



Working Paper

Operationalising climate justice

An analysis of selected country submissions and the ICJ Advisory Opinion

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November 2025



ODI Global



Abstract

The 2025 International Court of Justice (ICJ) Advisory Opinion on climate change confirmed that obligations to protect the climate system arise from the Paris Agreement as well as other treaties and customary international law, and that a stringent due-diligence standard applies to both procedural and substantive duties, with implications for the proliferation of fossil fuels.

This report examines the ICJ submissions of nine developed and developing countries that could be considered allies of Small Island Developing States (SIDS) in different ways. It assesses how well these countries' submissions align with those of Pacific SIDS, which present climate change as an issue of structural inequity and an existential threat, posing challenges to self-determination politically, culturally and economically. The nine countries fall into three broad categories: a conservative developed-country angle, a more progressive developed-country angle, and a major-developing-country angle.

By rejecting the *lex specialis* argument and opening the door to monetary compensation and other consequences under the law of state responsibility, the Opinion equips SIDS with potential political and litigation pathways to press for finance, loss-and-damage remedies, and constraints on further fossil fuel expansion in countries.



ODI Global, 203 Blackfriars Road, London SE1 8NJ, United Kingdom

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Online ISSN 1759-2917

Print ISSN 1759-2909

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How to cite: Sindico, F., McKenzie, K., Wegener, L. and Siradze, K. (2025) *Operationalising climate justice: An analysis of selected country submissions and the ICJ Advisory Opinion*. London: ODI Global.

Acknowledgements

The authors would like to thank Emily Wilkinson and Amy Cano Prentice for their useful comments and reflections on the analysis presented in this working paper.

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Abbreviations and acronyms

AO	Advisory Opinion
CBDR-RC	Common But Differentiated Responsibilities and Respective Capabilities
COP	Conference of the Parties
GCF	Global Climate Fund
GHG	greenhouse gas
ICJ	International Court of Justice
LDC	Least Developed Country
NDC	Nationally Determined Contribution
SIDS	Small Island Developing States
UK	United Kingdom
UNFCCC	United Nations Framework Convention on Climate Change

Executive summary

This Working Paper builds on the previously developed Report (July Report) on submissions by Pacific Small Island Developing States (SIDS) to the International Court of Justice's (ICJ) proceedings on an Advisory Opinion (AO/the Opinion) on Obligations of States in Respect of Climate Change. The Working Paper explores three primary questions:

- How do the additionally identified countries discuss or define climate justice as identified by Pacific SIDS in their submissions to the ICJ?
- How do these countries' submissions and the ICJ AO itself address the issues of relevance identified by Pacific SIDS and analysed in the July Report?
- What are the implications for the operationalisation of climate justice (as defined in the submissions by Pacific SIDS)?

In response to the triple threat to self-determination (political, cultural, economic) that climate change poses, six actions were identified by Pacific SIDS as legally required: 1) rapid, deep fossil fuel emissions cuts; 2) recognition of continued statehood in the face of loss of territory; 3) protection, cooperation and assistance for climate-related displacement and migration; 4) a human-rights-centred approach; 5) substantial, new, and predictable resources for loss and damage; and 6) effective measures to close the climate-finance gap.

Through the lens of these legally required actions, each of the additional country submissions that were analysed have nuanced distinctions, but they broadly fall into the following three categories of responses. The most conservative approach is taken by developed countries who tend toward the stance that the climate change legal regime is the only source of climate-related legal obligations, rejecting the notion of any secondary responsibility under other sources of international law. A more progressive approach taken by some of the developed countries analysed is more open to the climate justice perspective presented by Pacific SIDS, acknowledging their vulnerabilities and open to the idea of secondary responsibility. The third approach is that taken by the two major developing countries which also push for stronger responsibility for historic contributions to climate change while remaining cautious in framing obligations in terms of legal consequences.

The Opinion itself addresses many of the issues surfaced in the July Report but, as detailed by many of the Separate Opinions and Declarations of individual and small groups of ICJ judges, the Opinion could have gone much further to provide clear detail and normative direction.

Clarity was provided, however, on important issues including that the obligations to protect the climate system come from the international climate treaties as well as a plethora of other

international treaties and customary international law. The Court was also clear in its Opinion that a stringent due diligence standard must be applied to both procedural and substantive legal obligations to protect the climate system.

Because the Court opened the door – without providing specifics – to other avenues for heightened climate ambition (including monetary compensation for climate-related loss and damage and the potential of new fossil fuel production being seen as internationally unlawful), there is potential for operationalising climate justice as defined by Pacific SIDS. Pathways include political/diplomatic approaches as well as legal/litigation pathways.

1 Pacific SIDS' climate justice perspective and relevant issues before the ICJ

Pacific SIDS present climate change as both an issue of **structural inequity** – a handful of states have contributed most, while SIDS bear a disproportionate share of the harm – and an **existential threat**.¹ In their submissions to the ICJ, this threat is articulated as a **triple challenge to self-determination**: politically (continuity of statehood and sovereign entitlements), culturally (the survival of place-bound identities and intergenerational transmission of cultural legacy), and economically (the ability to decide and pursue sustainable development). On this basis, Pacific SIDS ask the Court to clarify that states – especially those who bear the most responsibly – have stringent, science-informed due-diligence obligations to prevent transboundary harm and to cooperate to avert, minimise and address its effects.

Politically, Pacific SIDS maintain that climate change must not extinguish peoples' political self-determination: statehood and maritime zones must persist despite sea-level rise; displaced persons must be protected under duties of cooperation and self-determination; and a handful of states have breached their due-diligence obligations to avert foreseeable transboundary harm, endangering Pacific islands' physical existence. **Culturally**, Pacific SIDS stress the inseparability of people and place: slow-onset change and extreme events sever the ties that sustain languages, customs and practices; states must respect, protect and fulfil cultural rights, prevent forced cultural loss through displacement, and must cooperate so communities can remain in place where possible and retain identity where movement is unavoidable, even extraterritorially. **Economically**, Pacific SIDS link the concept of justice to the capacity to chart sustainable development pathways: economic shocks, adaptation costs and debt erode fiscal space and livelihoods; beyond Paris-regime finance, international law (Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC); duty to cooperate) requires scaled, predictable, accessible support – particularly for loss and damage – in addition to mitigation and adaptation finance, further complemented by debt relief and technology transfer.

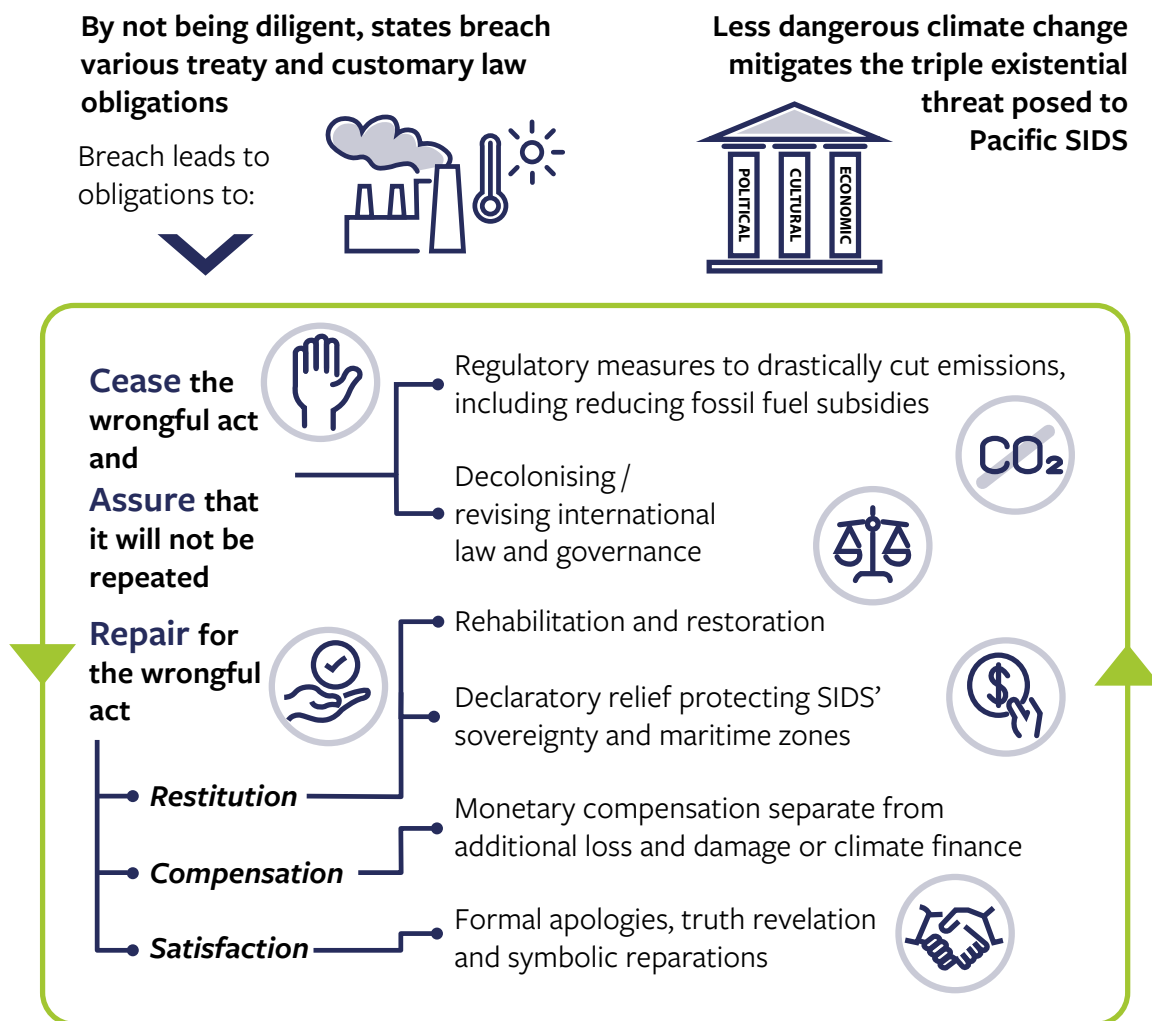
From the Pacific SIDS' perspective, states are legally required to engage in the following six actions:

1. **rapid, deep fossil-fuel-focused emission cuts** by those historically most responsible, aligned with best available science, equity, and fair-share mitigation
2. **recognition of continuous statehood** and stability of maritime zones notwithstanding sea-level rise

1 See Report 'ICJ, Climate Justice and Pacific SIDS', July 2025.

3. **protection, cooperation and assistance for climate-related displacement and migration**, safeguarding the full spectrum of rights
4. **a human-rights-centred approach** (including extraterritorial duties) to protecting life, culture, self-determination, and the rights of future generations
5. **substantial new and predictable resources for loss and damage**, with compensation where obligations have been breached and for non-economic harms, and
6. **effective measures to close the climate-finance gap** and enable just, resilient and sustainable development – improved access, debt relief and technology transfer.

Finally, Pacific SIDS position these claims squarely within the **law of state responsibility**: where obligations to mitigate, protect and cooperate are breached, legal consequences follow. These consequences include cessation and assurances of non-repetition, as well as full reparation through restitution, compensation and satisfaction. This translates Pacific SIDS’ overall climate justice framing into concrete international legal duties and remedies.



2 Climate justice issues reflected in other states' submissions

Focusing on the issues of relevance for Pacific SIDS, this section explores how other countries discuss climate justice in their submissions to the ICJ. Before mapping how different states address these issues (Section 2.2), we provide some overall and structural findings (Section 2.1). The analysis focuses on the submissions of nine specific countries identified by ODI.²

- UK
- Germany
- Australia
- New Zealand
- Canada
- France
- Japan
- China
- India

2.1 General findings

While each of these countries participated in the proceedings, the **length and depth of their submissions vary**. For example, Canada submitted barely 20 pages and did not comment on other country submissions. Australia on the other hand submitted around 150 pages and included commentary on the submissions of other countries. In comparison with the Pacific SIDS' submissions, these other countries included far fewer comprehensive statements, less evidentiary and supplementary material and more selective comments. These factors alone indicate a **different understanding of the purpose of the proceedings** before the ICJ which will be further elaborated later in this section.

The traditional **divide between states categorised as developed or developing countries** is reflected in the submissions. For example, China and India emphasised the right to development and the historical responsibility of developed countries, framing climate justice primarily through a development lens. However, this analysis has identified important nuances beyond this divide in reflecting climate justice.

2 Submissions include written statements, written comments, oral pleadings, and written replies to the judges' questions posed during the proceedings.

For example, France significantly departed from the mainstream developed country approach, advancing more progressive, justice-oriented interpretations of legal obligations and consequences.

Overall, the analysis reveals **three key perspectives** among the selected countries:

1. **A conservative developed country position** – largely in opposition to Pacific SIDS’ positions, insisting that the climate regime, particularly the Paris Agreement, provides comprehensive answers to the questions posed to the Court and entirely rejecting notions of secondary responsibility.
2. **A progressive developed country position** – more open to Pacific SIDS’ climate justice perspective, acknowledging their vulnerabilities, advocating stringent mitigation obligations and open to the application of secondary responsibility.
3. **A major developing country position** – pressing for stronger responsibilities for developed countries, particularly regarding climate finance and sustainable development, while remaining cautious in framing obligations and legal consequences.

Each of the selected countries has a **clear tendency towards one position**. The UK, Australia, Germany and Canada clearly lean towards the conservative position, while France, New Zealand and Japan tend to take a more progressive stance. China and India take the major developing country perspective. However, it is important to note that **in relation to specific issues, countries sometimes diverge** from their overall tendency. For example, while overall rather aligned with Pacific SIDS, New Zealand’s position in relation to secondary responsibility is closer to the more conservative perspectives of countries like the UK.

Overall, **developed countries provided rather abstract and technical assessments** and arguments, focusing on dogmatic questions of international law and neglecting realities and concrete implications. In doing so, most of the developed countries sought to persuade the Court that the questions could be resolved without considering structural injustices, historical developments and the existential nature of the threat for some states.

Most developed states argued that obligations in relation to climate change arise solely from the Paris Agreement and the United Nations Framework Convention on Climate Change (UNFCCC) and, if there are other obligations, their scope does not extend beyond the climate treaty obligations. In this way, they sought to **align all climate obligations with the key premises of the Paris Agreement**, namely that:

- historic responsibility is not a relevant parameter, with obligations depending solely on present responsibility and national capacity
- international law does not provide a basis for states to be held liable for climate-related loss and damage
- and obligations of assistance are based on solidarity and cooperation, not legal responsibility.

2.2 Analysis of the other states' positions on relevant issues

This part explores the other countries' submissions in light of the specific issues identified by Pacific SIDS (see Section 1) and how they connect to the two questions posed to the ICJ by the UN General Assembly.

Box 1 Questions posed to the Court by the UN General Assembly

1. 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?
2. 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:
 - a. 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?
 - b. Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

The **distinction between answers to the first and second question** is important because, while most countries acknowledge the existence of primary obligations (e.g. in relation to ambitious mitigation action), many of them reject notions of legal consequence in relation to harm associated with non-compliance.

The submissions of these other countries largely neglect some of the issues that Pacific SIDS deem relevant to the legal assessment of climate change. For example, **the continuity of statehood and maritime zones under sea-level rise** are only addressed by two countries: Australia and New Zealand.³ Further, **climate-related displacement**, and **cultural human rights** in particular, are not addressed at all by most of the states analysed. Instead, there is a **clear focus on the aspects of ambitious climate mitigation and obligations of support for developing and particularly impacted countries**.

³ Fully supporting the continuity of maritime zones and statehood in the face of sea-level rise and endorsing respective declarations, see, New Zealand, Oral Submission, para 7; Written Statement, para 13; Australia, Written Statement paras 1.17–19.

2.2.1 Ambitious climate policy and political self-determination

The legally required ambition in developing and implementing climate policies is a focus in all analysed countries' submissions. Alignment or non-alignment with the Pacific SIDS' climate justice perspective can be seen in positions concerning the applicability and scope of international climate law.

Does the relevant law extend beyond the Paris Agreement?

Most of the additional countries – developed and developing – adopt a rather conservative approach towards the application of other legal sources of climate-relevant obligations. They assert that the UNFCCC and Paris Agreement form the primary legal framework, with other treaty regimes and customary principles playing only a complementary role.⁴ Several countries – **New Zealand, Australia, Japan** and the **UK** – emphasise that the climate treaties are the primary source of legal obligations but must be read together with other treaty regimes and customary law principles in a harmonious way.⁵ **China** takes an even more stringent view, explicitly treating the climate treaty regime as *lex specialis* that takes precedence over other rules and regimes.⁶ **France** clearly adopts a more progressive approach, closer to the Pacific SIDS perspective, emphasising that,

[w]hile these three conventions must be given central consideration in answering the questions put to the Court, they do not constitute the entire body of applicable law, which may also include other conventions or principles of customary international law relevant to identifying and clarifying the obligations of States in respect of climate change.⁷

Overall, the analysed countries' positions are not – or are only partly – aligned with the Pacific SIDS' position: obligations to protect the climate system arise not only under the Paris Agreement, but also under other treaties and general international law, and that these obligations go beyond what is required under the climate treaties.

Is state conduct in relation to climate change also governed by a duty of prevention under customary law?

In the context of applying the duty to prevent transboundary harm to climate change, **France** and **Japan** stand out among developed countries as the leading proponents of a progressive

4 See Australia Written Submission, para 1.9; UK Written Submission para 29–31; Germany, Written Statement, para 42.

5 New Zealand, Oral Submission, para 14, 17, 21, Written Statement para 30, 86; UK Written Comments para 35.3; Australia Oral Submission para 6; Japan, Oral Submission para 7.

6 China Oral Submission para 8.

7 France, Written Comments, para 19.

interpretation. Given the magnitude and intensity of the harm and the irreversibility of some climate impacts, they argue that the customary law principle of prevention supports requiring a heightened standard of due diligence (e.g. in the adoption of domestic legal frameworks, in good faith implementation and oversight thereof).⁸ This position comes closest to that of the Pacific SIDS, who argue that a state complies with its international duty of prevention only when it employs all means at its disposal to avoid harmful activities within its jurisdiction.⁹

The other analysed countries – developed and developing – mostly converge in rejecting the existence of a customary law duty of prevention in relation to climate change.¹⁰ They support this position with several arguments: First, climate harm is argued to be too diffuse and generally different from classic transboundary harm.¹¹ Second, the hurdles of establishing causation and attribution of harm to individual or groups of states would be insurmountable.¹² Third, there is no consistent practice and legal opinion among states in relation to a duty of prevention of climate change.¹³ The **UK**, **Australia** and **China** explicitly highlight that – in any event – any duty of prevention should not extend beyond what is required by the UNFCCC and Paris Agreement.¹⁴

Is the 1.5°C the legally binding mitigation target?

Nearly all of the selected countries are aligned with adopting the 1.5°C threshold – rather than the ‘well-below 2°C’ threshold – as the temperature target guiding collective and individual efforts.¹⁵ Some countries (the **UK**, for example), however, emphasise in their submissions that the 1.5°C threshold does not directly impose binding obligations on individual states.¹⁶ On the other hand, **France’s** and **Japan’s** submissions include particularly clear language, stating that Nationally Determined Contributions (NDCs) ‘must be framed in light of the 1.5°C temperature objective’ and firmly advocating enhanced mitigation ambition.¹⁷ In contrast, **China** distinguishes itself from the Pacific SIDS perspective, stressing that the 1.5°C–2°C long-term temperature goal represents a range rather than a singular 1.5°C target, and reiterating the political character of this target.¹⁸

8 France, Written Statement para 63; Japan, Written Comments paras 45, 46.

9 E.g. Vanuatu, Written Statements, p. 126, paras 269 f.

10 E.g. Canada, Written Statement para 31, Written Statements of China, paras 128-129; India, para 17; New Zealand, paras 96–103; Australia, para 4.10; UK, Written Comments para 34.

11 E.g. Australia, Oral Submission para 10; UK, Written Comments para 34.1; similar also the developing countries: India, Written Statement para 17; China, Oral Submission para 47.

12 E.g. UK, Written Comments para 34.2.

13 E.g. Australia, Oral Submission para 12, Canada, Written Statement para 31.

14 Australia, Oral Submission para 15; UK, Written Comments para 34; China, Written Statement para 131.

15 Australia, Written Statement para 1.21, 1.22; Oral Submission para 3(a); UK, Written Comments para 17.3; New Zealand, Written Statement paras 50, 52.

16 UK, Written Comments para 17.3.

17 France, Written Statement para 53; Japan, Written Statement paras 37-38; similarly also Germany, Written Statement para 44.

18 China, Oral Submission paras 29–30.

Does the Paris Agreement provide substantive and legally binding mitigation obligations that are particularly strict for historical emitters?

Most selected states view Article 4 of the Paris Agreement as **combining procedural obligations of result with substantive obligations of conduct**. Procedurally, Parties must prepare, communicate and maintain NDCs on a five-year cycle – a binding duty not met by best efforts alone but by actual submission. Substantively, achieving NDC content is an **obligation of conduct**: states must pursue domestic measures with due diligence, in good faith, and with progressive ambition, consistent with the temperature goal.

More conservative readings (e.g., UK, Australia, New Zealand) accept this dual structure, though they stress its procedural character and the limits of enforceability.¹⁹ **More progressive views** (e.g., France, Germany, Canada, Japan) underline that the procedural steps are inseparable from substantive elements, such as ambition and alignment with the temperature goal, making the hybrid nature of these obligations more explicit.²⁰ **Major developing countries** add another layer: China affirms that NDCs are legally binding obligations of conduct but must be interpreted through equity and CBDR, while India anchors differentiation more firmly in historical responsibility and national capacity, placing the lead burden on developed countries.²¹

On differentiation, **Germany, Canada, UK, Australia** and **New Zealand** take a conservative position in their submissions, only vaguely confirming explicit differentiation within the UNFCCC and Paris Agreement.²² They argue that the Paris Agreement left behind the fundamental bifurcation between developed and developing countries in relation to mitigation of climate change. **France** and **Japan** take a more progressive perspective and highlight that the requirement for developed countries to take a leading role is binding and translates to concrete enhanced standards of due diligence for developed states.²³ **Japan** concretises this by referring to ‘significantly enhanced ambition’ aligned with a 1.5°C pathway and net zero by 2050 at the latest.²⁴ However, all **developed countries** are aligned in the position that the principle of CBDR-RC does not refer to historical responsibility, i.e. the historical distribution of emissions, but only to the present share of global emissions. This stands in contrast to the Pacific SIDS’ position as well as that of other developing countries like **China** and **India**. **China** stresses that developed countries

19 UK, Written Comments, paras 22–23; AUS, Written Comments, paras 2–28; New Zealand, Written Statement, paras 48–54.

20 France, Written Reply, Answer to Question 2; Germany, Written Statement, paras 43–52; Canada, Written Reply, pp. 2–3; Japan, Written Reply, pp. 2–3.

21 China, Written Reply, pp. 5–7; India, Written Statement, paras 22–29.

22 Australia, Written Statement para 1.22.

23 France, Written Statement para 56.

24 Japan, Written Statement, paras 37–38.

should assume obligations and responsibilities different from those of developing countries based on the rules of the Paris Agreement, their historical responsibility, and the pressing need to bridge global climate governance deficits.²⁵

While the **UK** and **New Zealand** in particular argue that CBDR only exists in the norms of the UNFCCC and Paris Agreement, and that it is not a principle of customary international law,²⁶ Pacific SIDS advocate CBDR being a stand-alone principle of international law governing states' conduct in relation to climate change.

Does international law specifically require the adoption of measures to rapidly transition away from fossil fuels?

Regarding transition away from fossil fuels, the conservative perspective, represented by the **UK**, **Australia** and **Canada**, recognises the outcome of the COP28 Global Stocktake only as political guidance. Highlighting sovereignty over natural resources, these states emphasise that obligations in relation to fossil fuels remain an issue of national discretion.²⁷ These submissions even allude to the possible necessity of fossil fuel production to fulfil human rights obligations.²⁸ **China** and **India** as major developing countries take a similar position, highlighting the need for special consideration of fossil-fuel dependent economies.²⁹ This is in direct conflict with the position of the Pacific SIDS, who argue that the transition away from fossil fuels is a legal baseline that gives rise to obligations to halt further fossil fuel exploration and investments. **France** and **Japan** very cautiously tend toward the Pacific SIDS perspective, stating that collective efforts should not be undermined by inaction.³⁰ They argue that specific measures in relation to the production of fossil fuels must be reflected in the NDCs but that there is a wide margin of discretion for states.³¹

25 China, Written Statement paras 65,67.

26 UK, Written Statement paras 136–137; New Zealand, Written Statement, para 28(b), 61; Written Comments, paras 26–29.

27 Australia, Oral Submission, para 3; UK, Reply paras 1–3; Canada, Reply p. 1.

28 UK, Written Comments para 49.

29 China, Reply paras 2–4; India, Reply paras 2–3, also highlighting that fossil fuels, while produced in specific territories, have historically been used globally, so obligations could be confined only to producing states.

30 Japan, Reply, p. 2.

31 France, Reply.

Table 1 Alignment with Pacific SIDS on issues of political self-determination

Pacific SIDS position on legal issues of political self-determination	UK	AUS	GER	CAN	NZ	JAP	FRA	CHN	IND	Advisory Opinion
Relevant law extends beyond UNFCCC/Paris Agreement	Partially aligned	Partially aligned	Partially aligned	Partially aligned	Partially aligned	Partially aligned	Mostly aligned	Not aligned	Partially aligned	Aligned
Customary duty of prevention governs State conduct	Not aligned	Not aligned	Not discussed	Not aligned	Not aligned	Mostly aligned	Mostly aligned	Not aligned	Not aligned	Aligned
1.5°C as binding mitigation target	Partially aligned	Partially aligned	Mostly aligned	Not discussed	Partially aligned	Mostly aligned	Mostly aligned	Not aligned	Not discussed	Mostly aligned
Substantive and binding mitigation obligations under the Paris Agreement	Mostly aligned	Mostly aligned	Aligned	Aligned	Mostly aligned	Aligned	Aligned	Aligned	Aligned	Aligned
Due diligence standard is stringent/heightened	Unclear	Unclear	Unclear	Unclear	Unclear	Aligned	Aligned	Unclear	Unclear	Aligned
Enhanced mitigation obligations for developed countries based on CBDR, including historical emissions	Not aligned	Not aligned	Not aligned	Not aligned	Not aligned	Partially aligned	Partially aligned	Aligned	Aligned	Mostly aligned
International law requires specific measures to implement a rapid transition away from fossil fuels	Not aligned	Not aligned	Not discussed	Not aligned	Not discussed	Partially aligned	Partially aligned	Not aligned	Not aligned	Mostly aligned
Statehood and maritime zones must persist despite sea-level rise	Not discussed	Aligned	Not discussed	Not discussed	Aligned	Not discussed	Not discussed	Not discussed	Not discussed	Mostly aligned

Note: See more detailed table in the Annex.

2.2.2 Human rights protection and cultural self-determination

Some of the analysed countries did not address the issue of **climate-induced migration and displacement** in their submissions (**Germany, Canada and Japan**). The **UK** acknowledges the reality of climate migration but adopts a conservative stance by rejecting any expansion of international law to create a new category of ‘climate refugees’. It maintains that existing refugee and human rights obligations continue to apply but are not broadened by climate impacts.³² **France, Australia and New Zealand** take a slightly more progressive position which comes closer to the Pacific SIDS’ position but does not align fully. **Australia** highlights its role in promoting the *Global Compact for Safe, Orderly and Regular Migration*, seeking to minimise the drivers of forced migration, including climate change and environmental degradation.³³ **France** positions climate migrants within a broader human rights framework, pointing to the Paris Agreement preamble and UNFCCC commitments that call on Parties to respect and promote human rights, including those of migrants and vulnerable groups.³⁴ **New Zealand** generally emphasises cultural self-determination in the Pacific context, underscoring its recognition of the specific vulnerabilities of Indigenous Peoples in climate-affected regions.³⁵

Major developing countries do not engage directly with the issue of climate migrants. China makes no explicit reference to cross-border or internal displacement in the materials reviewed. India, however, acknowledges the rights of migrants and displaced persons in a human rights context, referencing the Paris Agreement preamble and UN Human Rights Council resolutions. Nonetheless, this recognition does not extend to a binding legal duty, leaving the matter within the realm of soft law and general human rights obligations.³⁶

The specific issue of **protecting culture, identity and the rights of future generations** is reflected very unevenly among the country submissions analysed. Most developed countries acknowledge the climate change impacts on cultural rights and future generations. **New Zealand** even highlights cultural self-determination through its references to Tokelau and the Pacific, stressing the centrality of the ocean to identity, livelihoods and heritage.³⁷ Despite this, most developed countries relativise the legal relevance and adopt a narrow reading of respective obligations. **Canada and Germany**, for example, explicitly reject the application of human rights to future generations.³⁸ Instead, from a conservative developed country position, intergenerational equity and self-determination are proposed as interpretive principles under the Paris Agreement, while at the same time rejecting their nature as lone-standing rules of

32 UK, Written Statement para 163.

33 Australia, Written Statement para 1.20.

34 France, Written Statement para 113.

35 E.g. New Zealand, Written Statement paras 9–12.

36 India, Written Statement paras 77,78.

37 New Zealand, Written Statement paras 9–12, 123, 144.

38 Canada, Written Statement paras 25-29; Germany, Written Statement paras 92,101.

customary international law.³⁹ The **UK** acknowledges the cultural and identity-related impacts of climate change, particularly for SIDS, but only frames these impacts descriptively and not as informing legal obligations.⁴⁰ **Australia** explicitly recognises the specific vulnerability of SIDS and future generations, highlighting that children and young people will bear the greatest exposure to climate change.⁴¹ It also refers to specific cultural rights linked to territory, ecosystem and resource use, thereby framing participation and consultation as obligations in climate decision-making.⁴² Contrary to the Pacific SIDS' argument, the analysed developed states also argue that human rights only apply extraterritorially in exceptional circumstances, requiring a case-by-case assessment.⁴³

Major developing countries, such as **China**, position cultural and intergenerational protection within a broader equity and sustainable development framing. It stresses both intra- and intergenerational equity, calling for equitable access to resources and protection of the climate system for present and future generations.⁴⁴ **India** similarly recognises intergenerational equity and cultural rights via the Paris Agreement preamble and Human Rights Council resolutions, explicitly referring to migrants, Indigenous Peoples and vulnerable groups.⁴⁵ India's submission highlights equitable access to the carbon budget for developing countries as an integral component of protecting future generations.⁴⁶ Overall, **China** and **India** emphasise equity, intergenerational fairness and human rights in relation to culture and future generations, but frame these primarily as expectations based on treaty norms rather than binding customary law obligations.

39 E.g. UK, Written Statement para 128; Written Comments para 38; towards stronger human rights relevance of the intergenerational dimension of climate impacts: France, Written Statement para 118; and Australia, Written Statement para 1.34.

40 UK, Oral Submission para 6.

41 Australia, Written Statement paras 1.33–1.34.

42 Australia, Written Statement para 3.63.

43 Canada, Written Statement para 28; Germany, Written Statement para 92; Australia, Written Statement para 3.64; France, Written Comments para 24; Written Statement para 134.

44 China, Written Statement paras 31–33; Oral Submission para 17.

45 India, Written Statement paras 77–79, Conclusions vii.

46 India, Written Statement, Conclusions vii.

Table 2 Alignment with Pacific SIDS on issues of cultural self-determination

Pacific SIDS position on legal issues of cultural self-determination	UK	AUS	GER	CAN	NZ	JAP	FRA	CHN	IND	Advisory Opinion
States must ensure protection, cooperation, and assistance for climate-related displacement and migration	Not aligned	Partially aligned	Not discussed	Not discussed	Not discussed	Not discussed	Not discussed	Not discussed	Not discussed	Aligned
International law requires a human rights-centred approach to mitigation of climate change	Not aligned	Not aligned	Not aligned	Not aligned	Not aligned	Not aligned	Mostly aligned	Not aligned	Not aligned	Aligned
Human rights-related duties apply extraterritorially	Not aligned	Not aligned	Not aligned	Not aligned	Not aligned	Not discussed	Not aligned	Not aligned	Not aligned	Partially aligned
International law provides specific protection for cultural identity in the face of climate change	Not aligned	Partially aligned	Partially aligned	Not aligned	Partially aligned	Not discussed	Mostly aligned	Partially aligned	Partially aligned	Mostly aligned
Human rights create binding obligations towards the protection of future generations	Not aligned	Not aligned	Partially aligned	Not aligned	Not aligned	Not discussed	Partially aligned	Not aligned	Mostly aligned	Partially aligned

2.2.3 Climate finance, loss and damage & economic self-determination

In terms of economic self-determination, **loss and damage** is a core issue of climate justice for Pacific SIDS, and it entails not only legal obligations under the treaty regime but also reparations under international law. This is contrasted by developed countries who take a cautious or restrictive perspective on loss and damage. **Most developed countries** reject the framing of support for loss and damage suffered as a legal obligation and emphasise its voluntary and cooperative nature.⁴⁷ This is supported by the argument that the Paris Agreement is ‘future-oriented’, meaning that it does not allow for claims of loss and damage under its framework.⁴⁸ The **UK** and **New Zealand** express their full support of the Loss and Damage Fund, but they frame it as cooperative funding under the Paris Agreement based on solidarity rather than reparations, stressing that financing obligations can only derive from treaty norms.⁴⁹ A slightly more progressive approach is taken by Australia and France. **Australia** highlights the difficulty of addressing loss and damage under the principles of state responsibility and emphasises the dynamic and evolving nature of loss and damage as a key component of cooperative treaty mechanisms.⁵⁰ **France** also supports an expanded role for financial resources based on equity and distributional justice, endorsing the polluter pays principle.⁵¹ However, France also insists that the Loss and Damage regime must remain distinct from state responsibility.⁵² In this regard, France underlines that ‘an individualizable financial assessment of the damage arising from climate change would be difficult to carry out in practice’.⁵³

China, as a major developing country, also rejects framing loss and damage as an issue of liability. Instead – similar to developed countries – China positions loss and damage strictly within the cooperative architecture of the UNFCCC and Paris Agreement, stressing that any financial flows between developing countries are voluntary and without legal obligation.⁵⁴ By contrast, India adopts a much stronger stance, insisting that developed countries bear primary responsibility given their historic emissions, greater financial capacity, and obligations under the UNFCCC/ Paris Agreement.⁵⁵ India stresses that adherence to climate justice and the principle of equity is essential for determining injury and attributing responsibility, warning that disregarding these principles would cause grave harm to developing countries that are not primarily responsible for the consequences of climate change.⁵⁶ While India refers to remedies like cessation, non-

47 E.g. Germany, Written Statement paras 27-28; Japan, Written Statement paras 44, 47; Written Comments paras 77-79; Canada, Written Statement paras 33-35.

48 Germany, Written Statement paras 61-62.

49 UK, Written Statement para 161.4; Oral Submission para 42; New Zealand, Oral Submission para 32; Written Statement para 28(e)).

50 Australia, Written Statement para 5.10; Written Comments paras 2.40-2.41.

51 France, Written Statement paras 246-250.

52 France, Written Statement paras 230-231, 235.

53 France, Written Statement para 203.

54 China, Oral Submission paras 42, 50; Written Statement paras 87, 90.

55 India, Written Statement, conclusions ix-x.

56 India, Written Statement, conclusions ix.

repetition, and full reparation, it does not elaborate further on their scope. It nevertheless underscores that developed countries must contribute a significant share to the Loss and Damage Fund.⁵⁷

Besides loss and damage support, Pacific SIDS underline the relevance of **climate finance** as fundamental to their survival and self-determination. The position of developed countries on climate finance is similar to that on loss and damage. Most analysed developed states emphasise that obligations flow exclusively from the climate treaties and are built on voluntary cooperation. The **UK** highlights Article 9(1) of the Paris Agreement as a binding duty for developed countries, citing its pledges of US\$2 billion to the Global Climate Fund (GCF, 2024–27) and a tripling of adaptation finance to £1.5 billion by 2025, and stresses reforms to improve access for Least Developed Countries (LDCs) and SIDS.⁵⁸ **New Zealand** echoes this approach, noting that developed countries collectively mobilised US\$115.9 billion in 2022 and underlining its own NZ\$1.3 billion (US\$0.75 billion) package for 2022–2025, with at least 50% directed to the Pacific. New Zealand also underscores the obligation of developed countries to provide climate finance under Article 9 of the Paris Agreement.⁵⁹ **Japan** describes climate finance as an act of solidarity rather than legal responsibility, while still pledging to assist island nations in building sustainable and resilient economies.⁶⁰ **Germany** denies any legal obligation to provide financial support for vulnerable states.⁶¹ Some developed states, however, adopt a more progressive narrative, linking finance more directly to equity and the special needs of SIDS. **Australia** underscores that ‘international cooperation and instruments related to sustainable development and humanitarian action are also essential’ to resilience.⁶² It commits AU\$3 billion (US\$2 billion) between 2020 and 2025, including AU\$1.3 billion earmarked for the Pacific, and announces contributions of AU\$100 million to the Pacific Resilience Facility, as well as AU\$50 million to the GCF.⁶³ These measures are presented as targeted support for Pacific adaptation, resilience, and loss and damage response. **France** advances a similar emphasis on equity and distributional justice, endorsing the polluter pays principle and stressing that finance mobilisation must ‘progress beyond previous efforts’ while taking account of ‘the priorities and needs of developing country Parties’, especially prioritising SIDS and LDCs.⁶⁴

The major developing countries go further, portraying climate finance as a clear obligation of developed countries grounded in historic responsibility and capacity. **China** notes that developed countries provided only US\$21–24.5 billion of targeted finance in 2020, far short of actual need, and insists that developed countries are ‘required to effectively provide financial, technological

57 India, Oral Submission para 34; Written Statement para 90.

58 UK, Written Statement paras 153–160.

59 New Zealand, Written Statement paras 13, 28(e), 63–65; Oral Submission para 15.

60 Japan, Written Statement paras 44, 47; Written Comments paras 77–79.

61 Germany, Written Statement paras 27–28.

62 Australia, Written Comments para 2.4.

63 Australia, Written Statement paras 1.13–1.14.

64 France, Written Statement para 235.

and capacity-building support’ in accordance with CBDR-RC.⁶⁵ China explicitly notes that ‘any finance flow between developing countries remains completely voluntary without any legal obligation’.⁶⁶ It calls for at least US\$300 billion annually by 2035 and a doubling of adaptation finance by 2025.⁶⁷ **India** takes an even stronger position, arguing that ‘responsibility has to be unequal and commensurate with the differential contribution to... degradation’,⁶⁸ and that developed countries, having reaped economic benefits from environmental harm, must bear primary responsibility. India demands US\$1 trillion annually post-2025,⁶⁹ criticises reliance on loans and the mitigation-heavy balance of existing finance⁷⁰ and calls for predictable, grant-based flows to address the immense financing needs of developing countries.

The third issue of economic self-determination from a Pacific SIDS perspective relates to the right to development and, specifically, to the **ability to pursue sustainable development**. While developed states acknowledge the right to development for developing countries, they emphasise in their submissions that this would not exclude mitigation duties.⁷¹ **New Zealand**, for example, explicitly rejects the idea of a conflict between development and mitigation, stressing that the Paris Agreement ‘promotes both objectives in tandem’ and that unmitigated climate change itself frustrates development, rejecting the use of development as a shield against mitigation.⁷² **Japan** similarly positions development within cooperative support frameworks, pledging to assist island nations and other developing countries in building sustainable and resilient economies.⁷³ A more progressive developed country position, submitted by **Australia**, highlights equity considerations and the ‘intrinsic relationship’ between climate action, sustainable development, and poverty eradication, and underscores that international cooperation and humanitarian action are ‘essential’ to building resilience and reducing risks.⁷⁴ Major developing countries place the right to development at the heart of their submissions. **China** stresses that Parties have both the right and the responsibility to promote sustainable development, calling the right ‘collective and primary’ and distinguishing ‘luxury emissions’ of developed countries from ‘survival and developmental emissions’ of developing countries.⁷⁵ It portrays climate change as fundamentally a development issue, insisting that poverty eradication and access to energy remain legitimate priorities.⁷⁶ **India** likewise embeds the right to development in both domestic and international law, recalling the 1986 Declaration on the Right to Development and noting its incorporation into Indian

65 China, Written Statement paras 66, 73.

66 China, Oral Submission para 42.

67 China, Oral Submission paras 38, 42.

68 India, Oral Submission paras 38, 42.

69 India, Oral Submission para 26.

70 India, Written Statement paras 54–56.

71 E.g. France, Written Comments para 39.

72 New Zealand, Written Comments, paras 25–29.

73 Japan, Written Statement, para 47.

74 Australia, Written Comments, para 2.4.

75 China, Oral Submission para 16; Written Statement, paras 27–30.

76 China, Oral Submission para 16.

constitutional jurisprudence.⁷⁷ It warns against climate measures that could serve as disguised restrictions on international trade⁷⁸ and highlights that, while pursuing ambitious climate action, India's priorities remain poverty eradication and achieving the SDGs.⁷⁹

77 India, Oral Submission para 31.

78 India, Written Statement para 29.

79 India, Oral Submission para 36.

Table 3 Alignment with Pacific SIDS on issues of economic self-determination

Pacific SIDS position on legal issues of economic self-determination	UK	AUS	GER	CAN	NZ	JAP	FRA	CHN	IND	Advisory Opinion
International law requires substantial, new, and predictable resources for loss and damage (as obligations under the PA and state responsibility for harmful conduct)	Partially aligned	Partially aligned	Partially aligned	Not discussed	Partially aligned	Partially aligned	Partially aligned	Partially aligned	Partially aligned	Mostly aligned
Legal consequences under the law of state responsibility apply in relation to failure of due diligence	Not aligned	Partially aligned	Not discussed	Not aligned	Partially aligned	Not aligned	Partially aligned	Not aligned	Not aligned	Mostly aligned
States must enhance climate finance under the PA, but also as reparation for breaching climate obligations	Partially aligned	Partially aligned	Not aligned	Not discussed	Partially aligned	Not aligned	Partially aligned	Partially aligned	Partially aligned	Partially aligned

3 The ICJ's answer to Pacific SIDS' climate justice claims

At this point, it is worth returning to what Pacific SIDS hoped to achieve from the Advisory Opinion, and whether the Opinion can be seen as a step forward in their demands for climate justice. According to Pacific SIDS, states are legally required to engage in the following six actions:

1. **rapid, deep fossil-fuel-focused emission cuts** by those most responsible, aligned with best science, equity and fair-share mitigation
2. **recognition of continuous statehood** and stability of maritime zones notwithstanding sea-level rise
3. **protection, cooperation and assistance for climate-related displacement and migration**, safeguarding the full spectrum of rights
4. **a human-rights-centred approach** (including extraterritorial duties) protecting life, culture, self-determination, and the rights of future generations
5. **substantial, new, and predictable resources for loss and damage**, with compensation where obligations have been breached and for non-economic harms, and
6. **effective measures to close the climate-finance gap** and enable just, resilient and sustainable development – improved access, debt relief and technology transfer.

As a reminder, Pacific SIDS position these claims squarely within the **law of state responsibility**: where obligations to mitigate, protect and cooperate are breached, legal consequences will follow – cessation and assurances of non-repetition, as well as full reparation through restitution, compensation and satisfaction. This translates the Pacific SIDS' overall climate justice framing into concrete international legal duties and remedies.

3.1 Rapid, deep fossil-fuel-focused emission cuts

Pacific SIDS called for the Court to confirm that developed countries must, as a matter of law, accelerate their climate ambition. In answering the first question posed to it, the Court maintained the following:

- a. The 1.5°C temperature goal is 'the' objective of the Paris Agreement.⁸⁰
- b. Paris Agreement obligations are not only procedural, but also substantive. It is not enough just to publish an NDC; states have a further due diligence obligation (obligation of conduct) to implement their NDC with a view to meeting the overall 1.5°C temperature goal.⁸¹

⁸⁰ ICJ AO, para 224.

⁸¹ *Ibid.* paras 236 and 245.

- c. Current efforts in state NDCs do not reflect the ‘high/stringent’ due diligence obligation set under international law, which means that all states must increase their ambition.
- d. Furthermore, the Paris Agreement’s 1.5°C temperature goal informs the customary law obligation to prevent significant harm,⁸² which the Court confirmed applies to the protection of the climate system and is – again – a due diligence obligation.⁸³
- e. This customary obligation requires all states to do everything within their means to prevent significant harm. Because of the level of harm posed by climate change and its foreseeability, the level of due diligence required is high.⁸⁴

Pacific SIDS also asked the Court to determine that fossil fuel production must be limited, if not halted entirely, as a matter of law, rather than left to the discretion of states and their individual industrial policy preferences. Here, the Court agreed, in large part, with Pacific SIDS:

- a. The Court made it clear that both under the Paris Agreement and under customary international law the level of due diligence required is high, and that the adoption of fossil fuel related policies ‘may’ be a breach of such high level of due diligence since it would clearly undermine the temperature goal of 1.5°C.⁸⁵
- b. The Court also clarified that these stringent due diligence obligations extend to the activities of private actors within states’ jurisdiction and control.⁸⁶

3.2 Recognition of continuous statehood

Pacific SIDS sought clarity from the Court on their continued statehood, despite the loss of territory due to climate change-induced sea-level rise.

- a. The Court devoted significant time and space in its consideration of international human rights in the Opinion to confirm that the right to self-determination includes that, should a sovereign state lose part of its territory to climate change-induced sea level rise, its statehood does not ‘necessarily’ disappear.⁸⁷
- b. The Court emphasised that, in the context of climate induced sea level rise, the obligation to cooperate is of particular importance in finding and achieving equitable solutions that account for the rights of affected states and their populations.⁸⁸

82 Ibid. para 278.

83 Ibid. para 280 ff.

84 Ibid. para 275.

85 Ibid. para 246 (stringent level of due diligence), para 427 (adoption of fossil fuel related measures as a breach of such stringent level of due diligence).

86 Ibid. para 252.

87 Ibid. para 363.

88 Ibid. para 365.

Here, individual judges expressed their disappointment in several Separate Opinions and Declarations that the Court did not go further. Judge Aurescu, for example, lamented that the Court missed the opportunity to engage in a deeper, more nuanced analysis with more comprehensive legal findings and instead took an ‘excessively and unnecessarily cautious and minimalist’ approach on this issue.⁸⁹ Specifically, Judge Aurescu criticised the Opinion’s lack of reference to legal stability, recognition of fixed baselines and outer limits of maritime zones as customary legal norms in the context of sea-level rise,⁹⁰ the lack of reference to the non-applicability of the legal principle of *rebus sic stantibus* to existing maritime delimitations,⁹¹ and an insufficient elaboration by the Court on the presumption of the continuity of statehood in the face of sea-level rise.⁹²

In another example, ICJ Vice-President Sebutinde criticised the Court’s superficial treatment of this issue (‘once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood’),⁹³ stating:

In my view, such statements are little comfort to those small island States that are in imminent danger of losing substantial territory or completely disappearing off the map due to sea level rise.⁹⁴

Instead, Sebutinde maintains that the Court should have confirmed that a loss of territory due to climate-related sea level rise ‘shall not lead to the loss of its statehood or maritime entitlement’.⁹⁵

3.3 Protection, cooperation and assistance for climate-related displacement and migration

Pacific SIDS, in part linked to the possible loss of territory, sought a clear declaration from the Court that countries have an obligation to accept climate refugees.

- a. The Court clearly connected the adverse impacts of anthropogenic GHG emissions on the environment to the enjoyment of human rights, finding that states have a responsibility to promote the environmental conditions necessary to ensure the enjoyment of these rights.⁹⁶

89 Aurescu Separate Opinion, para 1.

90 *Ibid.* paras 2–13.

91 *Ibid.* paras 14–19.

92 *Ibid.* paras 20–22.

93 ICJ AO, para 363.

94 Sebutinde, para 8.

95 *Ibid.*

96 ICJ AO, paras 372–386.

b. The Court articulated a clear obligation under the principle of non-refoulement (the international legal principle prohibiting states from forcibly returning individuals to a country where they face serious threats of irreparable harm) when climate change impacts cause individuals to seek safety in other countries.⁹⁷

3.4 A human-rights-centred approach

The ICJ confirmed that there is an emerging human right to a clean and healthy environment, but the Opinion was not as clear as it could have been. Cultural and other rights are seen to be integral to such a human right, and states have a due diligence obligation to protect the climate system (stringent due diligence) in order to comply with their human rights obligations.⁹⁸

Several judges criticised the Opinion's lack of detail on the substance of the right to a clean, healthy and sustainable environment. While the Court recognised the right as a distinct norm of customary international law, Judges Bhandari and Aurescu, for example, both lament that the Court stopped short of further articulating its normative content and distinguishing it from general human rights.⁹⁹

In her Separate Opinion, Judge Charlesworth, criticising the brevity of the Court's treatment of the right, elaborated on a human rights-centred approach to climate change obligations. Specifically, Judge Charlesworth acknowledged that the Court confirmed the existence of the right to a clean and healthy environment, referring to it as 'inherent', a 'precondition' to or 'essential' for the effective enjoyment of human rights.¹⁰⁰ She points out, however, that the Court failed to elaborate on the contents of this right, which in her view entails both substantive and procedural features, as well as obligations toward vulnerable groups.¹⁰¹ In Judge Charlesworth's view, states have a particular obligation to protect the human rights of vulnerable groups, including paying attention to potentially discriminatory effects of measures taken to respond to climate change.¹⁰²

3.5 Substantial, new and predictable resources for loss and damage

The Court frames issues related to loss and damage in terms of the duty to cooperate and ultimately leaves it to state parties to select the appropriate means of cooperation, so long

97 Ibid. para 378.

98 ICJ AO, paras 387–393.

99 Bhandari, para 3, Aurescu, paras 27–46.

100 ICJ AO para 393.

101 Charlesworth, paras 8–12.

102 Ibid. paras 13–29.

as these are consistent with their due diligence obligations.¹⁰³ Beyond financial assistance, technology transfer and capacity-building, which are all prescribed by the Paris Agreement, the Court did not identify additional obligations to cooperate on loss and damage.¹⁰⁴

In relation to loss and damage-related responsibility for breaches of obligations, the Court determined that ‘well-established rules on state responsibility’ and customary law are to be applied.¹⁰⁵

Several judges criticise the Court for not going far enough on this point. Vice-President Sebutinde, for example, believes the Opinion should have specified that reparation and remedies for climate-related loss and damage could include monetary compensation, recovery and prevention for biodiversity and coastal erosion, as well as disaster relief, technological transfer and – crucial for Pacific SIDS – debt relief.¹⁰⁶

3.6 Effective measures to close the climate-finance gap

Pacific SIDS, in their submissions, requested that the Court clarify that under international law, climate finance must be increased, and that financial funds should also come in the form of **compensation** for the breach of international law obligations related to climate change.

While the Court agreed that, in principle, monetary compensation is possible for breaches of international obligations, it also maintained that quantifying such compensation will be very challenging.¹⁰⁷

Judge Bhandari, in his Separate Opinion, suggests that the Court could have proposed specific mechanisms to provide for compensation in situations where the full extent of damage cannot be fully ascertained, and suggests the UN General Assembly should consider developing them instead. This could include, in Judge Bhandari’s view, a special fund to which developed and affluent states should ‘contribute generously’ and that could be crucial to support equitable and effective responses to climate change.¹⁰⁸

3.7 The law of state responsibility

Finally, on the very important matter of whether climate change-related state obligations carry legal consequences, the Court clarified:

103 ICJ AO, para 261.

104 Ibid. para 262.

105 Ibid. para 420.

106 Sebutinde, para 12.

107 Ibid. para 454.

108 Bhandari, para 8.

- a. Its role is not to decide whether one country in the proceedings (or a ‘handful of States’ as it is often termed by Pacific SIDS) is responsible for the breach of international law.¹⁰⁹
- b. However, it also said that its role was to lay out the ‘general’ framework applicable to 1) determine whether international responsibility arises, 2) who can invoke such responsibility, and 3) which remedies can be invoked.¹¹⁰
- c. It will be for future situations / disputes / courts to test this general framework but many of the legal matters that other Parties considered to be difficult, hence impossible under international law,¹¹¹ were deemed the opposite by the Court.

In particular, the assertion that the Paris Agreement is *lex specialis*, taking precedence over other sources of law, was clearly rejected by the Court.¹¹² Further, the Court determined that the challenges of attribution and causation are not insurmountable when determining international legal responsibility for the breach of conventional or customary international legal obligations.¹¹³ Interestingly, the Court affirmed that ever-increasing scientific data make allocation of specific emissions to specific countries more likely.¹¹⁴ When it comes to reparations, the Court opened the door to the inclusion of rebuilding climate-damaged infrastructure.¹¹⁵

Here again, however, the Court received quite a bit of criticism in the Separate Opinions and Declarations. For example, Judge Bhandari would have liked to see greater specificity in the Court’s handling of legal consequences, including the identification of ‘concrete instances of legal consequences arising from the established breaches.’¹¹⁶ Judge Bhandari went further still suggesting that the Court could have declared that cessation would require ending practices that support high-emitting industries and the adoption of effective policies to facilitate deep and rapid cuts in greenhouse gas (GHG) emissions.¹¹⁷

Judges Xue and Yusuf focused also on the scientific grounding elaborated in great detail by the IPCC as the factual basis for determining any legal consequences.¹¹⁸ Judge Yusuf goes even further, claiming that the Court’s failure to make a clear distinction between those states who have great responsibility for significant harm and those who have been injured for purposes of legal consequences ‘fundamentally undermined the legal relevance’ of the Court’s Opinion.¹¹⁹

109 Ibid. para 106.

110 Ibid. para 406.

111 Ibid. para 275, 429 (cumulative nature of emissions linked to climate change), para 425 ff (attribution), para 433 ff (causation).

112 Ibid. para 407 ff.

113 Ibid. para 275, 429 (cumulative nature of emissions linked to climate change), para 425 ff (attribution), para 433 ff (causation).

114 Ibid. para 429.

115 Ibid. para 451.

116 Bhandari, para 4.

117 Bhandari, paras 3–4.

118 Xue, paras 2–4, Yusuf paras 12–19.

119 Yusuf, para 36.

4 Implications for the operationalisation of climate justice from a SIDS perspective

The ICJ has provided a normative tapestry upon which both political and legal strategies aimed at operationalising climate justice can be developed.

4.1 Political/diplomatic strategy

Starting with political strategy, the Court provided the clear confirmation in law that all countries must do their utmost to tackle climate change. This stringent due diligence obligation is not optional. Developed states (those handful of states most responsible for climate change) can no longer claim that their obligations under the Paris Agreement are purely procedural. They can no longer assert that they have no obligations under customary international law to protect the climate system. Importantly, they can no longer legitimately argue that approving new oil, gas and coal licences for future production is clearly lawful under international law.

While not a legally binding decision in itself, the Advisory Opinion is a restatement of what international law requires in relation to the specific questions posed to the Court, amounting to a clarification of the legally binding obligations that already exist under international law. However, ‘legally binding’ means different things under international law than it does under (most) domestic legal systems. Enforcement of binding legal obligations is highly intertwined with power and international relations, and climate change is not inherently different from any other area of international relations.

The question thus becomes where and for what purpose the illegality of the action of the handful of countries most responsible can be presented in the most effective way. In other words, something akin to a name and shame strategy might be considered. A first obvious place to deploy such a strategy is at the climate Conference of the Parties (COPs). For years, SIDS and other highly impacted states have worked hard to include explicit mention of fossil fuels in the text of COP Decisions, often to no avail. The ICJ’s Advisory Opinion provides support for an insistence on references to fossil fuels (the cause of the problem) to be included in COP Decisions whose aim it is to contribute to the solution to the problem of climate change.

But climate COPs are not the only forum where a political/diplomatic strategy can be impactful. The Court’s clear findings that obligations to protect the climate system are found in a plethora of international treaties can be deployed in several other international processes. Just to name a few in which Pacific SIDS play a key role: the ongoing – challenging – plastics treaty negotiations are

directly and inherently related to fossil fuel production due to the very nature of plastics.¹²⁰ The stringent due diligence obligation to protect the climate system as identified by the Court could have a positive domino effect in relation to reducing plastic use and pollution. Another important international process is the implementation of the Fourth UN Finance for Development process, which ended in Seville in May 2025.¹²¹ The Court's articulated stringent due diligence obligation to implement obligations under the Paris Agreement is not limited only to mitigation, but also to adaptation and, importantly in this respect, to finance.

The ICJ's Advisory Opinion also opens the door to other pathways to advocate for additional climate-related finance flows. While the Court stopped short of elaborating further funding for loss and damage, it did clarify that remedies for the breach of international law obligations – including the stringent due diligence obligations the Court identified – can take the form of monetary compensation, such as reparations, restitution and, in exceptional circumstances, a global sum. The detailed further analysis offered by many of the Separate Opinions and Declarations, critical of the Opinion's lack of detail and normative content, point to an openness on the Court to monetary contributions by high-emitting states as compensation for climate-related damages. While the Court itself did not address it in detail, individual judges invoke the polluter pays principle, as well as the potential for compensation for acts not prohibited by international law, indicating an openness to shifting the focus from the action causing harm to the harm itself.

The Court's positioning of many aspects of international legal obligations as they pertain to climate change within the duty to cooperate and with a view toward sustainable development opens further avenues for operationalising climate justice. From territorial loss not 'necessarily' leading to a loss of statehood to a finding that protection of the climate system is a necessity for the full enjoyment of human rights, the Court provided ground for legally challenging state actions in contravention of these principles.

4.2 Legal/litigation strategy

From a legal/litigation perspective, states must decide whether to build on the outcome of the ICJ AO (and on the International Tribunal for the Law of the Sea and Inter American Court of Human Rights AOs) to pursue domestic and/or international litigation. Here there are two important strategic questions: which kind of court to target and what kind of remedy to seek.

The first strategic decision is whether to bring a case before an international court (which, given the nature of the Opinion, would be a logical forum) or before domestic courts. Starting with the latter, while direct legal action by one state against another within national court systems is impractical (and typically legally impossible), strengthening existing ties with supportive civil

120 See, e.g. <https://news.un.org/en/story/2025/08/1165658>.

121 <https://unfoundation.org/the-fourth-international-conference-on-financing-for-development>.

society in leading high-emitting countries could open avenues to litigation in domestic courts. Another pathway to national courts is along the routes taken in the *Lliuya v RWE AG* or *Asmania et al v. Holcim* cases whereby people from an impacted state bring a private actor to court in the judicial system of that actor's jurisdiction.¹²² Here it is important to stress that the Court clarified that the stringent level of due diligence also applies to activities and operations from non-state actors (e.g. a carbon major) operating within the jurisdiction of a high-emitting country. The entire Advisory Opinion would be nonsensical if that were not to be the case. The vast majority of global GHG emissions come from carbon-intensive private sectors. If they were not included in state obligations to protect the climate system, the actions and omissions of states would not be able to contribute to the protection of the climate system.

Internationally, there is significant potential for a new wave of climate change litigation in the wake of the ICJ's Opinion. The Court clarified that international legal obligations relating to climate change are found in the climate change legal regime, as well as a significant number of other international legal regimes, as well as in customary international law. Further, the Court highlighted that the nature of the international legal obligation to protect the climate system is of an *erga omnes* nature. These two obscure Latin words have the potential to act as an earthquake to the international legal system. Put simply, *erga omnes* means that the legal interest at stake is owed to the international community as a whole. Due to their nature, such obligations can be invoked not only by a directly injured state, but by any member of the international community, i.e., by any state. This means that a high-emitting state can be brought before international legal courts on climate-related legal grounds on behalf of the international community.

The Court explicitly left the door open to future legal disputes by declining to identify the legal responsibility of any specific state or group of states for climate-related harms or breaches of international legal obligations, determining instead that this must be evaluated on a case-by-case basis.

122 <https://climatecasechart.com/non-us-case/liiuya-v-rwe-ag/>; <https://climatecasechart.com/non-us-case/four-islanders-of-pari-v-holcim>.



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