CIRGoM POLICY BRIEF 10

# The ICJ Advisory Opinion on Climate Change: The Start of Something New?

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## SUMMARY

The advisory opinion delivered by the International Court of Justice (ICJ) in July 2025 marks a major step forward in clarifying States' obligations in relation to climate change, including mitigation, adaptation, cooperation, and financing. The Court confirms that both customary international law and the Paris Agreement impose a demanding standard of due diligence, tailored to each State's respective capacities, aligned with scientific knowledge and the 1.5 °C objective. It also emphasizes States' duty to regulate private actors contributing to greenhouse gas emissions. Non-compliance may engage States' international responsibility.

Significant uncertainties remain regarding how these clarifications will translate into concrete effects. Not binding on UN Member States in and of itself, the opinion's impact depends on how it will be used. While it has already shaped climate litigation and civil society advocacy efforts, it may also influence public policies and regulatory frameworks. The central challenge lies in its implementation - transforming this opinion into an operational tool to enhance climate ambition, accountability, and coherence between international commitments and domestic action.


Following a request by the United Nations General Assembly, the ICJ delivered, on 23 July 2025, an advisory opinion on States' obligations concerning climate change. This referral resulted from an unprecedented mobilization initiated by Pacific civil society actors, notably the Pacific Island Students Fighting Climate Change, and supported by Vanuatu and a coalition of particularly vulnerable States.

Adopted in March 2023, the General Assembly resolution requested the Court to clarify both the content of States' obligations under international law and the legal consequences of their breach. The advisory procedure allowed for a broad and inclusive deliberative space, avoiding the constraints of inter-State litigation.

This opinion forms part of a broader trend toward the judicialization of international climate law, alongside proceedings before other international courts and tribunals. It stands out through its systemic ambition, as the ICJ was tasked with identifying and articulating all relevant legal norms, whether treaty-based or customary. By adopting a harmonized interpretation across different branches of international law, the Court anchored climate obligations firmly within the general framework of international law.

This advisory opinion forms part of a broader trend toward the judicialization of international climate law, alongside proceedings brought before the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights. It nevertheless stands apart in its systemic ambition, as the ICJ was called upon to identify and articulate the full range of relevant legal norms, whether treaty-based or customary. This approach has contributed to embedding the climate issue within the general framework of public international law. In doing so, the Court adopted a harmonized interpretation of the different branches of international law – law of treaties, customary international law, human rights law, and other environmental agreements – in order

to distill a coherent set of obligations.

The opinion was rapidly relayed within political fora. On 20 May 2026, during its eightieth session, the United Nations General Assembly adopted a resolution welcoming the "importance" and "authority" of the opinion and calling upon States to comply with it, reaffirming that any breach of the obligations identified entails their international responsibility.

> "The General Assembly [...] [c]alls upon all States to comply with their respective obligations under international law to ensure the protection of the climate system". (Resolution A/80/L.65)

While the opinion provides numerous clarifications of existing law, its practical reach will largely depend on how it is used, in a context where inter-State litigation relating to climate responsibility remains unlikely. As an advisory opinion, its influence is primarily indirect; it lies in its capacity to guide and structure practices, both in climate litigation and in public policymaking. Beyond its welcome interpretation of the content and scope of States' international obligations, its impact will depend on its ability to be mobilized in the arenas where climate governance is effectively shaped. How can this legal advancement be translated into action? How can governments draw upon it in the development of their domestic policies? How can civil society, observers at the Conferences of the Parties (COPs), and, more broadly, actors involved in climate governance outside the courtroom make use of it to strengthen ambition, accountability, and the coherence of climate commitments?

This policy brief first revisits the main contributions of the opinion in terms of the definition of obligations and their legal consequences, before identifying, in a second step, concrete pathways for mobilization aimed at ensuring that these standards are more effectively considered, both at the national level and within international forums.

## CLIMATE OBLIGATIONS MORE PRECISELY DEFINED

One of the major contributions of the opinion lies in clarifying the content of States' obligations. The Court adopted a cumulative approach: climate obligations derive from both treaty law and customary international law, interpreted in a consistent manner.

With respect to the Paris Agreement, the Court confirmed its legally binding nature and identified, in particular in Article 4, a dual regime of obligations relating to mitigation. On the one hand, States are subject to an obligation of result – that is, to achieve a specific outcome – consisting in preparing, communicating, and updating their nationally determined contributions (NDCs). On the other hand, they are required to adopt domestic measures aimed at achieving these objectives. This second requirement constitutes an obligation of conduct – that is, to take appropriate measures – assessed against a demanding standard of due diligence. This entails a duty for States to take all reasonable measures to prevent harm, by mobilizing available means and current scientific knowledge, taking into account their particular capacities and circumstances.

In this regard, the Court introduced a decisive clarification: the content of NDCs is no longer left to the sole discretion of States. It must reflect a progression over time and embody the "highest possible ambition," assessed in light of the objective of limiting global warming to 1.5 °C. In doing so, the Court conferred increased normative weight on this target, using it as a benchmark for assessing the due diligence standard, rather than treating it as a mere political aspiration.

These requirements are part of a broader set of complementary obligations, including the duty to cooperate, the obligation to implement appropriate adaptation measures, and the obligation to contribute – according to respective capacities – to the financing of climate action.

## DUE DILIGENCE AS A CORNERSTONE OF CLIMATE OBLIGATIONS

Due diligence emerges as the structuring concept of the opinion. It constitutes the common standard for assessing State conduct under both treaty law and customary international law.

In concrete terms, this standard requires States to deploy all reasonably available means to prevent serious harm to the climate system, relying on the best available scientific evidence and taking into account their respective capacities. As scientific knowledge evolves, the level of required diligence is expected to increase accordingly.

The Court also clarified the operational content of this obligation. It encompasses, in particular, the adoption of appropriate regulatory frameworks, the regulation of economic activities, the conduct of environmental impact assessments incorporating climate-related effects, and the establishment of effective monitoring and enforcement mechanisms.

## THE CONTRIBUTION OF CUSTOMARY INTERNATIONAL LAW

Beyond the treaty framework, the Court confirmed the applicability of customary international law to climate change. In particular, it reiterated the existence of duties to cooperate and to prevent environmental harm, insofar as they extend to damage resulting from anthropogenic greenhouse gas emissions. Although diffuse and cumulative in nature, these emissions are capable of causing significant harm to the climate system, thereby justifying the application of the prevention principle.

> "The Court concludes that the duty of States to prevent significant environmental harm applies in the context of climate change and that this duty forms part of the most directly relevant applicable law." (ICJ, Advisory opinion, 2025)

The Court clarified that the internationally wrongful act does not lie in greenhouse gas emissions as such, but rather in the failure to prevent harm, notably through insufficient regulation. It further specified that States may incur responsibility for failing to regulate private activities within their jurisdiction, thereby reaffirming the central role of the State in overseeing economic actors.

Finally, certain climate obligations were characterized as *erga omnes*, particularly those relating to the protection of the climate system. Obligations *erga omnes* are owed to the international community as a whole, allowing any State to invoke their breach even in the absence of direct harm.

## A "PANOPLY OF LEGAL CONSEQUENCES" IN CASE OF BREACH

Beyond defining obligations, the ICJ opinion is notable for explicitly integrating climate change into the general regime of State responsibility. The Court recalled that any internationally wrongful act entails the responsibility of the State concerned and gives rise to a range of legal consequences.

The ICJ rejected the notion of a self-contained climate law regime and confirmed the applicability of the general law of State responsibility, including in situations involving multiple contributors. It reiterated that any wrongful act entails obligations of cessation, non-repetition, and full reparation, which may require revisions of public policies. Traditional forms of reparation – restitution, compensation, and satisfaction – remain applicable, notwithstanding the specific challenges posed by climate-related harm. Satisfaction, in particular, plays an important role in acknowledging the harm suffered, including by the most vulnerable States and populations. It constitutes a form of symbolic or declaratory reparation, such as the acknowledgment of wrongdoing, distinct from financial compensation.

While the Court did not provide detailed guidance on how such reparations should be implemented in specific cases, it affirmed that climate inaction may constitute an internationally wrongful act engaging State responsibility. The question is no longer whether legally binding climate obligations exist, but rather how to operationalize them effectively and address their breach.

## FROM CLARIFICATION TO IMPLEMENTATION: WHAT LEVERS FOR ACTION?

While the ICJ advisory opinion undoubtedly represents a significant normative step forward, in clarifying the existence, content, and consequences of States' climate obligations, the question of its measurable impact remains open. In the absence of binding force and of direct enforcement mechanisms, its influence will largely depend on how it is mobilized by actors within the international system.

In this respect, several avenues for uptake can be identified. First, civil society organizations may use the opinion as a source of legal legitimacy, both in advocacy efforts and in their participation in international arenas, notably as observers at COP meetings. The explicit recognition of due diligence obligations and the potential responsibility of States provide a normative basis for challenging insufficient climate commitments and for influencing international negotiations.

Second, the opinion opens new perspectives for climate litigation. Claimants may rely on the clarifications provided by the ICJ to reorient litigation strategies toward obligations of conduct – particularly the adoption of domestic measures consistent with the due diligence standard under customary international law – rather than toward more diffuse programmatic objectives, whose implementation largely falls within governmental discretion. While the opinion does not formally establish the independent justiciability of climate obligations, it nonetheless strengthens their litigation potential, particularly through their explicit grounding in customary international law, thereby facilitating their invocation before domestic and regional courts. In Canada, this use is already observable: the opinion was cited by the Federal Court in *Lho'imggin et al. v. Her Majesty the Queen* (2025 FC 1586), illustrating its growing influence in domestic litigation.

Finally, the opinion may more diffusely guide State practices and the interpretation of existing commitments within multilateral forums. By consolidating a shared legal vocabulary around the notions of obligation, due diligence, and reparation, it may help structure the level of ambition in international negotiations and strengthen the political pressure exerted on States.

> « While the ICJ Opinion is not binding in Canadian courts, these pronouncements may have significant legal implications in the Canadian context. » (Cour fédérale, 2025)

It remains to be seen, however, to what extent these dynamics of uptake will succeed in transforming the opinion into an effective lever for climate governance. The opinion thus appears as a starting point rather than an endpoint; its influence will depend on the strategic uses made of it by stakeholders, both State and non-State actors.

## RECOMMENDATIONS: MAKING THE OPINION A TOOL FOR LEGAL AND POLICY MOBILIZATION

*1. Integrate the ICJ's findings into public policymaking*

Governments and decision-makers must draw the full implications of the Court's clarifications, both legally and scientifically. The opinion confirms that climate obligations are embedded in a binding legal framework structured around the duty of due diligence, the principle of progression, and the objective of limiting global temperature rise to 1.5 °C.

In this regard, it is essential that the design and implementation of public policies explicitly incorporate scientific evidence. The temperature targets of the Paris Agreement now inform the interpretation of States' obligations. The due diligence standard—whose content depends, inter alia, on scientific knowledge and risk levels—sheds light on both procedural and substantive obligations under the Paris Agreement: the establishment of effective regulatory frameworks, monitoring of public policies, environmental impact assessments that incorporate climate effects (including indirect ones), and consistency between stated objectives and the means deployed. Failure to integrate these standards exposes States to an increased risk of engaging their international responsibility.

In this context, particular attention must be paid to situations of heightened vulnerability to climate change. The principle of common but differentiated responsibilities and

respective capabilities implies that States' obligations should be assessed in light of their respective contributions to climate change as well as their means of action. At the same time, it also requires enhanced consideration of the specific needs of the States and populations most exposed to the effects of global warming, particularly small island developing States and least developed countries. By articulating due diligence obligations with requirements relating to cooperation, adaptation, and financing, the ICJ opinion calls on policymakers to integrate these considerations more explicitly into their climate policies. This entails not only strengthening mitigation efforts, but also ensuring increased support for adaptation policies, whose costs and needs are expected to rise significantly. Failing this, a persistent imbalance between mitigation and adaptation efforts could exacerbate existing vulnerabilities and give rise to increased issues of international responsibility, particularly in cases where assistance to the most exposed States proves insufficient.

*2. Use the Advisory Opinion as a strategic tool for civil society*

The advisory opinion provides civil society with a lever for action both within domestic legal systems and in international governance spaces. Non-State actors can rely on the Court's clarifications to reorient litigation strategies toward obligations of conduct – particularly the adoption of ambitious domestic measures – rather than solely toward programmatic targets. The recognition of the applicability of customary international law to climate change, including greenhouse gas emissions as a potential source of transboundary harm, further strengthens the justiciability of climate claims before domestic courts.

In national contexts such as Canada or Quebec, where emission trajectories and levels of policy ambition are increasingly criticized, these elements may help inform public debate and highlight the gap between stated commitments and the actual legal obligations arising from international law. These dynamics are all the more significant in contexts marked by heightened vulnerability to the effects of climate change. In this respect, the principle of common but differentiated responsibilities may be mobilized by civil society to highlight inequalities in exposure and capacity in the face of the climate crisis, as well as to call for strengthened obligations of solidarity, particularly in relation to adaptation finance and the addressing of loss and damage.

*3. Extend responsibility to the regulation of private actors*

By confirming that States may incur responsibility for failing to regulate private activities within their jurisdiction, the ICJ reinforces expectations placed on the private sector in addressing the climate crisis. This clarification comes at a time when certain policy trends move toward weakening obligations imposed on economic actors. In contrast, the ICJ reaffirms that responding to the climate emergency requires strengthened accountability, guided by States' due diligence obligations in regulating the private sector.

While the precise modalities of implementing this duty in domestic law remain to be specified, it should logically translate into stronger oversight of the conformity of public action with respect to private activities, rather than regulatory relaxation. This implies, in particular, heightened scrutiny of public policies that may support activities incompatible with climate objectives, including subsidies, project approvals, or environmental assessment mechanisms.

This requirement is especially salient in light of recent or proposed reforms in certain jurisdictions. In Canada, federal measures announced in May 2026 to accelerate environmental approval processes for certain infrastructure projects have raised concerns regarding their compatibility with climate due diligence requirements, as they may limit the scope of climate impact assessments and weaken oversight mechanisms. Similarly, in New Zealand, the government has initiated substantial reforms to the *Climate Change Response Act*, including a bill announced for 2026. Proposed changes include simplifying requirements for emission reduction plans, removing certain public consultation obligations, and reducing the advisory role of the Climate Change Commission in their preparation.

In this context, the ICJ opinion can serve as a benchmark to assess such developments and to reaffirm that States have an obligation to maintain – and, where necessary, strengthen – adequate regulatory frameworks governing private sector activities.

*4. Strengthen the articulation between multilateral governance and judicial interpretation*

The opinion highlights a dynamic of mutual reinforcement between judicial interpretation and climate governance. State negotiators are encouraged to engage more closely with the ICJ's findings in multilateral settings, particularly at COPs, taking into account the broader implications of the opinion beyond the treaty framework.

Moreover, COP decisions, as subsequent agreements within the meaning of the Vienna Convention on the Law of Treaties, may contribute to refining the interpretation of climate obligations. It is therefore essential that such decisions maintain – or even strengthen – the level of ambition and precision of their language, in line with the standards articulated by the ICJ.

The adoption by the General Assembly of a resolution following the ICJ opinion confirms the emergence of a dialogue between judicial interpretation and the political governance of climate change. By explicitly endorsing the Court's key conclusions – including the existence of *erga omnes* obligations, the unlawfulness of certain forms of climate inaction, and the applicability of the regime of State responsibility – the resolution contributes to their dissemination and consolidation within multilateral discourse. It also calls for institutional follow-up, requesting the Secretary-General to identify ways to ensure compliance, thereby paving the way for the progressive integration of these standards into existing mechanisms, particularly those under the UN Framework Convention on Climate Change and the Paris Agreement.

*5. Preserve normative ambition in climate negotiations*

Particular vigilance is required regarding the indirect effects of the opinion on negotiation dynamics. The explicit recognition of legal obligations, as informed by subsequent COP decisions, may lead some States to exercise greater caution in drafting future texts, out of concern that new constraints may emerge or that existing commitments may be interpreted more stringently.

In this context, observers at COPs – particularly civil society organizations and the most vulnerable States – are called upon to play a key role in preventing normative dilution within the international climate regime. They must ensure that incorporating the ICJ's findings does not weaken legal language but rather contributes to the progressive strengthening of existing commitments.

The explicit recognition by the General Assembly of the centrality of the 1.5 °C objective and the need to align public policies with the best available scientific evidence reinforces expectations in terms of ambition. It may also help limit attempts at normative dilution in negotiations, by establishing a political reference point grounded in the Court's interpretation of international law.

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The ICJ advisory opinion will produce effects only if it is effectively mobilized by public authorities, the private sector, and civil society. The strategic choice to proceed through the advisory procedure made it possible to overcome certain structural limitations of inter-State litigation, without displacing existing mechanisms such as the Loss and Damage Fund established at COP27 in Sharm el-Sheikh in 2022. It should therefore be understood primarily as a framework capable of informing public policy, strengthening litigation claims, and shaping the future trajectory of international climate governance.

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