

The ICJ's Advisory Opinion on Obligations of States in Respect of Climate Change

An Earth System Law Case Commentary

Gauthier Martens, *PhD Researcher*

Exploring New Frontiers in Earth System Law: From Theory to Practice
(12-13 November 2025)

Article Structure



Introduction



The UN General Assembly's Request – Context and Content



The International Court of Justice's Opinion



Stems of Planetary Perspective – Science in Environmental Litigation



What Now?



Conclusion



Presentation Structure



Introduction



The UN General Assembly's Request – Context and Content



The International Court of Justice's Opinion



Stems of Planetary Perspective – Science in Environmental Litigation



What Now?



Conclusion

The UN General Assembly's Request

A Very Abridged Timeline

2011: Failure of Palau's attempt at a request

2019: Pacific Island Students Fighting Climate Change lobbying

1st March 2023: Introduction of draft Resolution A/77/L.58

29 March 2023: Adoption of Resolution 77/276

23 July 2025: ICJ Advisory opinion delivered



The UN General Assembly' questions (1/3)

‘Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,’

The UN General Assembly' questions (2/3)

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

The UN General Assembly' questions (3/3)

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

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

The Court's Interpretation of those questions:

Material Scope

94. [...] the Court is [...] of the view that the relevant conduct for the purposes of these advisory proceedings is not limited to conduct that, itself, directly results in GHG emissions, but rather comprises **all actions or omissions** of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions. The Court considers that the material scope of its inquiry encompasses the **full range of human activities that contribute to climate change as a result of the emission of GHGs**, including both **consumption and production activities**. [...]

95. [...] The Court's inquiry must [...] have a broad material scope encompassing States' obligations concerning all actions or omissions of States, **and of non-State actors within their jurisdiction or effective control**, that result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions. In the Court's view, such a broad material scope is particularly apt when addressing legal issues pertaining to a problem of the magnitude of climate change, which the General Assembly has characterized as the "common concern of mankind" [...] and an "unprecedented challenge of civilizational proportions" [...].

The Court's Interpretation of those questions:

Territorial Scope

96. Turning to the territorial scope of the request, it follows from the Court's conclusions on the material scope of the questions put to it that the General Assembly **did not intend to impose any territorial limits to the Court's inquiry**. The references in the preamble to the request to the "protection of the global climate" lead the Court to conclude that it is requested by the General Assembly to formulate its reply **not in respect of any particular territory or regions, but in global terms**, especially since GHG emissions are "unequivocally caused by . . . human activities" (IPCC, Climate Change 2023: Synthesis Report, p. 42, section 2.1), which are not territorially limited. This is to be done by determining the **obligations of all States** pertaining to the protection of the climate system as a whole, as well as determining the **legal consequences for all States** that fail to comply with these obligations.

The Court's Interpretation of those questions:

Temporal Scope

97. With regard to the temporal scope of the request, [...] The determination of when obligations arose, in the case of customary obligations, or entered into force, in the case of treaty obligations, may [...] be affected by other legal rules and factual questions, such as the principle of non-retroactivity enshrined in Article 28 of the Vienna Convention on the Law of Treaties of 1969 in respect of treaty obligations, the emergence of the relevant rules of customary international law, and questions of sufficient scientific understanding of the causes of climate change and its adverse effects in respect of obligations under general international law. The Court observes that while these temporal issues may be particularly relevant for an *in concreto* assessment of the responsibility of States for breaches of obligations pertaining to the protection of the climate system, the present opinion is not concerned with the invocation and determination of the responsibility of individual States or groups of States [...]. Rather, the present opinion considers the legal obligations of all States under question (a) and identifies the relevant legal régime applicable to legal consequences arising under those legal obligations in reply to question (b).

The Court is not really answering the questions, per the opinion of its own judges

Judge Yusuf's separate opinion:

7. Worse still is the Court's assertion in paragraph 406 that its task in this Advisory Opinion is to "identify, in a general manner, the legal framework under which the conduct of States can be assessed in order to determine whether a State, or a group of States, is responsible for a breach of its obligations pertaining to the protection of the climate system". Did the General Assembly really need to seek an advisory opinion of such general and abstract nature from the Court? Isn't such a general legal framework readily available under the International Law Commission Articles on Responsibility of States for Internationally Wrongful Acts [...] which lays down the general conditions under international law for the States to be considered responsible for wrongful actions or omissions, and the legal consequences which flow therefrom? By trying to elude the actual meaning and material scope of the questions put to it by the General Assembly, the Court has indeed ended up engaging in an abstract examination of the law of State responsibility in a manner divorced from the reality of the significant harm to the climate system caused by the historical and current GHG emissions of gross emitters and the injury suffered by the most vulnerable victims of climate change such as small island developing States [...] or the least developed countries [...]

The International Court of Justice's Opinion

Some Data

- Only the 30th Advisory opinion since the Court's creation in 1945
- With 133 pages, by far the longest
- Applicable law sections
 - For Question (a) = 61 paragraphs
 - For Question (b) = 14 paragraphs
- Impossible to review the whole opinion, will concentrate on 'significant determinations'

Applicable Law (1/2)

- **Climate Change Treaties**

- UN Framework Convention on Climate Change (*UNFCCC*, 1992)
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (*Kyoto Protocol*, 1997)
- Paris Agreement (2015)

- **Customary International Law**

- Duty to prevent significant harm to the environment
- Duty to co-operate for the protection of the environment

- **Other Environmental Treaties**

- Vienna Convention for the Protection of the Ozone Layer (*VCPOL*, 1985)
- Montreal Protocol on Substances that Deplete the Ozone Layer (*Montreal Protocol*, 1987)
- Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (*Kigali Amendment*, 2016)
- Convention on Biological diversity (*CBD*, 1992)
- UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (*UNCCD*, 1994)

Applicable Law (2/2)

- **Law of the Sea Treaty**
 - UN Convention on the Law of the Sea (*UNCLOS*, 1982)
- **International Human Rights Law**
 - International Covenant on Economic, Social and Cultural Rights (*ICESCR*, 1966)
 - International Covenant on Civil and Political Rights (*ICCPR*, 1966)

First Significant Determination: *Lex Specialis*

170. There is, in particular, no indication that the climate change treaties are meant to apply while simultaneously excluding general customary international law or other treaty rules on the protection of the environment. The fact that the climate change treaties have been carefully negotiated and represent a calibrated set of interrelated rules does not, in and of itself, provide such an indication. States parties to the climate change treaties were aware of their normative context and could have expressed a possible intention to displace other rules and principles had they so wished.

171. For these reasons, the Court considers that the argument according to which the climate change treaties constitute the only relevant applicable law cannot be upheld and finds that the principle of *lex specialis* does not lead to a general exclusion by the climate change treaties of other rules of international law.

Second Significant Determination: Obligations under climate change treaties *generally* are binding (1/2)

268. For all these reasons, the Court considers that the climate change treaties establish stringent obligations upon States to ensure the protection of the climate system and other parts of the environment from anthropogenic GHG emissions. The UNFCCC sets the overall objective of “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”, without providing any specific, legally binding, quantitative goals for the achievement of that objective. [...]

269. For its part, the Kyoto Protocol establishes legally binding, quantitative emissions targets [...] in pursuit of the overall objective of the UNFCCC. While there is no active commitment period at present, the treaty remains in force and relevant, including as a means for assessing the compliance of parties with their commitments during the first commitment period.

Second Significant Determination: Obligations under climate change treaties *generally* are binding (2/2)

270. Most recently, the Paris Agreement sets an objective of primarily holding the increase in the global average temperature to 1.5°C above pre-industrial levels (Article 2). This “temperature goal” is a specification and quantification of the overall objective set in the UNFCCC. [...]. To comply with their mitigation obligations, all parties must take measures, in fulfilment of their obligations under the Paris Agreement, that make an adequate contribution to achieving the collective temperature goal; these measures must be reflected in parties’ NDCs which must be adjusted to be more demanding every five years; and these NDCs must, when taken together, be capable of achieving the temperature goal and the purposes of the Agreement. [...]. Each party has a due diligence obligation to do its utmost to ensure that the NDCs it puts forward represent its highest possible ambition in order to realize the objectives of the Agreement (Article 4, paragraph 2). Consequently, parties have an obligation to undertake best efforts to achieve the content of their NDCs.

Third Significant Determination: The Paris Agreement's temperature goal is 1.5°C

224. As a general matter, the Court notes that while the Paris Agreement provides for limiting the global average temperature increase to well below 2°C above pre-industrial levels as a goal and 1.5°C as an additional effort, 1.5°C has become the scientifically based consensus target under the Paris Agreement. At the twenty-sixth COP, which was the third CMA to the Paris Agreement, parties “[r]ecognize[d] that the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C and resolve[d] to pursue efforts to limit the temperature increase to 1.5°C” [...]. Subsequently, at the fifth CMA, parties to the Paris Agreement reiterated this resolve [...] In the Court’s view, these decisions [...] constitute subsequent agreements in relation to the interpretation of the Paris Agreement [...]. Accordingly, the Court considers the 1.5°C threshold to be the parties’ agreed primary temperature goal for limiting the global average temperature increase under the Paris Agreement. The Court adds that this interpretation is consistent with Article 4, paragraph 1, of the Paris Agreement, which requires that mitigation measures be based on the “best available science” [...].

Fourth Significant Determination: Relation between sources of law

310. The Court recalls that treaty rules and rules of customary international law, as norms belonging to two sources of international law, retain a separate existence [...]. However, when several norms bear on a single issue they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations [...].

314. As it is difficult to determine in the abstract the extent to which the climate change treaties and their implementation practice influence the proper understanding of the relevant customary obligations and their application, the Court considers that, at the present stage, compliance in full and in good faith by a State with the climate change treaties [...] suggests that this State substantially complies with the general customary duties to prevent significant environmental harm and to co-operate. This does not mean, however, that the customary obligations would be fulfilled simply by States complying with their obligations under the climate change treaties [...]. While the treaties and customary international law inform each other, they establish independent obligations that do not necessarily overlap.

Fifth Significant Determination: Subsistence of States whose territory is affected by climate change

361. [...] The final report of the Study Group on sea level rise in relation to international law, adopted by the ILC at its seventy-sixth session (2025), shows a convergence of views among States across all regions in support of the **absence of an obligation** of States parties to UNCLOS **to update charts or lists of geographical co-ordinates relating to their maritime zones** once they have been duly established, in conformity with UNCLOS [...].

362. The Court considers that the provisions of UNCLOS **do not require** States parties, in the context of physical changes resulting from climate-change related sea level rise, **to update their charts or lists of geographical co-ordinates** that show the baselines and outer limit lines of their maritime zones **once they have been duly established** in conformity with the Convention. [...]

363. [...]. In the view of the Court, **once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood.**



Sixth Significant Determination: The Right to a Clean, Healthy and Sustainable Environment

393. [...] the Court is of the view that a clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.

Seventh Significant Determination: No *Lex Specialis* with regards to States' Responsibility

418. The Court [...] finds that the text, context, and object and purpose of the climate change treaties do not support the proposition that the parties intended to exclude the general rules on State responsibility. In particular, the Court finds no evidence in Articles 8 and 15, or in the procedural mechanisms thereunder, of any discernible intention on the part of the parties to the Paris Agreement to derogate from the customary international law rules on State responsibility for breaches of treaty obligations.

420. [...] the Court concludes that responsibility for breaches of obligations under the climate change treaties, and in relation to the loss and damage associated with the adverse effects of climate change, is to be determined by applying the well-established rules on State responsibility under customary international law.

Stems of a Planetary Perspective

Planetary Perspective

The 'Planetary' notion:

- “bursts the bubble” of the Globe’ (Kurki, 2024, p. 1189)
- negates the idea of a homogeneous planet where (historical) responsibilities and vulnerabilities with regards to the environment would both be evenly distributed (Latour and Chakrabarty, 2020, p. 89)
- insists on seeing Earth as a complex assemblage of (ecological, socio-political, economic, legal) subsystems where action in one subsystem can have – and actually has already had – far-reaching consequences in others

For a Court, a ‘planetary perspective’ means:

- ‘adjudicat[ing] the matter [at hand] not purely from a traditional and localized domestic context [but in] a more holistic planetary view of climate science, climate change impacts, planetary justice, planetary stewardship, earth system vulnerability, and global climate law’ (Kotzé, 2021, p. 1425)

IPCC Science's Authoritativeness (1/3)

74. The Court [...] will rel[ies] primarily on the IPCC reports, which participants agree constitute the best available science on the causes, nature and consequences of climate change. [...]

Judges Bhandari and Cleveland' Joint Declaration:

5. The Court's reliance on the work of the Intergovernmental Panel on Climate Change (IPCC), particularly its Synthesis Reports, as the embodiment of the "best available science" is both prudent and necessary. As the Court rightly acknowledges, it does not possess technical expertise in climate science. Notably, no participant in these proceedings challenged the IPCC's authority or credibility. However, we believe the IPCC's findings on fossil fuel warrant even greater prominence in the Court's legal analysis.

Zarbiyev (2023, on the basis of Scheppele and Sołtan, 1987):

'The practice of authority assertions and authority contestations in international law shows that rather than being "agent-centered", claims and challenges to authority primarily turn around attributes that pass for "authoritative resources" in the relevant contexts'



IPCC Science's Authoritativeness (2/3)

German Federal Constitutional Court, *Neubauer et al. v. Germany*, para. 17:

'The IPCC's task is to present the state of scientific research on climate change in a **comprehensive and objective manner**, thereby providing a **basis for science-based decisions**. To this end, it compiles the results of the scientific, technical and socio-economic literature currently published around the world. The IPCC does not conduct research itself, but rather **summarises the key findings of these publications** in assessment reports and special reports, and **evaluates them from a scientific perspective**. The authors are required to reach agreement on their assessment of the state of the scientific research, specifying their **level of confidence and clearly presenting any contradictory views**, gaps in knowledge and uncertainties [...]. The results are then **reviewed once again by independent experts** prior to the **Summary for Policymakers being adopted by the member governments** in a plenary session. The summary may only reproduce information that is also contained in the main report. The group of reviewing authors, selected on the basis of scientific expertise, decides whether the reformulations proposed by the governments are correct.'

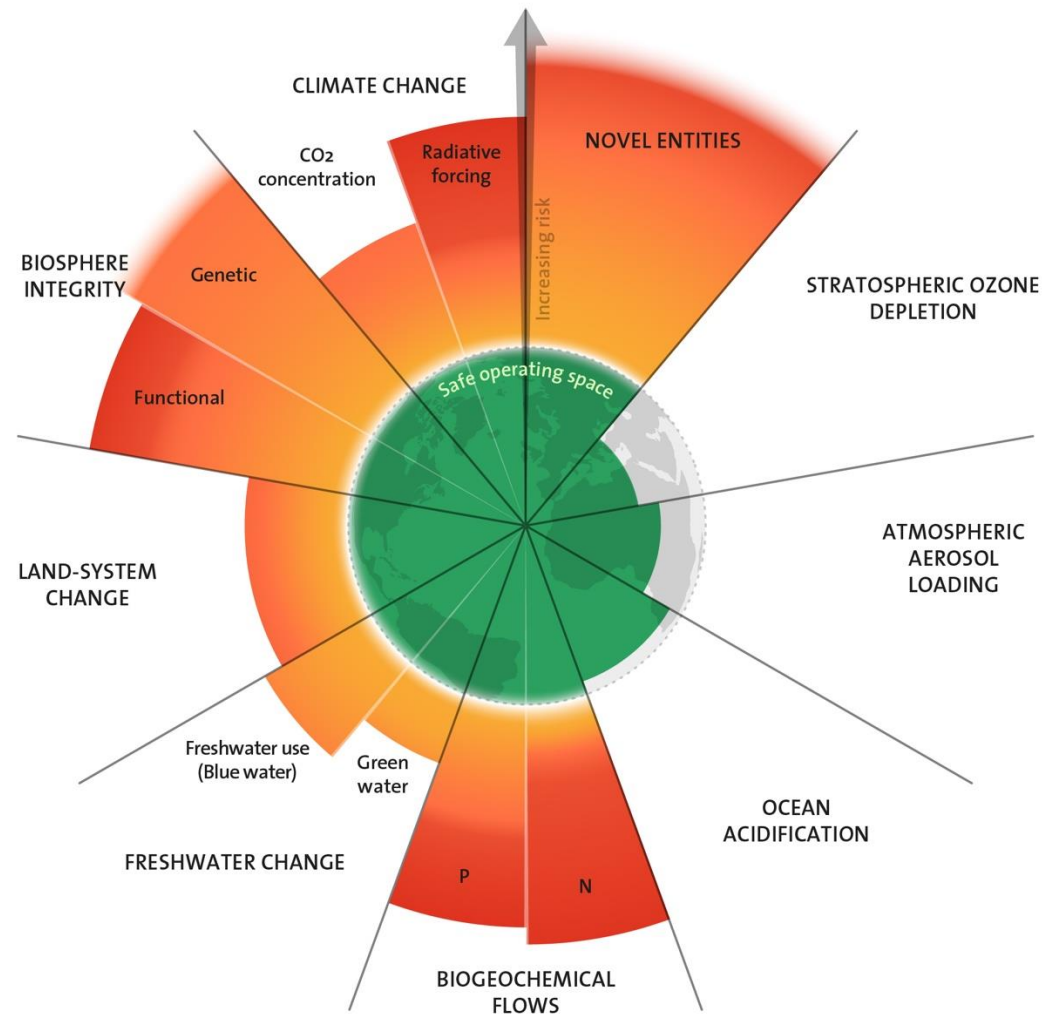
IPCC Science's Authoritativeness (3/3)

Authoritative resources of IPCC Science:

- High-level scientific summary
- Consensus-seeking procedures
- Transparency on level of confidence and contradictory views
- Relative independence from political sphere
- Political 'backing' and, with the Summary for Policymakers, intervention

Seemingly contradictory

Quid for Other Parts of the Environment?



Conclusion

Law is Not Enough

456. [...] the Court recalls that it has been suggested that these advisory proceedings are unlike any that have previously come before the Court. At the same time [...], the questions put to it by the General Assembly are legal ones [...], and the Court, as a court of law, can do no more than address the questions put to it through and within the limits of its judicial function; this is the Court's assigned role in the international legal order. However, the questions posed by the General Assembly represent more than a legal problem: they concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet. International law, whose authority has been invoked by the General Assembly, has an important but ultimately limited role in resolving this problem. A complete solution to this daunting, and self-inflicted, problem requires the contribution of all fields of human knowledge, whether law, science, economics or any other. Above all, a lasting and satisfactory solution requires human will and wisdom — at the individual, social and political levels — to change our habits, comforts and current way of life in order to secure a future for ourselves and those who are yet to come. Through this Opinion, the Court participates in the activities of the United Nations and the international community represented in that body, with the hope that its conclusions will allow the law to inform and guide social and political action to address the ongoing climate crisis.

Thank You!

gauthier.martens@uclouvain.be