CLIMATE CHANGE LAW SPECIALIST GROUP BLOG SERIES

REFLECTIONS:

THE ICJ CLIMATE CHANGE ADVISORY OPINION – A TURNING POINT FOR CLIMATE JUSTICE FROM THE WORLD COURT

In anticipation of COP30, this blog post of the Climate Change Law Specialist Group Blog Series provides a summary of the WCEL Webinar 'The ICJ Climate Change Advisory Opinion – A Turning Point for Climate Justice from the World Court'*, held online on Friday, 22 August 2025 in reaction to the historic Advisory Opinion on climate change delivered by the International Court of Justice (ICJ) on 23 July 2025 at the Peace Palace in the Hague.*

With participation by IUCN Director-General, Dr Grethel Aguilar, the special edition of the WCEL Webinar Series 'The Transformative Power of Law: Addressing Global Environmental Challenges' *discussed the* 'Advisory Opinion on Obligations of States in respect of Climate Change'*, rendered by the ICJ in July 2025. In the webinar, moderated by Prof Francesco Sindico (University of Strathclyde; Co-Chair, IUCN WCEL CCLSG), distinguished experts in climate change law and international law – IUCN WCEL CCLSG members who contributed to IUCN's participation in the advisory proceedings before the ICJ – highlighted the significance of the Advisory Opinion for the development of law for many years to come.*

Photo: ICJ

OPENING REMARKS: DR GRETHEL AGUILAR, IUCN DIRECTOR-GENERAL

Offering a preliminary statement, IUCN Director-General, Dr Grethel Aguilar, celebrated the Advisory Opinion as a 'historical milestone for international law, for climate justice, and for the future of people and nature'. She welcomed the confirmation by the Court that 'States have a legal obligation to take all necessary measures to limit global warming to 1.5°C'. Mentioning some highlights, Dr Aguilar observed that the Opinion draws on the climate treaties, human rights law and the law of the sea, as well as on customary international law. She also noted that the duty of cooperation is legally binding on all States. Importantly, Dr Aguilar observed, the Court provided clarity on the Paris Agreement, and a 'powerful affirmation' made by the Court in this context is that implementing the Nationally Determined Contributions (NDCs) is an obligation of conduct. Inaction or insufficient action on climate change is not 'simply a policy choice'—it violates international law. This 'shifts the landscape of accountability' and provides a 'clear legal foundation' for demanding 'urgent, science-based climate action', she added.

In her conclusions, Dr Aguilar highlighted the role that IUCN played as a participant in this historical process, contributing a written statement, a submission in response to other participants' statements, an oral submission during the hearing phase, and a written reply to questions posed by Judges Cleveland, Tladi, Aurescu and Charlesworth at the hearing of 13 December 2024. She commended the contribution of the World Commission on Environmental Law (WCEL) to the proceedings, and conveyed her gratitude to the leadership of Prof Christina Voigt and the technical support provided by Prof Francesco Sindico throughout IUCN's participation in the process. She mentioned the unprecedented contributions by IUCN to all three recent Advisory Proceedings on climate change, including those before the International Tribunal on the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACtHR). But what comes next for IUCN? Dr Aguilar clarified that '**our mission now is to build on this moment, ensuring that the Court's message translates into accelerated, concrete action on the ground**'.

INITIAL STATEMENT: PROFESSOR CHRISTINA VOIGT (UNIVERSITY OF OSLO; CHAIR, IUCN WCEL)

Prof Christina Voigt started her remarks by observing the strong alignment between IUCN's written and oral statements and the Court's Advisory Opinion. Indeed, she observed, 'much of what IUCN put forward was picked up by the Court in one way or the other', and perhaps no other participant in the Advisory proceedings can make such a claim. This, she stressed, 'bears witness to IUCN's recognition as an institution that can provide sound legal arguments, sound legal analysis based on sound science'. She recalled, additionally, that it was the first time that IUCN appeared before the ICJ; and in so doing, IUCN spoke for 'the protection of a common good, of our planet and its people and nature, for present and future generations'.

Prof Voigt shed light on seven particularly relevant aspects of the Advisory Opinion: first, **the Opinion was positively received, and it marks a new era for the ICJ itself**. Prior to this Advisory Opinion, the ICJ had not made any pronouncements about climate change. In being 'so detailed, and progressive and thorough', the Advisory Opinion inaugurates a new era for the Court and international law in general, as well as for international environmental law and climate change law in particular. Prof Voigt recalled that this was the largest proceedings ever held before the ICJ, and 'for many Small Island States, it was the first time ever that they appeared before the Court'. The Court astoundingly 'delivered a progressive, diligent and

detailed Opinion, not shying away from addressing some very contentious issues in diplomatic relations and international discourses, which otherwise are highly politicised', but were addressed through the lens of law.

Second, **while the Advisory Opinion is not binding, the obligations identified and highlighted by the Court *are* binding**. It also carry significant weight as a unanimous Opinion that the Court delivered in response to a consensual request by the UN General Assembly. And the Opinion will have effects on other courts, international and domestic. The effects will not be limited to adjudicatory processes, but will also be felt across diplomatic negotiations, particularly the upcoming UNFCCC Climate COP30 in Belém, and domestic legislative processes. Additionally, the Advisory Opinion will likely inform the work of the constituted bodies established under the Paris Agreement.

Third, Professor Voigt continued, the **Court made the core finding that 'States have the obligation to** do the *utmost* to reduce greenhouse gas emissions to protect sinks and reservoirs' and this obligation is 'based on several, independent, parallel and mutually supportive legal sources', and entails **acting with *stringent* due diligence**. Similar standards applying across the board to stay within the Paris Agreement's 1.5°C target were identified by the Court, which also contributes to a more consistent and harmonious international law. Importantly, a breach of climate obligations characterises an internationally wrongful act, which attracts international responsibility of the breaching State and consequences that include compensation.

In her fourth point, Professor Voigt observed that **the Advisory Opinion presents the first and only detailed interpretation of the Paris Agreement by an international court**. She pointed out that the Court did not shy away from carefully interpreting the Paris Agreement in light of the treaty's objective and purpose, despite the significant ambiguity in its text as the outcome of a disputed negotiation and drafting process. She praised the Court's clarification that the obligation to prepare, communicate and maintain Nationally Determined Contributions (NDCs) is one of result, unlike many participating States' claims that submission of NDCs is voluntary, and regretted that 'more than 170 States have not put forward that result this year', which triggered action by the Paris Agreement's Compliance Committee (PAICC). Additionally, Prof Voigt explained, the Court clarified that 'the content of the NDCs does not fall entirely within the discretion of States', that putting forward NDCs in alignment with the 1.5°C limit that are progressive, reflective of each State's *highest possible ambition*, and informed by the outcome of the Paris Agreement's Global Stocktake is an obligation of conduct. This obligation requires a *stringent* level of due diligence, and Prof Voigt concluded that this finding may have immediate impact for many States, given their pending NDC submissions.

In her fifth point, Prof Voigt observed that **the Court clarified that the obligations are also based on human rights treaties**. She recalled that IUCN submitted, in this context, that human rights obligations are positive obligations demanding that States take 'all necessary measures to protect, preserve and respect human rights', and that these obligations are informed by international standards. IUCN's submission had an impact because, as she noted, the Court did clarify the right to a healthy environment as 'a condition for the enjoyment of other human rights'.

In her sixth point, Prof Voigt praised the **Court's finding of obligations under the law of the sea Convention (UNCLOS), for which the ICJ followed 'quite strictly' the findings by ITLOS** last year that greenhouse gas emissions constitute pollution of the marine environment.

Again, positive obligations were reinforced, entailing the obligation to address pollution of the marine environment, as well as to protect and preserve the marine environment with stringent due diligence. In this context, Prof Voigt again praised the Court's approach towards consistency in international law.

In her seventh point, Prof Voigt highlighted the Court's significant finding the customary duty under international law to prevent significant harm to the territory of other States and to areas beyond national jurisdiction. She celebrated the confirmation by the Court of IUCN's statement that '**the no harm rule is applicable to the protection of the climate system**'. This applying-to-all obligation was strengthened by the Court's further conclusion that it **has *erga omnes* character, and is to be fulfilled according to the stringent standard of due diligence**. The Court then provided clarification as to what it means to comply with this requirement of stringent due diligence. It includes taking all necessary measures, informed by science's best standards and technology, as well as by differentiation in light of States' capabilities, and that States apply precaution, with risk and environmental impact assessments, as well as notification and consultation. Here, Prof Voigt noted, 'the Court *really* gives a detailed legal toolbox to everyone working on this field'.

Prof Voigt concluded by mentioning the legal consequences for violation of climate obligations under the law on international responsibility, and noting the Court's pronouncement on sea level rise, an important achievement particularly for vulnerable States, such as Vanuatu, who led the initiative for a request by the UN General Assembly for an advisory opinion. In this context, the Court clarified the continuity of statehood even amidst States' disappearance due to sea level rise. Additionally, she reminded, the Court clarified that **States have no obligation to update and revise their charts if baselines change due to sea level rise**, which preserves the marine entitlements and the maritime zones for island and coastal States.

STATEMENT: PROFESSOR CAROLINE FOSTER (UNIVERSITY OF AUCKLAND)

Prof Caroline Foster discussed the relationship between treaty and customary sources of international law pertaining to obligations to the climate system. She highlighted first that the Court is encouraging the international community to '*lean into*' the treaty existing regime, and how the Opinion suggests that compliance with the climate treaties, for the time being, entails substantial compliance with customary international legal duties. However, she noted, the ICJ made it clear that customary obligations are not fulfilled simply by complying with the treaties. Importantly, customary international law constituted a legal standard for assessing whether the climate change treaties through time …will actually continue fully to serve their purpose. There might come a time when compliance with the climate treaties is insufficient to fulfil customary obligations and when further treaty negotiations are required. These judicial findings enhance the Advisory Opinion's 'enduring quality'. Continuing on the subject of customary international law, Professor Foster returned to the Court's view that non-Party States, when cooperating with States Parties in an equivalent way to that of Parties may be considered to be fulfilling their customary obligations. She pointed out the Court's further suggestion that a non-Party State that is not cooperating in the manner envisaged would have the burden of demonstrating that its policies and practices are in compliance with its customary international law obligations. This leaves open the question of 'reversal of the adjudicatory burden of proof', and the basis on which reversal might rest.

STATEMENT: PROFESSOR MARGARET YOUNG (UNIVERSITY OF MELBOURNE)

Prof Margaret Young welcomed the Court's 'remarkably systemic' treatment of climate obligations, in line with IUCN's 'advocacy about the scientific conceptions of the climate system'. She explained that as a result of the Court's recognition of the inclusion within the climate system of the atmosphere, the hydrosphere, the geosphere and, crucially, the biosphere, the obligations of States to protect the climate system are found in multiple sources. She celebrated the Court's interpretation of customary obligations by reference to a 'systemic view of treaty obligations' as 'very consequential'. Regarding the techniques used by the ICJ, including treaty interpretation according to Article 31 of the Vienna Convention on the Law of Treaties (VCLT), she focussed on the implications for biodiversity-related agreements, such as the Convention on Biological Diversity (CBD), the Kunming-Montreal Global Biodiversity Framework, and the new Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction (the BBNJ Agreement). Prof Young celebrated that the Court engaged carefully with these treaties alongside the climate regime, and referred to the remedy of restitution 'as including the restoration of ecosystems and biodiversity', as part of the legal consequences if States are found to have caused significant harm to the climate system. She further stressed the 'comprehensive understanding of State obligations' provided by the Court, through which 'ecosystem measures may simultaneously operate as climate change mitigation or adaptation measures', which reflects IUCN's expertise on nature-based solutions. An important point was that, even if the fragmented nature of international law entails that sometimes obligations do not cohere, climate change and environmental law treaties, as well as customary international law, inform each other. The Court accepted that actions to address climate change are not always in harmony with actions to protect biodiversity (or progress human rights for that matter). This reflects a nuanced approach to issues of regime interaction, and the need to minimize negative impacts and foster positive impacts of climate action on biodiversity, Prof Young concluded.

STATEMENT: PROFESSOR NILUFER ORAL (NATIONAL UNIVERSITY OF SINGAPORE; MEMBER, UN INTERNATIONAL LAW COMMISSION; MEMBER, IUCN WCEL STEERING COMMITTEE)

Prof Nilufer Oral spoke about the relationship between the ICJ Advisory Opinion and the 2024 Advisory Opinion of the International Tribunal for the Law of the Sea (ITLOS), in which IUCN WCEL also participated. She noted that the ITLOS Opinion was narrower, whereas the opinion request put before the ICJ was 'quite broad'. Remarkably, she observed, both Opinions were unanimous, 'which in and of itself is a rarity' and illustrates 'how serious climate change is being taken at the very highest judicial levels'. ITLOS, which has a larger number of Judges rendered a 'very robust' Opinion. And the big question, in Prof Oral's view, was how much the ICJ would defer to ITLOS in pronouncing on law of the sea issues. Prof Oral noted that there were numerous mentions of ITLOS' Advisory Opinion by the ICJ, which recognised the considerable body of jurisprudence developed by ITLOS and that it should ascribe great weight to ITLOS' interpretation of UNCLOS. Prof Oral further praised the Court's concurrence with ITLOS that greenhouse gas emissions constitute pollution, as well as that compliance with the UNFCCC and the Paris Agreement is not enough for the purposes of UNCLOS.

STATEMENT: DOCTOR CORINA HERI (TILBURG UNIVERSITY)

Dr Corina Heri highlighted the Court's recognition of the human right to a healthy environment and its connection with other rights. Notably, the Court's interesting approach to the right followed different characterisations in the Opinion—as a 'pre-condition for the enjoyment of many human rights', as 'inherent' and 'essential for the enjoyment of other human rights'—gave the impression that the Court 'was trying to hit the right formulation', she remarked. Yet, Dr Heri noted, the Court could have gone further in the clarification of what the right to a healthy environment demands of States. In her view, the Court seems to have left it open for specialised bodies to engage more with human rights issues. Overall, the right to a healthy environment is 'potentially highly transformative', which is exemplified by the findings of the Inter-American Court of Human Rights, including that it is a norm of *jus cogens*.

STATEMENT: PROFESSOR HARRO VAN ASSELT (UNIVERSITY OF CAMBRIDGE)

Prof Harro van Asselt turned to the reliance by the ICJ on scientific findings, particularly IPCC reports as best available science, and the 1.5°C goal, which links to the issue of fossil fuel production, signalling that no new fossil fuel projects can be developed. The proceedings included developing States' conduct of fossil fuel production. Importantly, 'all fossil fuel production, licensing and subsidy activities' have to be reflected in States' NDCs and domestic measures in consistency with the 1.5°C goal. Prof van Asselt observed that the Court suggested that customary obligations related to environmental impact assessments, as well as notification and consultation, also apply to fossil fuel projects. Additionally, he observed the Court's clarification that fossil fuel production, licensing and subsidisation may constitute internationally wrongful acts and attract legal consequences, including cessation. Reflecting on the Advisory Opinion, Prof van Asselt pointed out that, 'the Court chose to single out fossil fuels', which he observed as 'very telling'. As he noted, 'the Court did feel called upon to make an explicit pronouncement on climate change mitigation and fossil fuels'. This was a significant development given that the issue has hardly moved forward in almost three decades of climate negotiations. Prof van Asselt attributed this point to the consistent efforts of climate vulnerable States, particularly Vanuatu. This, he concluded, has triggered 'the emergence of a quite sophisticated legal debate on States obligations in this area'. But, similarly to Dr Corina Heri's reflections, he noted that the Court could have drawn on the linkage between fossil fuels and potential human rights violations, and it could have addressed the role of international economic law in this context. In Prof van Asselt's view, climate litigation at the international level might 'focus on countries that are expanding fossil fuel production whilst at the same time claiming to be climate leaders', and the Opinion is likely to give traction to domestic litigation challenging new fossil fuel developments.

DISCUSSION: PROFESSOR CHRISTINA VOIGT

Regarding the impact of the Advisory Opinion in general, Prof Christina Voigt shared her view that, while the Advisory Opinion will have implications for the future of climate COP processes, the findings by the Court on NDC content and domestic measures 'really matter' in domestic processes, in the preparation of NDCs 'again and again, every 5 years'. She stressed the importance of the periodicity of the NDCs, because this is something that 'will come back and hit States again and again'. In this context, the Opinion 'is a tool for stakeholders, for civil society, for parliamentarians, for everyone involved or [who] should be involved in designing

the NDCs, to really put pressure … and ramp up ambition domestically, because that is where it matters and where it needs to be implemented'. Turning back to climate COPs, Prof Voigt observed that, interestingly, the discussion about NDCs and their content has not been part of the negotiations, unlike Article 4 of the Paris Agreement and the ambition mitigation work program. In this regard, the Opinion presents a 'changing moment', with the discussion changing 'towards looking in more detail on what actually needs to go into the NDCs'. She expects COP30 in Belém to be a place for recognition of the Opinion and discussion of its elements. But, considering that many NDC submissions are still pending, this is where the Opinion may have 'immediate impact'.

STATEMENT: MS ANA KANTZELIS (SIX PUMP COURT)

Ms Ana Kantzelis also spoke about some of the implications of the Advisory Opinion and, in her intervention, she drew attention to the last paragraph of the decision. In that part, the Judges stressed the role of international law, which however important, is limited in resolving climate change. The practical impact of the Opinion lies in 'how States and others use it individually and collectively within other international and national frameworks'. International law, as she noted, informs and limits power in this context. Ms Kantzelis stressed the pressure on multilateral processes going forward, predicting that the Opinion 'should significantly strengthen diplomatic leverage and ambition', particularly in the September meeting of the UN General Assembly and in the upcoming COP30. The Opinion also asserts 1.5°C as an anchor for the collective ambition in the climate regime and provides a 'firmer legal ground' for stronger action at the multilateral level.

Another point Ms Kantzelis made is that 'the Opinion affirms customary duties that cut against unilateral backsliding and that strengthen multilateral frameworks'. All States are under the duty to prevent transboundary harm and the duty to cooperate, including non-Parties to the climate treaties. Importantly, she continued, 'withdrawing from a treaty does not remove those obligations', and this 'reduces incentives to exit cooperative regimes and undercuts unilateral threats of retaliation against States engaging in net-zero or other cooperative frameworks'. Cooperation in good faith against climate change is required under international law, and she also observed that 'international litigation remains a credible complement to diplomacy and keeps accountability pathways open before international courts and tribunals', and the Opinion provides a detailed basis on which claims might succeed. Further, Ms Kantzelis noted that the Opinion provides 'signals and opportunities for institutional reform and interpretive alignment of obligations across different areas of law', with potential effects in the near future. As an example, she mentioned the suggestion made by Judge Bhandari that a claims commission for climate change harms be established, and recalled the interest in establishing 'an international environment court as part of wider environmental governance reforms'. She also mentioned Judge Cleveland's conclusion that States' climate obligations are to inform the interpretation of investment treaty law, particularly for consistency and towards reducing the so-called regulatory chill, and guiding future arbitral practice. The Opinion enables States to present climate regulation to citizens 'as a legal obligation rather than a political choice', and the language and standards contained in the Opinion have legal effects despite the Opinion's lack of direct legal bindingness. Yet, Ms Kantzelis cautioned that the current environment of political polarisation, salient narratives on energy security and cost of living pressures, among other issues, might lead to different levels of constructive engagement with the Opinion and implementation of climate policies, including through reduced transparency.

Prof Christina Voigt further thanked all the experts involved in the 'massive collective effort' that produced IUCN's contribution to the Advisory Opinion.

SUMMARY: PROFESSOR FRANCESCO SINDICO

Prof Francesco Sindico summarised the session with five powerful remarks:

1. the ICJ did not take the easy way, the shortcut, despite the massive division in several topics. As a result, the existing divisions did not reflect a divisive direction in the Opinion.
2. The temperature limit of 1.5°C is now the law, and this may have ripple effects across public and private sectors.
3. The ICJ provided the legal framework, including general international law, asserting that there are grounds for international responsibility. States are now to sort things out themselves under that guidance.
4. In the last paragraph of the Opinion, the Court highlighted the systemic nature of climate change, and we are likely to see a rise in litigation.
5. This started because of a dream of young people. We need to acknowledge the role they played. The dream got very complex, but it all started in a classroom of young people. Dreaming is still possible, and young people can still influence nations.

Photo: ICJ

ADDITIONAL INFORMATION

Advisory Opinions (Full texts):

- ICJ Advisory Opinion on the obligations of States in respect of Climate Change (https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf)
- ITLOS Advisory Opinion (https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/)
- Inter-American Court of Human Rights Advisory Opinion (https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf)

IUCN contributed at all stages of the proceedings for the climate change advisory opinions at the International Court of Justice, the International Tribunal for the Law of the Sea, and the Inter-American Court of Human Rights. (All IUCN submissions are publicly available. Click on the name of each tribunal to access IUCN's written submissions).

Themes: Climate Change, Governance – Law and Rights

IUCN Commission: WCEL

IUCN Secretariat: Climate Change Law

This summary was written for the Climate Change Law Specialist Group, IUCN WCEL, as part of a series that aims to map activities, events, and panels related to Climate Change Law around the year.

*If you wish to learn more, please contact **Marina Dutra Trindade**, executive assistant of the IUCN WCEL Climate Change Law Specialist Group.*