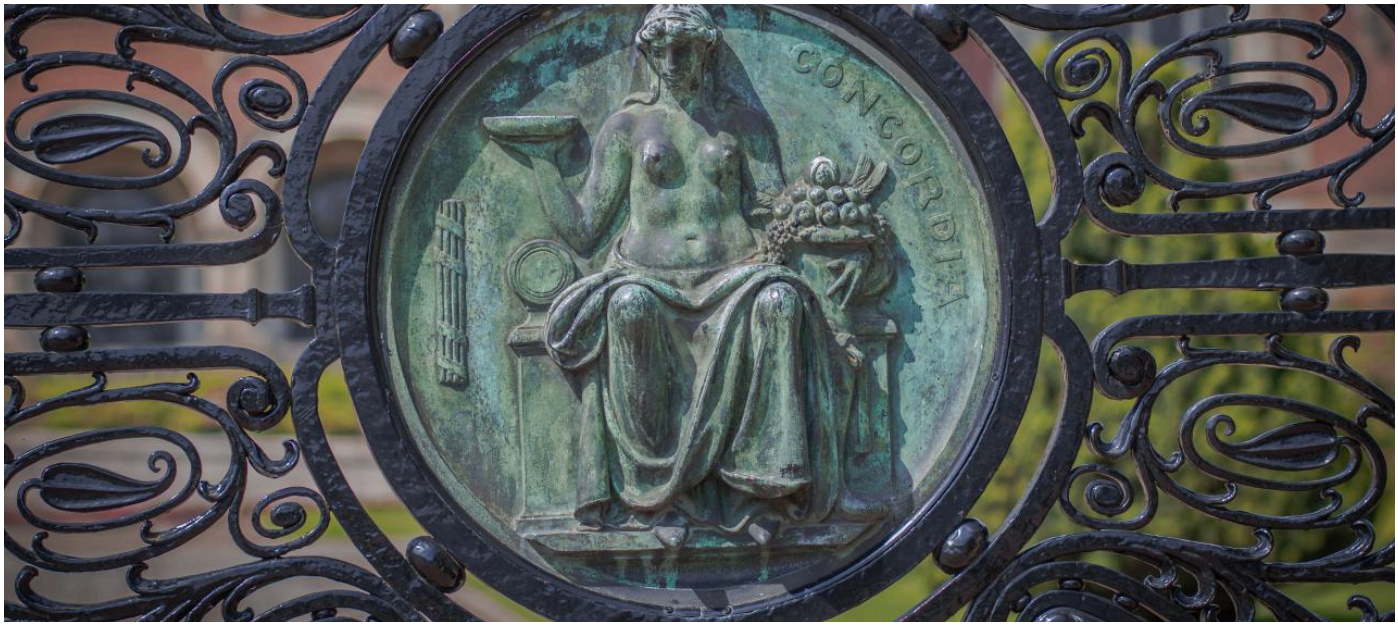
International and Inter-American Advisory Opinions on Climate Change: Some Thoughts on Human



Advisory Opinion – International Court of Justice – Inter-American Court of Human Rights – Climate Change – (Im)Mobility – State Obligations – Participation – International Cooperation.

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The Inter-American Court of Human Rights (IACHR) and the International Court of Justice (ICJ) have both recently issued advisory opinions. The first, adopted on 29 May

2025, concerns the climate emergency and human rights. The second, dated 23 July 2025, relates to the obligations of States in respect of climate change. While both opinions address similar subjects, the approaches adopted by the courts differ significantly. This commentary aims to highlight points of convergence and divergence between them, as well as some of their contributions and shortcomings, specifically regarding the issue of human (im)mobility. This exercise is of particular interest in light of the advisory opinion requested on 2 May 2025 to the African Court on Human and Peoples' Rights on the interpretation of its reference instrument in the face of the climate challenge.

A. Two Courts, Two Mandates, One Climate Challenge

The **request** submitted to the International Court is notable for its conciseness, in contrast to the lengthy and detailed request submitted to the Inter-American Court. The latter included 20 questions concerning the interpretation of general obligations and respect for human rights that could be affected by the climate emergency (para 27). Although the Inter-American Court reformulated these questions into three questions relating respectively to substantive rights, procedural rights and vulnerable groups (para 28), it nevertheless addressed all the issues raised by the Chilean and Colombian Republics in a 234-page advisory opinion. The International Court, for its part, was asked only two questions, but they were significant: legal obligations in relation to climate change and the legal consequences of violating those obligations. It responded in a 133-page opinion.

Both the International Court and the Inter-American Court allow third-party interventions in their advisory opinion proceedings. In both cases, these proceedings have left their mark on the courts by becoming the most **participatory processes in their history**. For its part, the Inter-American Court received 263 written observations from more than 600 entities worldwide (IACHR Press Release 48/2025). As for the International Court, it received more than 250 interventions from States and international organisations during the written phase and public hearings (ICJ Press Release 2025/36). It is interesting to note, however, that the **diversity of the actors behind the interventions** is not the same before the two courts. While the Rules of the International Court limit the possibility of filing submissions to States and international organisations, the Rules of Procedure of the Inter-American Court allow a much wider range of actors to participate. As Gómez-Betancur *et al.* point out, the 613 actors who submitted written observations to the Inter-American Court also include local communities, indigenous peoples, Afro-descendant groups, civil society organisations, academic institutions and young activists. Their participation did not go unheeded, as the Inter-American Court, for the first time, referred directly to the written observations of civil society and indigenous peoples in support of its analysis in

an advisory opinion (see Gómez-Betancur *et al.*). The Inter-American Court also recognises local, traditional and indigenous knowledge when it enshrines the right to access the benefits of measures based on the best available science (paras 477–478). While thus opening itself up to a greater plurality of knowledge, it also relies on the reports of the **Intergovernmental Panel on Climate Change** (IPCC), as does the International Court of Justice. The Inter-American Court makes this choice because of their representative character, methodological rigour and widespread recognition by States (para 33), whereas the International Court justifies it by the agreement of the participants in the proceedings on this point (para 74). Despite criticism of the institution, particularly its failure to take into account indigenous knowledge (Sherpa, Rashidi, Carmona *et al.*, van Bavel *et al.*) and knowledge from the Global South (Rucavado Rojas and Postigo), both courts recognise the IPCC as the benchmark for the best available scientific data on climate change.

Each court's response to the questions submitted to it is **framed** by its mandate (limited to the human rights defined in its regional instrument for one, covering the entire body of international law for the other) and conditioned by the rather horizontal or vertical logic of its dispute resolution. Historically, the Inter-American Court has often taken a bold stance, notably in its 2017 advisory opinion recognising the human right to a healthy environment. This is also evident in its response to the climate challenge brought before it. Indeed, while the Inter-American Court follows the terms of the request and focuses primarily on climate change, it nevertheless points out that climate change is part of the broader context of a **triple global crisis**, alongside global pollution and biodiversity loss (para 42). The International Court, for its part, limits its analysis to climate change, as this was the only issue mentioned in the request.

The International Court has, in principle, a wider range of instruments to interpret, yet this seems to limit its analysis in certain respects, particularly with regard to human rights, to which it devotes a total of eight pages (paras 369–404). For example, it does not address **procedural rights**, whereas the Inter-American Court dedicates one of the three questions in its opinion to this issue and recognises that they are an essential condition for the legitimacy and effectiveness of decisions taken to address the climate emergency (para 458). Admittedly, the International Court is not a human rights court. Nevertheless, it has jurisdiction to interpret international law as a whole and could have based its reasoning on existing case law from human rights courts. Instead, it merely states that "the application of international human rights law in relation to the adverse effects of climate change has been addressed in decisions of regional human rights courts" and refers to their case law, in particular the Inter-American Court's opinion (para 385). Furthermore, there are other important international legal instruments relating to procedural rights that the International Court could have read in conjunction with human rights law, in particular the Aarhus Convention and the Escazú Agreement, which the Inter-American Court cites (paras 38, 464, 492, 533, 547, 564).

Despite their different approaches, it is interesting to note that the International Court and the Inter-American Court sometimes reach the same conclusions. Given the importance of the issue, both courts conclude that obligations in this area are ***erga omnes*** (ICJ, para 440, IACHR, para 287). Furthermore, even though current projections confirm that this threshold will be exceeded, both courts reaffirm the **+1.5 °C warming threshold as the target to be pursued**, as the International Tribunal for the Law of the Sea had already done in its advisory opinion on climate change and international law. The International Court of Justice deduces this from the decisions taken at the Conferences of the Parties following the adoption of the Paris Agreement (1/CMA.3 and 1/CMA.5), which indicate the 1.5 °C target as the objective to be pursued. It considers these decisions to be subsequent agreements that should guide the interpretation of the Paris Agreement within the meaning of Article 31(3)(a) of the Vienna Convention on the Law of Treaties (para 224). More briefly, the Inter-American Court deduces from the Paris Agreement and the international consensus on limiting global warming to 1.5 °C that the latter must be understood as a minimum starting point and not a final objective (para 326). On certain points, both the International Court and the Inter-American Court have adopted an ambitious position, with a promising consensus emerging.

B. Climate (Im)Mobility: The Brevity of the International Court of Justice in the face of the Cross-Cutting Developments of the Inter-American Court

As this clearly appears from the two previous comments, each of which analyses one of the two opinions, the Inter-American Court is much more nuanced in its understanding of human (im)mobility than the International Court. The difference is first apparent in **tone**. The International Court adopts conditional and forward-looking language, considering that “conditions resulting from climate change which are likely to endanger the lives of individuals *may* lead them to seek safety in another country or prevent them from returning to their own” (para 378). The Inter-American Court, on the other hand, clearly recognises that these movements are already a reality (paras 103, 116, 420).

Furthermore, while the International Court merely mentions displacement as one of the consequences of climate change in two places (paras 73, 357) and acknowledges the application of the principle of *non-refoulement* in one paragraph (para 378), the Inter-American Court devotes extensive discussion to human (im)mobility, over more than 15 pages scattered throughout its judgment (paras 76, 95, 102–104, 116, 158, 195, 253, 403–434, 449, 614). The Inter-American Court adopts a **cross-cutting approach**

that demonstrates a better understanding of the diversity of climate (im)mobility. After emphasising the obligations to prevent the occurrence of climate-related mobility, the Inter-American Court recognises a series of other obligations on the part of States to regulate migration, displacement (internal or international), planned relocation and immobility[1].

This can be explained in particular by the fact that only the request for an advisory opinion submitted to the Inter-American Court devoted one of its questions to climate mobility. However, the issue was not irrelevant to the International Court, since not only did the preamble to the request for an advisory opinion mention displacement, but nearly two thirds of the States' written submissions also referred to mobility in one way or another (McAdam).

The **principle of *non-refoulement*** seems to be an issue on which both courts adopt a tentative recognition, simply referring to the *Teitiota* views from the United Nations Human Rights Committee without specifying the conditions for its application. The Inter-American Court goes a step further by mentioning **refugee** status, in addition to subsidiary protection under human rights (para 433). It also specifies, unlike the International Court, that States have an obligation to put in place effective mechanisms to ensure the humanitarian protection of persons fleeing a deteriorating environment, in particular by creating appropriate **migration categories**, such as humanitarian visas or temporary residence permits (para 433). The addition of other migration pathways is important insofar as international protection presupposes a critical level of risk and does not allow individuals to adapt in time (McAdam).

The Inter-American Court also directly links the obligation to **cooperate** with the effective protection of the human rights of persons in situations of mobility (paras 253, 430). It emphasises that the international community is responsible for operationalising international funds that enable the most vulnerable countries to cope with human mobility driven by climate change (para 431). In referring to this fund's compliance with the principles of equity, solidarity, and common but differentiated responsibilities, the Inter-American Court insists that some States bear greater responsibilities than others in the current situation. Cooperation must therefore take into account differences between States, particularly regarding responsibilities (para 253). However, the manner in which States could align their national priorities with adequate international cooperation while taking into account the equitable distribution of resources remains unclear and requires further clarification (see Guidi and Chaparro). On the contrary, the International Court does not link the obligation to cooperate to situations of mobility. The latter recognises the obligation to cooperate, which it describes as a "pressing need" and a "legal obligation" (para 308), adding that it "is founded on the recognition of the interdependence of States and the ensuing need for solidarity among peoples" and "assumes particular significance" in the face of rising sea levels (para 364). However, the International Court of Justice adopts a neutral approach that does not differentiate between the obligations of different groups of

States, in particular according to the terminology established in international climate law of developed and developing countries, and limits the principle of common but differentiated responsibilities and respective capabilities to the distribution of efforts in the field of climate change (para 148). Beyond the approach of each court, one thing is certain: international law establishes a clear requirement for cooperation in order to address this threat to humanity as a whole.

C. Suggested Reading

Case law:

- ICJ, Advisory Opinion of 23 July 2025, *Obligations of States in Respect of Climate Change*.
- HRC, Views concerning communication No. 2728/2016, *Ioane Teitiota v. New Zealand*, 24 October 2019.
- ITLOS, Advisory Opinion of 21 May 2024, *Climate Change and International Law.*
- IACHR, Advisory Opinion AO-32/25, *Climate Emergency and Human Rights*, 29 May 2025.
- IACHR, dvisory Opinion OC-23/17, *The Environment and Human Rights*, 15 November 2017.

Doctrine:

- Carmona, R. *et al.*, "Analysing Engagement with Indigenous Peoples in the Intergovernmental Panel on Climate Change's Sixth Assessment Report", *Npj Climate Action*, Vol. 2, No. 1, 2023, p. 29.
- CIEL *et al.*, *Justicia Climática y Derechos Humanos: Estándares y Herramientas Jurídicas de la Opinión Consultiva 32/25 de la Corte Interamericana de Derechos Humanos*, October 2025.
- McAdam, J., "How the ICJ's Advisory Opinion on Climate Change Addresses Displacement, International Protection and Ongoing Statehood", *Researching Internal Displacement Short Pieces*, 2025.
- McAdam, J., "*Moving beyond Refugee Law: Putting Principles on Climate Mobility into Practice*", *International Journal of Refugee Law*, Vol. 34, No. 3–4, 2022, pp. 440–448.
- Rashidi, P., "Indigenous Peoples at the Heritage–Climate Change Nexus: Examining the Effectiveness of UNESCO and the IPCC's Boundary Work", *Review of International Studies*, Vol. 51, No. 1, 2025, pp. 42–63.

- Rucavado Rojas, D. and Postigo, J. C., "The Cycle of Underrepresentation: Structural and Institutional Factors Limiting the Representation of Global South Authors and Knowledge in the IPCC", *Climatic Change*, Vol. 178, No. 2, 2025, p. 19.
- Sherpa, P. Y., "Relevance of the Sixth IPCC Assessment Report to Indigenous Lived Realities", *AlterNative: An International Journal of Indigenous Peoples*, Vol. 21, No. 3, 2025, pp. 463–471.
- van Bavel, B., MacDonald, J. P. and Dorough, D. S., "*Indigenous Knowledge Systems*", in K. De Pryck and M. Hulme (eds.), *A Critical Assessment of the Intergovernmental Panel on Climate Change*, Cambridge, Cambridge University Press, 2022, pp. 116–125.
- van der Geest, K., de Sherbinin, A., Gemenne, F., and Warner, K., "Editorial: Climate migration research and policy connections: progress since the Foresight Report", *Frontiers in Climate*, Vol. 5, 2023.

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[1] The Cancún Agreements (para 14, f) define three forms of mobility: migration, displacement and planned relocation. Immobility, whether voluntary or involuntary, is now generally considered to be a fourth form of climate mobility (van der Geest *et al.*).

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