science but also portrayed environmental regulations as an obstacle to economic growth and national sovereignty. Although President Biden rejoined the accord and introduced the Inflation Reduction Act—widely regarded as the most significant climate legislation in U.S. history—its implementation has faced fierce opposition in Congress, where many Republican lawmakers continued to dismiss

the urgency of the crisis or seek to weaken its key provisions. (Teirstein, 2025) This oscillation between denial and delayed action has eroded America's credibility as a global leader in climate diplomacy. Ultimately, the United States withdrew from the Paris Agreement once again during President Trump's second term in office.

A similar pattern of politicisation is observable in Europe. While the European Union has often portrayed itself as the world's climate champion, internal divisions have repeatedly hampered the consistency of its environmental agenda. The European Green Deal, for example, has faced growing resistance from farmers' unions, far-right parties, and even some member states, arguing that its strict emission targets threaten economic competitiveness and social stability. (Schatzschneider, 2024) In countries such as Poland and Hungary, governments have exploited these concerns to frame climate initiatives as impositions by "Brussels elites," thus turning a shared ecological responsibility into a populist symbol of national defiance. (Mączka & Bodnar-Potopnyk & Matczak & Takacs, 2025) These internal tensions not only delay meaningful reform but also weaken the EU's negotiating power in international climate forums such as COP conferences.

Outside the Western world, the political instrumentalisation of climate issues takes different forms but serves similar ends. In China and India, two of the largest greenhouse gas emitters, environmental commitments are often subordinated to economic growth imperatives. Both countries have pledged to reach net-zero emissions in the coming decades. Nevertheless, their continued investment in coal-fired power plants reveals the tension between developmental priorities and environmental responsibility. At the same time, leaders frequently invoke historical injustices—emphasising the disproportionate role of Western industrialisation in causing the current crisis—to resist binding international targets. While such arguments are not without merit, they also function as political shields that justify inaction or selective engagement in global negotiations. (Roy, 2025)

The annual Conferences of the Parties (COP) further illustrate how climate diplomacy has been shaped by political theatre. The COP27 summit in Sharm el-Sheikh, for example, concluded with a landmark agreement to establish a "Loss and Damage" fund to support vulnerable countries. However, despite its symbolic significance, the mechanism

remains underfunded and vaguely defined, mainly due to disagreements between developed and developing states over who should contribute and how. Similarly, COP28 in Dubai—hosted by a major oil-producing nation and presided over by the CEO of a state oil company—drew criticism for exposing the contradictions between global rhetoric on decarbonisation and the continued dominance of fossil fuel interests in international policymaking.

These examples reveal a broader structural problem: environmental crises are being filtered through the same political logics that caused them. Rather than transcending national and partisan divides, climate governance has been captured by them. Politicians invoke environmental responsibility when it serves their domestic image, yet retreat from binding commitments when they perceive a risk to economic or electoral interests. This pattern transforms climate change from a matter of collective survival into a mere instrument of political utility.

The consequences of such politicisation are profound. It delays the implementation of effective mitigation strategies, undermines international trust, and normalises performative politics over substantive reform. Each climate summit yields more promises than progress, while the concentra-

tion of CO<sub>2</sub> continues to rise and the world inches closer to irreversible tipping points. As long as political actors treat climate policy as a bargaining chip rather than an existential necessity, the international community will remain trapped in a vicious cycle of rhetorical commitment and practical inertia. To break this cycle, environmental governance must be reimagined as a domain of shared moral and human responsibility—one that transcends electoral timelines and partisan divisions. Without depoliticising the climate agenda and insulating it from the fluctuations of domestic politics, even the most ambitious global accords will remain symbolic gestures against the backdrop of an increasingly uninhabitable planet.

On the other hand, although political leaders and governments have at times portrayed climate action as a threat to their national interests, failed to accord it the necessary importance, or approached it selectively in line with their own strategic priorities, global climate initiatives in fact offer an extensive range of opportunities for states and other international actors across multiple domains—opportunities that are indispensable and warrant far more careful and deliberate consideration.



(Kemal Öztürk - Anadolu Agency)

# Reframing Climate Policy: From Perceived Threat to Global Opportunity

Since many governments have perceived climate policies as threats to national security, economic growth, and energy independence, this perception has often hindered collective global action. (Coglianese, 2019) Climate negotiations have become overshadowed by concerns about sovereignty and competitiveness. However, when approached strategically, climate action can serve not as a zero-sum challenge but as a multidimensional framework for advancing economic innovation, energy resilience, diplomatic influence, and global stability. Reframing climate change mitigation and adaptation policies as instruments of opportunity rather than burden is therefore essential for aligning national interests with global sustainability.

## 1. Economic Transformation and Green Growth

The global shift toward decarbonisation is not merely an environmental necessity; it represents one of the most significant engines of economic transformation in modern history. Investments in renewable energy, green infrastructure, sustainable transport, and carbon-capture technologies are creating new growth frontiers worth trillions of dollars. Countries that act early and decisively in this transition will not only mitigate environmental risks but also position themselves as leaders of the green economy.

The European Union's Green Deal illustrates this logic by linking environmental sustainability with competitiveness and industrial modernisation. Likewise, South Korea's Green New Deal treats decarbonisation as a catalyst for innovation, digitalisation, and export diversification. For fossil-fuel-dependent economies, the transition may initially appear disruptive, but it offers a pathway toward energy diversification, industrial renewal, and long-term employment generation. According to the International Renewable Energy Agency (IRENA), the renewable energy sector could create over 40 million jobs worldwide by 2050—a powerful argument that climate policy, when integrated with social and labour strategies, can strengthen both economic growth and social cohesion.

## 2. Energy Security and Strategic Autonomy

The most underestimated benefit of climate action lies in its contribution to national and regional energy security. By investing in renewables and reducing dependence on imported fossil fuels, countries can significantly enhance their strategic autonomy and reduce vulnerability to geopolitical shocks. Indeed, the Russian invasion of Ukraine revealed the fragility of Europe's energy dependence and demonstrated that fossil-fuel reliance is itself a national security liability. Hence, the energy transition has evolved from an environmental priority into a strategic imperative for stability and resilience.

States that develop indigenous clean energy technologies and supply chains can not only safeguard their energy systems but also gain geopolitical leverage through technology exports and green diplomacy. In this sense, climate action complements rather than contradicts national security—transforming sustainability into a strategic asset rather than a policy constraint.

## 3. Diplomatic Leverage and Global Leadership

Climate diplomacy has emerged as a defining element of twenty-first-century international relations. Countries that demonstrate credibility in implementing ambitious climate targets enhance their soft power and international legitimacy. Environmental leadership now serves as a form of diplomatic currency: the European Union's *Global Gateway* initiative and China's *Green Silk Road* both show how green investment and technology transfers have become instruments of geopolitical influence. (Wang, 2021)

For emerging powers such as Türkiye, Brazil, or Indonesia, engaging in climate diplomacy presents an opportunity to deepen regional cooperation, attract sustainable investment, and strengthen their role in global governance frameworks. Rather than viewing international climate commitments as external impositions, states can utilise them to project leadership, shape global norms, and build strategic partnerships rooted in shared ecological responsibility.

## 4. Contribution to Global Peace and Security

While climate change exacerbates existing threats—such as resource scarcity, forced migration, and food insecurity—it also offers a platform for cooperation. Climate security frameworks can help prevent conflicts by fostering dialogue over shared environmental challenges. (Wang, 2021) Cross-border water management in the Middle East or regional drought resilience initiatives in Africa demonstrate that environmental cooperation can build trust even among historically adversarial actors.

Moreover, integrating climate adaptation into peacebuilding strategies can enhance resilience in fragile states. Joint investments in sustainable agriculture, disaster preparedness, and renewable energy can transform potential sources of conflict into shared opportunities for development. In this sense, climate cooperation becomes a mechanism for preventive diplomacy and a cornerstone of global security architecture.

## 5. Toward a New Security Paradigm

Ultimately, climate change demands a redefinition of security itself. Traditional notions of state security—centred on military power and territorial defence—are increasingly inadequate in the face of transnational environmental

risks. A human-centred, ecological conception of security recognises that environmental degradation, pandemics, and resource crises pose existential threats comparable to armed conflict. (Wang, 2021)

In this context, climate policy should not be treated as an external constraint on national interest but as an integral component of it. Far from being a zero-sum equation, sustainable development, economic competitiveness, and national security are mutually reinforcing. Countries that embrace this integrated vision will be better equipped to navigate the coming decades—building not only greener economies but also more peaceful, stable, and resilient societies.

On the other hand, reimagining climate governance not as a constraint but as a source of opportunity inevitably raises questions about the role of international law in consolidating this paradigm. While political commitments and economic incentives remain indispensable, they must be anchored in a coherent legal framework capable of ensuring accountability and equity. In this regard, the *Advisory Opinion* delivered by the International Court of Justice on 23 July 2025 constitutes a critical milestone in this transformation. By clarifying states' legal obligations regarding climate change mitigation, adaptation, and the protection of future generations, the ICJ's Opinion provides a normative framework that may redefine the interaction between international law and environmental responsibility.



(Kemal Öztürk - Anadolu Agency)

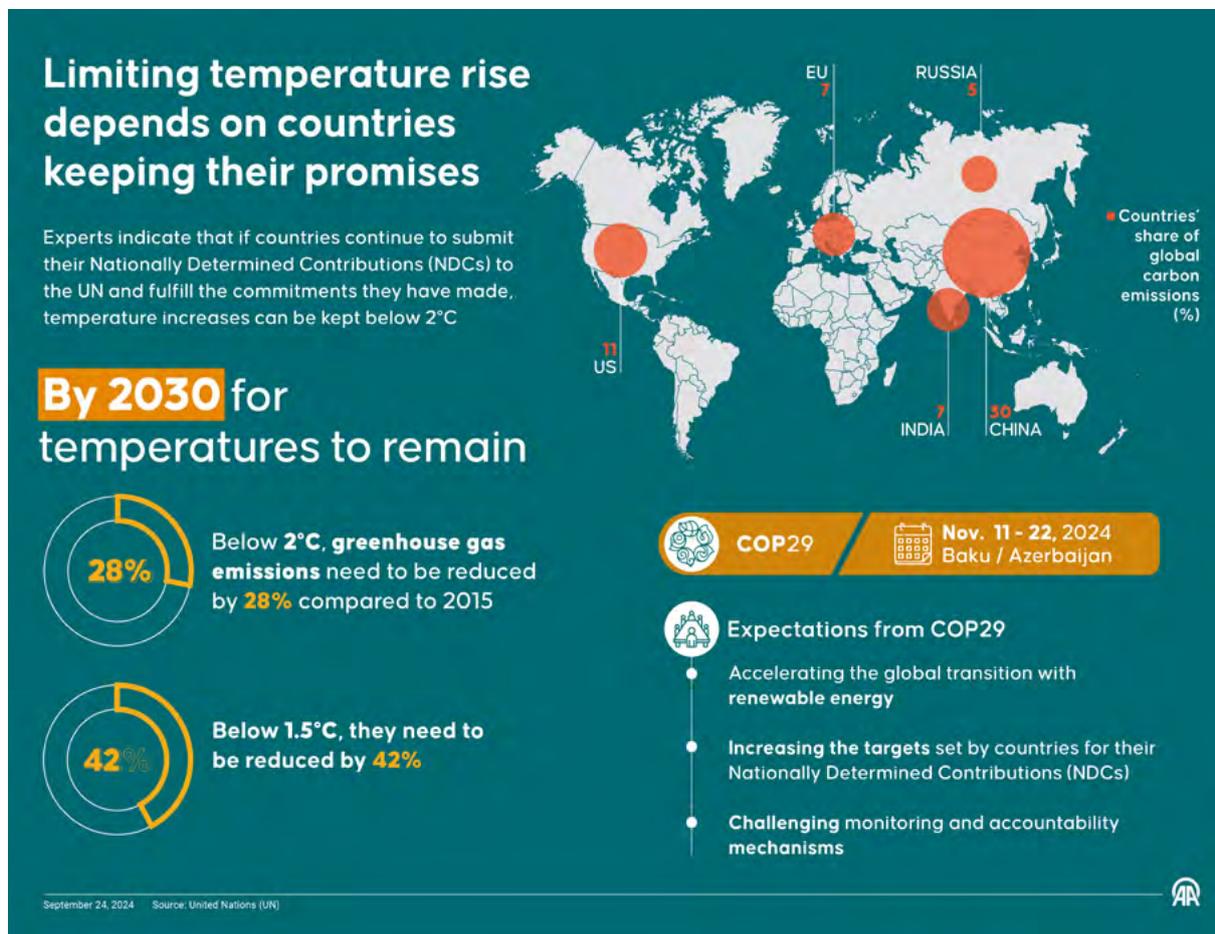
# The ICJ's Advisory Opinion on State Obligations in Climate Change

On 23 July 2025, in what many observers have called a watershed moment for international environmental law and state accountability, the International Court of Justice (ICJ) issued its 'Advisory Opinion on the obligations of States with respect to climate change.' This ruling crystallises, in legal form, many of the normative expectations that climate justice advocates have long asserted. (Dugal, 2025)

By judicially codifying obligations previously framed as political choices, the ICJ Opinion introduces a mechanism that constrains opportunistic national politics. It shifts the discourse from political will to legal accountability, thereby limiting the room for selective engagement and rhetorical commitments.

## Origins and Context

The Advisory Opinion emerged from a resolution of the UN General Assembly, [A/77/L.58](#), jointly sponsored by 132 states and initiated by the Pacific Island nation of Vanuatu. The request for the Court to give guidance was explicitly triggered by existential concerns: small island states, vulnerable to sea-level rise and other irreversible climate impacts, had pressed for clarity about what international law requires of states in light of anthropogenic climate change. Behind the resolution stood a six-year campaign initiated by the "Pacific Island Students Fighting Climate Change" (PISFCC), demonstrating the role of civic activism in pushing the normative boundaries of international law. (Schaugg & Jones & Qi, 2025)



The questions posed by the UNGA concerned:

(a) *What States' obligations are under international law to protect the climate system (and related parts of the environment) against anthropogenic greenhouse gas emissions for present and future generations; and*

(b) *What legal consequences follow if states, by acts or omissions, cause significant harm—especially to those states, peoples, and individuals who are particularly vulnerable due to geography, development level, or forward-looking intergenerational harm.*

## Key Findings of the Advisory Opinion

The Opinion delivers several core determinations that clarify and, in many cases, expand existing norms under international law.

Major findings include:

### **1. Severity, Urgency, and Human Causation:**

The Court emphasised that climate change poses “severe and far-reaching” consequences to both natural ecosystems and human populations. Further, it termed climate change an “urgent and existential threat” to humanity, underlining the necessity of prompt and decisive action. The Court also affirms that greenhouse gas emissions have an anthropogenic source, and recognises the IPCC reports as the authoritative source concerning the causes, nature, and consequences of climate change.

### **2. Binding Nature of the 1.5 °C Target under the Paris Agreement:**

One of the more striking declarations is that the target to limit global temperature rise to 1.5 °C under the Paris Agreement is legally binding. All state parties to the agreement are obligated to ambitiously align their mitigation measures with the best available science to meet that target. Incremental increases beyond that threshold are not merely undesirable; they carry a legal risk of violating international obligations.

### **3. Customary International Law Duties:**

The Court also finds that customary international law includes binding obligations for States to take preventive and precautionary measures. Preventive care includes regulation of private actors, controlling fossil fuel production, consumption, permitting, and subsidies. The Court clarifies that while greenhouse gas emissions *per se* are not always unlawful, failure to take measures which are feasible and reasonable, in light of scientific knowledge and foreseeable risk, can give rise to international legal responsibility

under the ‘Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)’.

**4. Attribution of Responsibility:** The Opinion holds that States can be held responsible not only for their own emissions, but also for acts or omissions such as licensing new fossil fuel projects, granting subsidies, or failing to regulate private sector emissions. Responsibility may be assessed with respect to cumulative and historical emissions as well as current and ongoing ones. States that are harmed need not be merely those directly suffering impacts; the doctrine of “legal interest” permits even States not directly harmed to invoke responsibility where general obligations are breached.

**5. Legal Obligations of Adaptation:** Beyond mitigation, the Court also finds that States have legal obligations concerning adaptation. These include implementing measures in line with the “best available science” to reduce vulnerability and risks posed by adverse impacts. Developed countries, in particular, bear additional responsibilities to assist developing and vulnerable states in adaptation efforts, including providing financial and technical support.

### **6. State Responsibility: Acts and Omissions:**

Perhaps one of the most consequential legal conclusions is that certain omissions—such as failure to regulate, granting of permits/licences for fossil fuel extraction, and giving subsidies—may constitute internationally wrongful acts. The Advisory Opinion affirms that the regime of state responsibility – the ARSIWA regime- applies: States must cease wrongful acts, provide assurances against future breaches, and make reparation where harm occurs (which may include restitution, compensation, or satisfaction). Even where obligations are breached, the duty to comply remains; NDCs under the Paris Agreement must be revised in light of obligations.

### **7. Human Rights and Transboundary Effects:**

The Court finally affirms that climate change threatens rights recognised under general international law, including the rights to life, health, adequate standard of living, family and home, privacy, and rights of children, indigenous peoples, and future generations. Inadequate or delayed adaptation measures may amount to violations of these rights. The Court also rejects the idea of treaty exceptionalism (the view that only climate treaties matter), holding that broader norms—including human rights law, general international environmental law, and customary international law—continue to apply and reinforce treaty-based obligations.

## What Does this Opinion Mean?

The Advisory Opinion has several layers of significance.

### **Normative Clarification**

The Opinion clarifies what states owe under existing law. Instead of vague or aspirational statements, the ICJ has pinned down binding duties—emphasising due diligence, prevention of foreseeable harm, obligations to regulate private actors, harmonising mitigation and adaptation, and assisting vulnerable populations. The binding nature of the 1.5 °C target under the Paris Agreement— as interpreted by the Court—is a significant normative milestone: it converts what some states have treated as political or target-oriented commitments into legal obligations. Likewise, the reaffirmation that omissions— including those of policy, regulatory licensing, and subsidies—may give rise to state responsibility makes clearer what lawful state practice must avoid.

### **Reinforcement of Customary International Law**

The Opinion strengthens the body of customary international law concerning climate change. While many of the relevant norms—precaution, transboundary harm, due diligence—were known or discussed in earlier cases (e.g.

*Legality of the Threat or Use of Nuclear Weapons*, *Trail Smelter*, *Pulp Mills*, etc.), the Advisory Opinion explicitly extends those norms to the climate system and defines content precisely: what counts as reasonable preventive measures, how attribution works, how obligations to future generations and vulnerable peoples interlink with human rights. This consolidation in a single authoritative voice reduces ambiguity in interpretation and elevates legal expectations.

### **Strategic and Political Implications**

The moral and political authority of the ICJ's Opinion is considerable. Although the Opinion is advisory and thus not binding, it is delivered by the world's highest judicial organ and carries moral force, interpretative weight, and persuasive authority. States, international organisations, domestic courts, and civil society actors may rely on it to hold governments accountable. For vulnerable and small states, the Decision is a lever in diplomatic negotiations. For high-emitters, it constitutes a warning: expanding fossil fuel production, maintaining subsidies, or failing to regulate private sector emissions can now bring concrete legal risks. In the future, treaty negotiations, trade agreements, investment regimes, and even domestic litigation strategies are likely to reference this Opinion.

## Legal Effects and Limits

While the Advisory Opinion carries significant moral and legal weight, it is crucial to recognise both its legal effects and its inherent limitations, particularly in light of the nature of advisory opinions and the broader framework of international law.

Like all ICJ advisory opinions, this one is non-binding too—it does not impose direct legal obligations on states nor on the Court itself, nor does it create new law in the way that decisions in contentious cases do. Although advisory opinions lack direct coercive force, their normative authority can cascade through domestic litigation, trade policy conditionalities, and ESG-based investment frameworks, thereby generating indirect compliance incentives even for reluctant states.

The ICJ advisory opinion can help settle disputes or at least provide authoritative guidance on how states' obligations under treaties, customary international law, and human rights law should be understood. Both domestic and international courts may draw upon its reasoning in their own rulings, enhancing its influence beyond the immediate context.

The Opinion is also likely to shape the behaviour of domestic courts and policymakers, particularly in countries where international law is incorporated into national law or where judicial systems are independent. Courts may rely on their reasoning to interpret constitutional and statutory duties related to environmental protection, human rights, or climate mitigation. Likewise, legislators and regulatory bodies could feel growing pressure to align national policies—such as licensing for energy production, subsidy frameworks, emission regulations, and adaptation strategies—with the Opinion's interpretation of due diligence, precaution, and prevention standards.

Notably, the Opinion rejects the notion that the UNFCCC, Kyoto Protocol, and Paris Agreement form a self-contained regime *-lex specialis-* that displaces general international law. Instead, it views these treaties as complementary to, and mutually reinforcing with, customary international law and human rights obligations. This approach may prompt states to interpret and fulfil their treaty commitments more stringently, recognising that these obligations coexist with broader customary and human rights duties. Moreover, by

finding no inherent conflict among the principal climate treaties, the Court avoided invoking hierarchical rules such as *lex posterior* under the 1969 Vienna Convention on the Law of Treaties, thereby reinforcing a coherent and integrated understanding of climate obligations.

Another significant contribution of the Opinion lies in its clarification of accountability under the law of state responsibility. The ruling affirms that omissions such as failing to regulate emissions, allowing or facilitating fossil fuel production and subsidies, or neglecting adequate adaptation measures can amount to internationally wrongful acts under the ARSIWA. States found responsible for such omissions may be required to cease these activities, provide assurances of non-repetition, and make reparations, including restoration of ecosystems, compensation for

damages, or even symbolic acts such as apologies or acknowledgements.

Finally, the Opinion underscores that states' duties are not limited to their obligations toward other states. They also extend to future generations and to individuals and communities—particularly those in vulnerable or marginalised positions, such as inhabitants of small island states, indigenous peoples, and children. By framing climate obligations in this intergenerational and human-centred manner, the Opinion strengthens the normative foundation for potential legal claims by affected populations. It reinforces that adaptation is not an optional policy choice but a legal obligation. Failure to meet this duty could, in itself, constitute a breach of human rights law.

## Challenges and Open Questions

Despite its substantial normative legal impact, the Advisory Opinion leaves some critical questions unresolved and presents significant challenges concerning enforcement, implementation, and coherence within the international legal system.

Translating its legal principles into concrete national actions—such as adopting effective mitigation and adaptation policies, reforming subsidies, regulating private actors, and controlling fossil fuel production—will demand substantial political will, legislative and institutional reform, budgetary commitment, and, in many cases, international cooperation through financial and technical support. While the Opinion raises the legal standards for climate action, the absence of binding enforcement mechanisms may allow some states to continue falling short of their obligations, as many already struggle to meet even their Paris Agreement targets.

Another key challenge lies in the realm of attribution and causation. Although the Court recognised that linking emissions to harm is scientifically and legally feasible, the practical burden of proving that a specific state's conduct—whether through acts or omissions—caused identifiable climate damage remains complex. Establishing causation, quantifying harm, and apportioning responsibility among multiple actors will require rigorous evidentiary standards, advanced scientific analysis, and expert testimony. The development of reliable metrics will be essential for courts and tribunals seeking to translate the Opinion's principles into enforceable judgments.

The relationship between these international obligations and domestic sovereignty also raises difficult questions. States may resist external or judicial pressure to revoke

energy licences, eliminate fossil fuel subsidies, or impose stricter environmental regulations, often citing their economic development priorities, energy security concerns, or sovereign rights over natural resources. Determining what constitutes “reasonable” measures in specific national contexts will likely vary according to each country's capacity, geographic vulnerability, and level of development, creating further interpretive challenges.

Moreover, while the Opinion clearly affirms that developed states have a duty to support developing and climate-vulnerable countries in their adaptation and mitigation efforts, the precise scope and enforceability of this obligation remain uncertain. Long-standing disputes persist over the scale, sources, and mechanisms of climate finance—who should contribute, how much should be provided, and through what institutional channels. Without predictable and adequate support systems, this duty risks remaining aspirational rather than practical.

Finally, enforcement remains one of the most significant unresolved issues. Since the Advisory Opinion is not legally binding, major emitters may seek to dilute the Opinion's impact by contesting its applicability or prioritising domestic economic goals. Hence, translating legal norms into behavioural change will depend on coalitions of smaller states, transnational advocacy networks, and domestic courts willing to invoke the ICJ's reasoning to maintain political pressure.

The actual test of the Advisory Opinion's influence will therefore depend on whether states, courts, and international institutions are willing to operationalise its findings within the framework of real-world legal and political constraints.

## Potential Effects Moving Forward

On the other hand, despite the legal and practical challenges it faces, the Advisory Opinion is expected to generate several concrete effects in both the short and medium term. One of the most immediate impacts will likely be seen in the realm of litigation. The Opinion provides a robust legal and moral foundation for future claims by states, communities, and individuals—particularly indigenous groups and those most affected by climate change. Plaintiffs may invoke their reasoning in domestic or regional courts to challenge governments and private entities for failing to regulate emissions adequately, permitting new fossil fuel projects, or neglecting necessary adaptation measures. In this sense, the Opinion could serve as a benchmark for assessing whether state conduct aligns with international legal obligations concerning climate protection and human rights.

Beyond the courtroom, the Opinion is expected to accelerate policy reform and regulatory change at the national level. It places states under stronger normative pressure to realign domestic climate policies with their international responsibilities. Governments may be compelled to review and reform subsidy systems, restrict or revoke fossil fuel licenses, strengthen environmental impact assessments, and more systematically integrate the principles of prevention and precaution into domestic environmental law. Additionally, the Opinion could encourage states to revise their Nationally Determined Contributions (NDCs) under the Paris Agreement more ambitiously—not merely as political commitments, but as legal duties stemming from international norms.

## Conclusion

The International Court of Justice's Advisory Opinion represents more than a symbolic reaffirmation of international climate obligations—it marks a potential shift in how climate accountability is distributed and enforced. By translating what were once political promises into legal principles, the Opinion constrains states' ability to treat climate action as a matter of discretion. In doing so, it bridges the long-standing gap between the moral urgency of climate politics and the legal precision of international law.

Still, the Opinion's power lies less in coercion than in its normative ripple effect. Though non-binding, its authority may shape domestic litigation, trade policies, and multilateral financing conditions—thereby introducing indirect mechanisms of enforcement. This "soft law" influence allows the Advisory Opinion to function as a quiet but enduring form of

On the international stage, the Opinion is likely to alter the dynamics of climate diplomacy and finance. Climate-vulnerable states will be able to invoke the Court's findings to press for greater financial support, technology transfer, and equitable burden-sharing from developed countries. In global negotiations—whether within the UNFCCC framework, bilateral arrangements, or climate financing mechanisms—the Opinion may serve as a powerful tool to rebalance expectations and responsibilities. It may also influence the behaviour of multilateral development banks, private investors, and international financial institutions, which could begin to factor legal exposure into their risk assessments. States with weak environmental governance or high fossil fuel dependency may find it increasingly difficult to attract funding without demonstrating credible compliance with the Opinion's standards.

Finally, over time, the Advisory Opinion's reasoning may contribute to the deeper internalisation of its principles within international law. As states begin to reflect their standards in their practice and articulate a shared belief—*opinio juris*—in their binding nature, these norms could evolve into customary international law. This process would gradually extend the reach of the Opinion's influence, shaping the behaviour not only of states that are parties to major climate treaties but also those outside such frameworks. In doing so, it may promote greater coherence and uniformity in how the international community approaches mitigation, adaptation, and the protection of human rights within climate policy.

pressure, reinforcing accountability through diplomatic and economic incentives rather than legal compulsion.

Yet, realism demands caution. The same states most responsible for emissions are also those most capable of diluting or delaying the Opinion's practical impact. Their resistance will test the resilience of smaller nations and civil society coalitions seeking to uphold the ICJ's principles. Sustained advocacy—particularly through regional courts, climate litigation, and transnational alliances—will be essential to ensure that the Opinion evolves from legal text to political traction.

Ultimately, the credibility of the global climate governance regime will hinge on whether this moment catalyzes a move from political rhetoric to legal responsibility. The ICJ has laid the foundation; it is now up to states, courts, and societies to build upon it.

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