

The International Court of Justice's Climate Opinion and What it Means for the US

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Introduction

On July 23, 2025, the International Court of Justice (ICJ) released its much-anticipated [*Advisory Opinion on States Obligations in respect of Climate Change*](#).¹ This marks the first time that the ICJ has directly clarified countries' climate-related obligations under international law.

The ICJ's opinion has been widely celebrated in climate circles. Significantly, the ICJ found that countries' international law obligations are not limited to those agreed to under climate treaties (such as the Paris Agreement), but stem from duties under both human rights and customary international law. The ICJ also found that failure to comply with those obligations could expose countries to concrete legal risks. In other words, from the perspective of international law, withdrawing from the Paris Agreement (as the US has recently done) does not exempt a country from responsibility for climate-related harms.

The ICJ decision is an advisory opinion. It is not directly enforceable against countries, and by itself, imposes no legal consequences. However, the opinion sets out a framework that could guide future litigation before international tribunals and domestic courts.

In this analysis, I explain the ICJ's role in international law and provide background on the case leading to the ICJ's advisory opinion on climate change. I then summarize the ICJ's opinion and explain the potential implications of the ICJ's findings for the United States.

The ICJ's climate opinion comes at an extraordinary moment in US climate policy. The ICJ issued its opinion in the same week the US Environmental Protection Agency (EPA) announced it would rescind its Endangerment Finding for greenhouse gases, removing the foundational finding that establishes the legal basis for the agency's climate-related emissions regulations. In its proposal, EPA argued that domestic legislation regulating air pollution (the Clean Air Act) did not authorize EPA to regulate greenhouse gas emissions, since their effects are *global* rather than local. The proposal also questioned the validity of climate science.² By contrast, the ICJ's opinion emphasizes the validity and relevance of

¹ *Legal Questions concerning Obligations of States in respect of Climate Change (Advisory Opinion)*, Int'l Ct. Justice, (July 23, 2025), <https://www.icj-cij.org/case/187> (hereinafter "*Climate Opinion*").

² Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36288 (Aug. 2, 2025). For an analysis of the proposal, see Erika Kranz, Carrie Jenks & Sara Dewey, *EPA's Proposal to Eliminate the Endangerment Finding and Motor Vehicle Greenhouse Gas Regulations*, HARVARD ENVTL. & ENERGY L. PROGRAM (Aug. 2025), <https://eelp.law.harvard.edu/wp-content/uploads/2025/08/EPAs-Proposal-to-Eliminate-the-Endangerment-Finding-and-Motor-Vehicle-Greenhouse-Gas-Regulations.pdf>.

climate science and calls on countries to take steps to cooperate to reduce their greenhouse gas emissions — or risk consequences in future litigation.

The ICJ's opinion is unlikely to have significant short-term effects on US climate policy, but its longer-term significance should not be overlooked. In the opinion, the ICJ sets out a roadmap for litigation that could be followed in domestic courts, both in the US and abroad. Furthermore, it may create litigation risks for foreign governments, which could result in tighter regulation for US companies operating abroad. In the opinion, the ICJ confirms that withdrawing from international climate treaties (such as the Paris Agreement) does not relieve countries of their broader obligations. And it confirms that countries may have a legal basis for making claims against those countries who fail to act on climate change. The US is not likely to submit to the jurisdiction of an international tribunal to enforce those claims against itself, but nor can it indefinitely ignore a growing international consensus on legal climate obligations.

What is the ICJ and why did it issue this opinion?

The ICJ is the United Nations's main judicial body.³ Most of the cases it hears are disputes between countries. Where one country believes another country has breached its international legal obligations, it can bring a *contentious* case to the ICJ (provided that the ICJ has jurisdiction). By contrast, requests for *advisory* opinions can only be referred to the ICJ by a select group of UN entities. Although advisory opinions are not binding, they are regarded as highly persuasive and often influence the conduct of countries, international agencies, and tribunals hearing concrete cases.⁴

The request to issue a legal advisory opinion on climate change was referred to the ICJ by the UN General Assembly, one of the UN's central bodies, comprising every UN Member State (including the United States).⁵ A referral to the ICJ from the General Assembly requires a resolution passed by a majority of its members, meaning at least 97 votes. In 2023, the General Assembly referred a request for an advisory opinion on climate change to the ICJ. The General Assembly's resolution to refer the request was adopted by consensus: no country, including the US, objected.

The General Assembly's request was championed by a coalition of small island countries led by Vanuatu, a Pacific archipelago made up of 83 islands. Vanuatu, like many small island

³ U.N. Charter art. 92 (describing the ICJ as "the principal judicial organ of the United Nations").

⁴ For assessment of the influence of ICJ Advisory Opinions, see e.g. Eran Stroegher, *How do States React to Advisory Opinions? Rejection, Implementation, and what Lies in Between*, 117 Am. J. Int'l. L. Unbound 292, 297 (2023) (concluding that "the opinion of the World Court can provide support and validation for a particular understanding of the law and may induce states and others to adopt the position articulated by the Court").

⁵ G.A. Res. 77/276, Request for an Advisory Opinion from the International Court of Justice on the Obligations of States in respect of Climate Change, U.N. Doc. A/RES/77/276 (Mar. 29, 2023).

countries, has contributed almost nothing to the problem of climate change⁶ yet it faces some of the most severe climate change-related impacts, including higher temperatures, threats to fisheries, extreme weather, and rising sea levels.⁷ These impacts pose existential threats to Vanuatians and their way of life, and the country lacks the adaptation resources of wealthier countries.⁸

Vanuatu's initiative originated in a law school classroom at the University of the South Pacific. There, students formed the group Pacific Island Students Fighting Climate Change (PISFCC) and eventually convinced the Vanuatian government to advance the campaign for a referral to the ICJ.⁹

What did the ICJ say in its opinion?

The General Assembly's request to the ICJ contained two questions. The first question asked what obligations countries have "to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for countries and for present and future generations."¹⁰ The second question asked what legal consequences might be faced by States who breach those obligations.¹¹

The First Question: Obligations Owed by Countries

Before determining the nature of countries' obligations, the ICJ first had to determine the legal sources of those obligations. Notably, unlike federal law in the United States, there is no centralized code of international law. Instead, international law is often fragmented across different treaties and legal regimes, and determining which regimes control a particular question can be a complex exercise.

Countries disagreed about the breadth of sources the ICJ should look to. Several countries, including the US, argued that the ICJ should restrict its analysis to treaties that directly address climate change (such as the United Nations Framework Convention on Climate

⁶ Vanuatu has contributed approximately 0.0003 percent of cumulative global emissions since 1750. Hannah Ritchie and Max Roser, *Vanuatu: CO2 Country Profile*, OUR WORLD IN DATA (2023) <https://ourworldindata.org/co2/country/vanuatu>.

⁷ *Climate Risk Country Profile: Vanuatu*, WORLD BANK GROUP (2021) https://climateknowledgeportal.worldbank.org/sites/default/files/country-profiles/15825-WB_Vanuatu%20Country%20Profile-WEB.pdf.

⁸ Elisa Morgera, *State at the conclusion of the country visit to Vanuatu by the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Dec. 5, 2024) <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/statements/2024-12-5-eom-sr-climate-vanuata-en.pdf> (observing that Vanuatu "has not contributed to the global climate crises and only graduated in 2020 from Least Developed Country status, therefore having limited resources to respond to the cumulative and compounding negative impacts of climate change").

⁹ Sera Sefeti, 'We were heard': the Pacific students who took their climate fight to the ICJ: and won, THE GUARDIAN (July 24, 2025) <https://www.theguardian.com/world/2025/jul/25/pacific-students-who-won-climate-case-ici-international-court-of-justice-hague>.

¹⁰ *Request for an Advisory Opinion*, *supra* note 5, at 2.

¹¹ *Id.*

Change [UNFCCC] and Paris Agreement).¹² In doing so, they pointed to the interpretive principle of *lex specialis*, under which a court should prefer the most directly applicable rules.¹³ This approach would have excluded other bodies of law, such as customary international law and human rights obligations. By contrast, many other countries — particularly those more vulnerable to climate change and its impacts — argued that the ICJ should look to the full gamut of international law.¹⁴ This would potentially expose countries to a broader set of obligations beyond those required under explicit climate treaties and agreements.

The ICJ adopted the broader approach, finding that *lex specialis* applies only where there exists a conflict between different sets of rules.¹⁵ In this case, there was no conflict: the climate treaties could be effectively harmonized with other bodies of international law. As discussed below, this finding is particularly relevant for the US, because it means that many aspects of the Court’s opinion apply to countries even if they are not party to the Paris Agreement.

The ICJ affirmed that the global scientific consensus presented in the [Intergovernmental Panel on Climate Change’s \(IPCC\) Assessment and Special Reports](#) represents the “best available science” for purposes of clarifying countries’ legal obligations.¹⁶

The ICJ also considered the application of another cross-cutting principle: that of “common but differentiated responsibilities and respective capabilities” (CBDR-RC), a principle enshrined in both the UNFCCC and Paris Agreement.¹⁷ In short, this principle describes “the need to distribute equitably the burdens of obligations in respect of climate change.”¹⁸ While all countries have core obligations to prevent climate-related harms, the precise measures

¹² See e.g. Written Statement of the United States of America, Obligations of States in Respect of Climate Change (Request for Advisory Opinion), Int’l Ct. Justice, U.N. Doc. No. 187, ¶3.1 (Aug. 15, 2024) <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-09-00-en.pdf> (arguing “States’ current obligations in respect of climate change are found, first and foremost, in the legal instruments that comprise the UN climate change regime, and particularly the Paris Agreement ... any other legal obligations relating to climate change mitigation identified by the Court should be interpreted consistently with obligations States have under the UN climate change regime and the Paris Agreement in particular”).

¹³ See e.g. Written Statement of OPEC, Obligations of States in Respect of Climate Change (request for Advisory Opinion, Int’l Ct. Justice, U.N. Doc. No. 187, ¶126 (Mar. 19, 2024) <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240319-wri-03-00-en.pdf>.

¹⁴ See e.g. Written Statement of Costa Rica, Obligations of States in Respect of Climate Change (Request for Advisory Opinion), Int’l Ct. Justice, U.N. Doc. No. 187 ¶¶11-25 (Aug. 15, 2025) <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240815-wri-20-00-en.pdf>.

¹⁵ *Climate Opinion*, *supra* note 1, ¶¶166-171.

¹⁶ *Id.* ¶137.

¹⁷ See United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107 art. 3 §1 (“The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities”); Paris Agreement, Dec. 12, 2015, T.I.A.S. No.1 - 1104, 55 I.L.M. 740 art. 2(2) (“This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances”).

¹⁸ *Climate Opinion*, *supra* note 1, ¶148.

required may differ among countries. Countries with fewer historic and ongoing emissions, and/or fewer resources available to mitigate or adapt to climate-related impacts, may be expected to take different steps than wealthier countries or countries with greater emissions. Importantly, however, the principle does not let anyone completely off the hook. While there may be a “spectrum” of obligations, no country is categorically excluded from acting.¹⁹ This finding may have significant implications for historically low-emitting but currently high-emitting countries (such as China and India), who have sometimes argued for a sharper distinction between the obligations of developed and developing countries.²⁰

Specific Obligations Under the Climate Treaties

Having established that it should consult a wide range of sources, the ICJ began its analysis with legal obligations arising under the core UN climate treaties: the UNFCCC, the Paris Agreement, and to a lesser extent, the Kyoto Protocol. Contrary to the submissions of some countries, the ICJ found that these treaties create *binding* obligations on countries.²¹

The UNFCCC obligates wealthier countries (Annex I Parties) to, among other things, carry out an inventory and publish national greenhouse emissions, co-operate with other countries in developing carbon-neutral technologies, adopt national policies to reduce emissions and protect carbon sinks, and assist other countries in meeting adaptation costs.²² The ICJ found that obligations must factor into the duty to cooperate in *good faith*.²³ While countries have some discretion in how they meet these obligations, they are nevertheless legally binding.²⁴

Crucially, the ICJ also concluded that the Paris Agreement’s commitment to hold “the increase in the global average temperature to well below 2 °C [3.6 °F] above pre-industrial levels” and pursue efforts “to limit the temperature increase to 1.5 °C [2.7 °F]” is relevant to countries’ legal obligations, and not a mere aspirational statement. Interpreted together with the best available science, the ICJ concluded that the 1.5 °C temperature goal is the “primary template”²⁵ guiding Parties’ obligations (notably, this goal is already at high risk of being exceeded within the next decade). While no single country can unilaterally act to achieve this goal, the ICJ found that Parties to the Paris Agreement must work to “make an

¹⁹ *Id.* at ¶150.

²⁰ See e.g. Written Statement of China, Obligations of States in Respect of Climate Change (Request for Advisory Opinion), Int’l Ct. Justice, U.N. Doc. No. 187 ¶38 (Mar. 22, 2024) <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-19-00-en.pdf> (arguing that “when applying the principle of CBDR-RC, a distinction should be made between the obligations of developed countries and those of developing countries”).

²¹ *Climate Opinion*, *supra* note 1, ¶175 (observing that some countries submitted that treaties “were designed so as not to be onerous, or even, in some cases, binding”); ¶202 (observing that the UNFCCC contains legally binding obligations); ¶¶234-269 (observing that the Paris Agreement establishes legally binding obligations on states).

²² *Id.* at ¶¶202-213.

²³ *Id.* at ¶218.

²⁴ *Id.* at ¶¶ 202, 213.

²⁵ *Id.* at ¶224.

adequate contribution to the temperature goal,” and do not have “unfettered discretion” over how they satisfy it.²⁶

A key plank of the Paris Agreement (unlike its predecessor Kyoto Protocol) is that parties are responsible for formulating their own emissions reduction plans in working toward the overall temperature goal. Countries must submit regular “nationally-determined contributions” (NDCs), which set out their own domestic mitigation measures and targets. Uncontroversially, the ICJ found that the submission of these plans constitutes a legal obligation. But, interestingly, the ICJ found that there are legal obligations related to the *content* of such plans: countries’ targets and measures must constitute a “progression” beyond prior NDCs, and (subject to CBDR-RC) reflect a country’s “highest possible ambition.”²⁷ The ICJ found, at minimum, NDCs must “be capable of making an adequate contribution to the achievement of the temperature goal.”²⁸ The ICJ also found it is not enough for countries to simply declare and publish their NDCs. Instead, they must make “best efforts” and “exercise[] due diligence in [their] efforts and in deploying appropriate means” to *implement* those NDCs, “including in relation to activities carried out by private actors.”²⁹

Likewise, the ICJ found that countries’ adaptation obligations must incorporate a standard of due diligence to achieve the Paris Agreement’s stated objectives.³⁰ And countries’ commitments regarding financial assistance, technology development and transfer, and capacity building, must be carried out with a level of co-operation and due diligence that allows for the collective temperature goals to be achieved.³¹

Obligations Under Customary International Law

The ICJ further found that countries’ obligations under the core climate treaties are buttressed by a host of other international law obligations, including those derived from customary international law, human rights law, and the law of the sea. These obligations are largely complementary, but together create a broader and more durable lattice of interlocking duties.

Customary international law develops independently of treaty obligations. It arises through consistent country practice, combined with countries’ belief that such practice is legally obligated (*opinion juris*).³² Outside of some narrow exceptions, customary international law binds all countries, regardless of whether they have signed on to treaty obligations.³³ The ICJ

²⁶ *Id.* at ¶270.

²⁷ *Id.* at ¶241.

²⁸ *Id.* at ¶242.

²⁹ *Id.* at ¶¶252-53.

³⁰ *Id.* at ¶258.

³¹ *Id.* at ¶265, 268.

³² Statute of the International Court of Justice art. 38(1)(b), June 26, 1945, 59 Stat. 1031, U.N.T.S. No. 993.

³³ *Climate Opinion*, *supra* note 1, at ¶315.

found that customary international law obligations are similar to those contained in the UN climate treaties, and in many cases can be satisfied by substantial compliance with the UNFCCC and Paris Agreement.³⁴ Thus, countries that have withdrawn from or not signed onto the Paris Agreement (such as the US) may still find themselves bound by a similar set of obligations.

The ICJ has previously recognized environmental obligations derived from customary international law. In particular, the ICJ has long recognized a duty on countries to “avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State” (*Pulp Mills*).³⁵ In its opinion, the ICJ clarified that this duty — sometimes defined as the duty of “harm prevention”³⁶ — applies stringently to harm caused to the climate system.³⁷ Though this arises only where there is a “risk of significant harm to the environment,” such risk can be brought about “by the cumulative effect of different acts undertaken by various States and private actors.”³⁸ The ICJ further clarified that “even if it is difficult in such situations to identify a specific share of responsibility of any particular State ... States need to avert the risk through a coordinated and co-operative response.”³⁹ In other words, countries’ obligations extend beyond traditional paradigms of environmental harm (such as cross-boundary oil spills). Climate change fits comfortably within existing environmental duties, as defined by the best available scientific knowledge.⁴⁰

The ICJ also found that countries must act with “due diligence” in avoiding such harm. This includes substantive obligations (such as enacting domestic laws or regulations), and procedural measures (such as notifying other countries of risks of harm).⁴¹ The requisite standard of due diligence applied in any concrete situation must take account of CBDR-RC,⁴² and is heightened where countries have been put on notice by scientific evidence, such as IPCC reports.⁴³ Due diligence might include the issuance of rules and measures such as those “designed to achieve the deep, rapid, and sustained reductions of GHG emissions,” including the regulation of private actors.⁴⁴ Countries must not only be “vigilant” in formulating rules, they must also exercise vigilance in their enforcement of those rules, including against private actors within their jurisdiction.⁴⁵ Crucially, the ICJ highlighted the

³⁴ *Id.* at ¶314.

³⁵ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, 2010 I.C.J. Rep. 14 ¶101 (Apr. 20, 2010).

³⁶ See further Jutta Brunée, *Harm Prevention*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW* (Lavanya Rajamani & Jacqueline Peel eds, 2d ed., 2021).

³⁷ *Climate Opinion*, *supra* note 1, at ¶¶134-38.

³⁸ *Id.* at ¶276.

³⁹ *Id.* at ¶¶276-77.

⁴⁰ *Id.* at ¶278.

⁴¹ *Id.* at ¶279.

⁴² *Id.* at ¶¶290-292.

⁴³ *Id.* at ¶¶283-284.

⁴⁴ *Id.* at ¶282.

⁴⁵ *Id.* at ¶138.

importance of environmental impact assessment, including assessment of the possible downstream effects of some activities.⁴⁶

In addition to these obligations related to harm prevention and due diligence, the ICJ found that countries have a customary international law obligation to cooperate with one another in addressing climate change. The ICJ confirmed that the duty is particularly relevant to climate change, “because unco-ordinated individual efforts by States may not lead to a meaningful result.”⁴⁷ In this context, “[c]o-operation is not a matter of choice for States but a pressing need and a legal obligation.”⁴⁸ The ICJ concluded that the duty of cooperation is also an interpretive rule which colors countries’ other obligations.

Obligations Under Other Legal Regimes

The ICJ also found that other legal treaty regimes — such as the Convention on Biodiversity, the UN Convention to Combat Desertification, and the International Convention on the Law of the Sea — each contain climate-related obligations, many of which underscore overlapping duties of harm prevention, due diligence, and good faith cooperation.

Importantly, the ICJ also concluded that human rights obligations are relevant to countries’ climate duties. The ICJ explained how a range of internationally-recognized human rights such as the rights to life and health, and the specific rights of women, children, and Indigenous Peoples — are threatened by climate change.⁴⁹ The ICJ also recognized that many established human rights rely on an underlying right to a clean, healthy, and sustainable environment, a right which is receiving growing recognition under international law.⁵⁰

The ICJ’s acceptance of the relevance of human rights obligations is significant. Its opinion extends more general human rights obligations into the climate context and confirms that countries that ratified the core UN human rights treaties must comply with climate-related duties. Notably, the United States has signed onto several such treaties, including the International Covenant on Civil and Political Rights (ICCPR).⁵¹

The recognition of obligations flowing from human rights is also significant for another reason. Many areas of international law concern the relationship *between countries*. Human rights law, however, concerns relationships between countries *and individuals*. By

⁴⁶ *Id.* at ¶298.

⁴⁷ *Climate Opinion*, *supra* note 1, at ¶141.

⁴⁸ *Id.* at ¶308.

⁴⁹ *Id.* at ¶¶376-84.

⁵⁰ *Id.* at ¶393.

⁵¹ See *ratification Status for the United States of America*, UNITED NATIONS HUMAN RIGHTS TREATY BODIES: UN TREATY BODY DATABASE (last accessed Aug. 29, 2025) https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=en (showing that the United States has ratified the UN Convention Against Torture, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, among other treaties).

recognizing that human rights law is a source of countries' climate obligations, the ICJ has likely added momentum to campaigns for countries' accountability toward their citizens (and perhaps even foreign citizens). Several human rights courts and tribunals have already recognized this possibility.⁵²

Second Question: Legal Consequences

Having outlined the legal obligations owed by countries, the ICJ then considered the second of the two questions referred by the UN General Assembly: what legal consequences follow from a breach of these obligations? The ICJ considered the issue of country *responsibility* (roughly, the consequences a country faces for violating international law), and the types of consequences that countries might face for failing to discharge their climate-related obligations.

The ICJ emphasized that many of the obligations it identified relate to *conduct* rather than *result*. For instance, the duty to prevent environmental harm does not incur responsibility simply because harm occurs. Instead, in many cases a country will only face legal consequences “if it fails to take all measures which were in its power to prevent the significant harm,” including by discharging its due diligence obligations.⁵³ Nevertheless, the ICJ confirmed that countries are subject to general rules of country responsibility under international law, and are not sheltered by dispute resolution mechanisms contained in climate treaties.⁵⁴

The ICJ found that a country commits internationally wrongful acts only where an act (or omission) can be attributed to that country.⁵⁵ In their submissions before the ICJ, some countries argued that this attribution requirement cannot be established in relation to climate change and greenhouse gas emissions. Climate-related harms arise from changes to the global climate system resulting from multiple actors in different jurisdictions, making them very difficult to attribute to a single country.⁵⁶ Versions of this argument are also frequently advanced in domestic litigation worldwide, including in the United States.

The ICJ, however, rejected these arguments. It pointed out that the “wrongful act” at issue is “not the emission of GHGs [greenhouse gases] per se, but the breach of conventional and

⁵² See e.g. *Teitiota v. New Zealand*, Hum. Rts. Comm., Comm’n No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (Jan. 24, 2020); *Billy et al. v. Australia*, Hum. Rts. Comm., Comm. No. 3624/2019, U.N. Doc. CCPR/C/135/D/3624/2019 (Sept. 22, 2022); *Sacchi et al. v. Argentina et al.*, Comm. on the Rights of the Child, Comm. No. 104/2019, U.N. Doc. CRC/C/88/D/104/2019, (Sept. 22, 2021); *KlimaSeniorinnen Schweiz and Others v. Switzerland*, Eur. Ct. H.R. (Grand Chamber), App. No. 53600/20 (Apr. 9, 2024).

⁵³ *Climate Opinion*, *supra* note 1, at ¶409.

⁵⁴ *Id.* at ¶418. On dispute mechanisms contained in climate treaties, see UNFCCC, *supra* note 17, at art. 14, setting out a dispute resolution system for disputes “concerning the interpretation of application of the Convention”.

⁵⁵ *Climate Opinion*, *supra* note 1, at ¶425.

⁵⁶ *Id.* at ¶426.

customary obligations.”⁵⁷ In other words, while it may be difficult to attribute country responsibility simply to the amount of greenhouse gases emitted from its territory, it is *not* so challenging to identify whether a particular country has breached its legal obligations through its conduct (such as failing to meet its harm prevention or due diligence obligations). The ICJ emphasized that these obligations include the regulation of private entities within a country’s jurisdiction or control.⁵⁸ In other words, countries’ failure to regulate greenhouse gas emissions, “including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies,” could constitute “internationally wrongful acts” which might give rise to the legal consequences discussed below.⁵⁹

Even though harm caused by greenhouse gas emissions may be produced cumulatively across many countries, it is nevertheless “scientifically possible to determine each State’s total contribution to global emissions,” and international law has long been able to address situations “in which there exists a plurality of injured or responsible States.”⁶⁰ Ultimately, “each injured State may separately invoke the responsibility of every State which has committed an internationally wrongful act resulting in damage to the climate system.”⁶¹ In other words, countries that are injured by climate change may be able seek accountability from other individual countries (such as by bringing claims before international courts and tribunals), notwithstanding that their harm is caused by the cumulative actions of many.

Having addressed *attribution*, the ICJ then analyzed the related question of *causation*. To establish a country’s responsibility for breaching its legal obligations, international law generally requires “the existence of ‘a sufficiently direct and certain causal nexus between the wrongful act ... and the injury suffered’.”⁶² Some countries argued that this causal standard could not be met in cases of climate-related harm.⁶³ But the ICJ confirmed that in concrete climate cases, the standard could theoretically be met. Applicants to a relevant international tribunal would need to address: (1) “whether a given climatic event or trend can be attributed to anthropogenic climate change,” and (2) “to what extent damage caused by climate change can be attributed to a particular State or group of States.”⁶⁴ While there was no concrete dispute before the ICJ in this case, in future cases such a causal claim could be considered.

Importantly, the ICJ suggested that many climate-related obligations are not just owed to particular countries. Instead, many are *erga omnes* — owed to the entire international

⁵⁷ *Id.* at ¶427.

⁵⁸ *Id.* at ¶428.

⁵⁹ *Id.* at ¶427.

⁶⁰ *Id.* at ¶¶429-30.

⁶¹ *Id.* at ¶431.

⁶² *Id.* at ¶436, *citing* Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I) 26 ¶32.

⁶³ *Id.* at ¶434.

⁶⁴ *Id.* at ¶437.

community. The ICJ said that cases addressing countries' responsibility for breaches of such obligations could potentially be invoked by *any* country, regardless of their specific injury.⁶⁵ This finding could make it easier for many countries to bring climate-related claims against other countries before the ICJ.

Finally, the ICJ summarized the different consequences that might follow from a breach of climate-related obligations, including duties of performance (ICJ orders requiring countries to perform their obligations), duties of cessation and guarantees of non-repetition, and duties to make reparations to injured countries or individuals, including restitution (re-establishing the state of affairs that existed before the breach), compensation, and satisfaction (such as apologies or statements of regret).⁶⁶ The ICJ affirmed a general principle that responsible countries must "make full reparation for the damage caused by the internationally wrongful act."⁶⁷ It should be noted, however, that the United States has withdrawn the compulsory jurisdiction of the ICJ,⁶⁸ which significantly diminishes the imminent likelihood of being subject to such consequences. Instead, the United States is bound by the ICJ's jurisdiction only where it voluntarily submits, or where jurisdiction arises from a separate treaty.

The ICJ concluded by reflecting on the seriousness of the issue before it. It observed that while it was focused on a narrow set of legal issues, it recognized that international law "has an important but ultimately limited role in resolving this problem."⁶⁹ Rather than resolving all issues, the Justices expressed hope that their conclusions "will allow the law to inform and guide social and political action to address the ongoing climate crisis."⁷⁰

What does the Advisory Opinion mean for the United States?

Under the ICJ's reasoning, the United States is currently likely in breach of several climate-related obligations under international law. Even though the Trump administration withdrew from the Paris Agreement, the ICJ opinion suggests this does not relieve the United States of its international obligations found in customary law or other treaty regimes. Significantly, the ICJ suggested that many customary international law obligations are similar to those found in the Paris Agreement.

While the ICJ stressed duties of good faith cooperation, the United States is withdrawing from the Paris Agreement,⁷¹ and significantly reducing its financial support for other

⁶⁵ *Id.* at ¶442.

⁶⁶ *Id.* at ¶446-55.

⁶⁷ *Id.* at ¶450, *citing* Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 198, ¶152.

⁶⁸ Termination of Declaration Recognizing As Compulsory the Jurisdiction of the Court, United States of America, 1408 U.N.T.S. 270 (1985).

⁶⁹ *Climate Opinion*, *supra* note 1, at ¶456.

⁷⁰ *Id.*

⁷¹ See further *Regulatory Tracker: Paris Climate Agreement*, ENVIRONMENTAL & ENERGY LAW PROGRAM: HARVARD LAW SCHOOL (Jan. 20, 2025) <https://eelp.law.harvard.edu/tracker/paris-climate-agreement/>.

countries' greenhouse gas mitigation and climate adaptation activities.⁷² The Trump administration is also repealing federal climate rules and revoking clean energy subsidies.⁷³ While the ICJ affirmed the global scientific consensus on climate change enshrined in the IPCC's reports, the Trump administration is disregarding this broad scientific consensus on climate change impacts and relying on reports suggesting the science is too uncertain to support regulations.⁷⁴ And, while the ICJ underlined the importance of environmental impact assessment and consideration of downstream emissions, the Trump administration has upended federal environmental analysis under the National Environmental Policy Act to fast-track fossil fuel development.⁷⁵

Although the United States has withdrawn from the Paris Agreement, it remains a party to the UNFCCC, which the Senate ratified in 1992. As the ICJ affirmed, the UNFCCC establishes a basic set of obligations related to inventory and disclosure of greenhouse gas emissions, and cooperation with other countries. These obligations must be carried out in good faith. As the United States disempowers its scientific community, proposes to eliminate federal climate reporting,⁷⁶ removes access to climate data and reports,⁷⁷ and withdraws from multilateral support to the Global South,⁷⁸ it does not appear to be fulfilling its UNFCCC obligations in good faith.

Despite these obvious breaches of duties outlined in the ICJ's opinion, it is not clear how the United States might be held legally accountable for such breaches.

The ICJ's opinion, by itself, is unlikely to change the Trump administration's climate policy. Many US governments have historically been highly resistant to international courts and

⁷² See Sara Schonhardt, *Trump killed US climate aid. Here's what it means for the rest of the world.*, CLIMATEWIRE (Apr. 3, 2025) <https://www.eenews.net/articles/trump-killed-us-climate-aid-heres-what-it-means-for-the-world/>.

⁷³ See further CleanLaw—Unpacking the White House's Legal Strategy for Attacking Environmental Protection, ENVIRONMENTAL & ENERGY LAW PROGRAM: HARVARD LAW SCHOOL (Apr. 30, 2025) <https://eelp.law.harvard.edu/cleanlaw-unpacking-the-white-houses-legal-strategy-for-attacking-environmental-protection/>.

⁷⁴ See further Carrie Jenks, Erika Kranz & Sara Dewey, *EPA's Proposal to Eliminate the Endangerment Finding and Motor Vehicle Greenhouse Gas Regulations*, ENVIRONMENTAL & ENERGY LAW PROGRAM: HARVARD LAW SCHOOL (Aug. 12, 2025) <https://eelp.law.harvard.edu/epas-proposal-to-eliminate-the-endangerment-finding-and-motor-vehicle-greenhouse-gas-regulations/>.

⁷⁵ See further Erika Kranz & Hannah Perls, *The Future of NEPA and Federal Permitting After Eagle County*, ENVIRONMENTAL & ENERGY LAW PROGRAM: HARVARD LAW SCHOOL (June 30, 2025) <https://eelp.law.harvard.edu/the-future-of-nepa-and-federal-permitting-after-eagle-county/>.

⁷⁶ See e.g. Rebecca Hersher, *White House dismisses authors of major climate report*, NPR (Apr. 29, 2025) <https://www.npr.org/2025/04/29/nx-s1-5380816/climate-assessment-authors-released>.

⁷⁷ See e.g. Jeff Brady, *Far more environmental data is being deleted in Trump's second term than before*, NPR (Aug. 8, 2025) <https://www.npr.org/2025/08/08/nx-s1-5495338/climate-change-environment-websites-trump>.

⁷⁸ Fiona Harvey, *Trump's USAid cuts will have a huge impact on global climate finance, data shows*, THE GUARDIAN (Mar. 10, 2025) <https://www.theguardian.com/environment/2025/mar/10/trumps-usaid-cuts-will-have-huge-impact-on-global-climate-finance-data-shows>.

tribunals.⁷⁹ The United States withdrew from the compulsory jurisdiction of the ICJ in 1985 and is actively sanctioning or undermining other international courts (such as the International Criminal Court⁸⁰ and World Trade Organization Appellate Body).⁸¹

In its opinion, the ICJ clearly affirms that countries can face consequences for violating their international obligations.

Because the United States is not bound by the compulsory jurisdiction of the ICJ, claims can only be brought against the United States with its consent, or under preexisting treaties which recognize its jurisdiction.⁸² Likewise, the United States has long shied away from the jurisdiction of human rights courts, tribunals, and complaints mechanisms, such as the UN Human Rights Committee or Inter-American Court of Human Rights. While many other countries have signed on to treaties and additional protocols which allow them to be adjudicated by international courts and UN watchdogs, the United States has consistently declined to do so. For instance, it has not ratified the First Optional Protocol to the ICCPR (which allows complaints about the United States' human rights record to be made to the UN Human Rights Committee), and it is not subject to the jurisdiction of the Inter-American Court of Human Rights. And even were it to subject to the jurisdiction of a competent tribunal, the current US government would be unlikely to comply with any adverse finding, and there exist few mechanisms for enforcing decisions against wealthier and more politically powerful countries.

Nonetheless, the ICJ's opinion may indirectly affect the United States. First, it gives credence to the view that withdrawing from the Paris Agreement is not without consequences. It suggests that the international community is entitled to view recent US actions as not only politically and morally unjust, but also unlawful.

Second, the ICJ's opinion could have important implications for US companies and interests under the jurisdiction of countries that *are* subject to the ICJ's compulsory jurisdiction — 74 countries in total, including Canada, Australia, the United Kingdom, and much of Europe and South Asia. The ICJ gives these countries a reason to more tightly regulate fossil fuel extraction in their countries or face the threat of being brought into the ICJ or other international tribunals by climate-vulnerable countries.

The ICJ's opinion might also give countries greater justification for regulating corporate activities even where companies' investments are guaranteed by investment treaties. In

⁷⁹ See generally Scott R. Anderson, *Walking Away from the World Court*, LAWFARE (Oct. 5, 2018), <https://www.lawfaremedia.org/article/walking-away-world-court>.

⁸⁰ Exec. Order No. 14203, 90 Fed. Reg. 9369 (Feb. 6, 2025) (imposing sanctions on International Criminal Court personnel).

⁸¹ Doug Palmer, *WTO chief says Appellate Body may not come back* POLITICOPRO (Apr. 12, 2023) (detailing how “the United States effectively killed the Appellate Body during the [first] Trump administration by blocking the appointment of new members to the seven-person panel”).

⁸² See generally Anderson, *supra* note 79.

many instances, US companies' investments are protected against local regulation (including climate measures) by treaties that promise significant compensation awarded by Investor-State Dispute Resolution tribunals. A mining company investing in another country, for instance, can seek significant damages if their project is canceled by a foreign government on environmental grounds.⁸³ While the ICJ did not address this issue directly, it underscores that international law doesn't just encourage, but requires, countries to minimize greenhouse gas emissions within their national borders, something that Investor-State Dispute Resolution tribunals are likely to carefully examine.

Third, the ICJ has endorsed several plaintiff-friendly theories that could be drawn on in domestic climate litigation against US governmental entities and companies in US courts, and against US-related entities in foreign courts. The ICJ endorsed the IPCC's reports as the "best available science" on climate change, which domestic plaintiffs can rely on to demonstrate global scientific consensus on the existence and impacts of climate change.

Moreover, the ICJ rejects two interrelated arguments that countries and companies often invoke in domestic climate litigation. First, it rejects the argument that climate-related harms cannot be attributed to any particular country or company. In response, the ICJ offered guidance on the two-step process through which harms can be attributed to global emissions generally, then parceled out to countries (and in other contexts, potentially companies). Second, the ICJ rejects the argument that it is impossible to develop a causal chain between greenhouse gas emissions and climate-related harms. In doing so, the ICJ's opinion may give a boost to judges in other fora faced with defendants' arguments that they cannot be held responsible for climate-related harms.

The ICJ's opinion emphasizes how the United States' actions under the Trump administration are at odds with the growing global climate policy consensus. It also clarifies that countries have a legal duty, grounded in international law principles, to address climate change and reduce their own greenhouse gas emissions, regardless of whether they are party to an express climate treaty (such as the Paris Agreement).

⁸³ For a recent example, see the claim brought by investors against the United Kingdom after coal mine permits were canceled on the basis of climate-related concerns. See Katie Surma, *Coal Company Sues UK After Environmentalists Win Major Climate Case in British Court*, INSIDE CLIMATE NEWS (Aug. 11, 2025) <https://insideclimatenews.org/news/11082025/coal-company-sues-uk-after-environmentalists-win-climate-case/>.