Advisory Opinions on Climate Change – A Legal Bedrock of State Responsibility: The IACtHR Opinion on the Climate Emergency and Human Rights
30 July 2025, 4:00 pm - 5:15 pm on Zoom (Singapore Time)

On 3 July 2025, the Inter-American Court of Human Rights (IACtHR) issued the long-awaited Advisory Opinion (AO) on the climate emergency and human rights requested by Chile and Colombia. The historic opinion detailed how the existing legal obligations of States under the American Convention on Human Rights apply in the urgent context of the climate emergency and intersect with human rights. The rich tableaux of issues addressed by the AO ranged from the nature of the right to a healthy climate, the legal personality of nature, the obligation not to create irreversible damage to the climate and global environment as a jus cogens norm, a climate-focused regime of reparations, the development of a pro natura principle of interpretation of international obligations, the investment law–climate–human rights nexus, and associated procedural rights and obligations among others. What are the implications of the IACtHR's AO for states, corporates, civil society, and peoples and communities? This webinar was the first in a series of three webinars convened by the Centre for International Law exploring climate-related AOs by the IACtHR and the International Court of Justice.

Ms. Catalina Fernández Carter, Head of the Department of Multilateral Human Rights Protection Systems and Bilateral Affairs, Ministry of Foreign Affairs (Santiago, Chile) delivered her address via a recorded message. Ms. Carter first opined on Chile's and Colombia's decision to request an AO from the IACtHR. She explained how the mobilising effect of the language of human rights helps different groups (e.g. civil society, academia) push states to be more ambitious in addressing the climate crisis. As the IACtHR's decisions have a profound impact in Latin American jurisdictions, Ms. Carter highlighted that the language of human rights can serve as a powerful tool to address the challenge of enforcing international law. This is because domestic tribunals and politicians often rely on international law to justify domestic decisions. Further, as a human rights tribunal, the IACtHR offers a vital platform for various stakeholders like civil society, indigenous communities, academia, and scientists, to participate. Thus, the opportunity for the victims of the climate crisis to appear before an international court was symbolically significant.

Ms. Carter then highlighted three key aspects of the AO that she found particularly relevant. First, Ms. Carter noted that Latin America, like the Pacific Islands, has suffered disproportionately from the effects of the climate emergency despite contributing minimally to it. She noted that the IACtHR addressed this imbalance by attempting to articulate the elements of the duty to cooperate, especially for states with historically larger contributions to the crisis or with more economic resources to assist countries that are disproportionately bearing the brunt of the climate crisis. Second, Ms. Carter observed that the IACtHR stressed that even countries with relatively low contributions to the climate crisis, such as Chile or Colombia, have a significant obligation to ensure their populations are protected through climate adaptation measures. Lastly, Ms. Carter highlighted how the IACtHR used the language of the Escazú Agreement to impose general obligations upon all states, or at least on all state members of the American Convention on Human Rights. The Agreement established procedural obligations such as access to information and access to justice. By integrating these high standards into the interpretation of rights under the

American Convention on Human Rights, the IACtHR may spur other regions to adopt similar frameworks. Ms. Carter concluded by expressing hope that the IACtHR's AO will initiate further dialogue on environmental issues, influencing both domestic and international legal discussions and spurring greater action on the climate emergency.

Professor Helene Tigroudja, Professor of Public International Law, Aix-Marseille University (France) and Visiting Research Professor, NUS, offered key reflections on the AO's significance, legal innovations, and broader implications for environmental justice. Prof Tigroudja began by commenting on the procedural aspects of the AO. She noted that the AO took longer than usual due to the unusually high number of submissions. Moreover, the IACtHR received an unprecedented number of briefs and delegations, which signified that the legal questions raised extended beyond Latin America and reflected global significance. Prof Tigroudja also highlighted how the IACtHR reframed the legal questions submitted by Chile and Colombia to focus on three pillars: (1) the substantive obligations of states in addressing climate change, (2) procedural rights and democratic participation, and (3) the protection of vulnerable groups such as indigenous peoples and environmental defenders. These pillars underscored the IACtHR's recognition of the climate crisis as a "polycrisis", which is a multifaceted global emergency requiring integrated, global dialogue across diverse perspectives. Prof Tigroudja further commended the IACtHR's underscoring of the duties of the executive, legislative, and judicial branches in addressing climate emergencies. She stressed the important role of the judiciary and encouraged domestic courts to adapt procedural rules for environmental claims to improve standards of evidence.

Prof Tigroudja proceeded to elaborate on the substantive content of the AO. She first drew attention to the IACtHR's recognition of nature as a subject of rights and their progressive move to legally articulate the duty to cooperate. She also highlighted how the AO linked environmental advocacy to broader human rights and democratic norms by addressing the criminalisation of climate protests and excessive use of force. Additionally, Prof Tigroudja underscored the importance of the IACtHR's recognition of the right to science and access to indigenous knowledge, especially in climate discourse. As misinformation poses tremendous risks, ensuring access to reliable scientific data and indigenous knowledge is crucial to informed policymaking. On its impact, Prof Tigroudja expressed that the AO, albeit advisory in form, carries binding interpretive authority. She noted that in contrast to European legal systems, many Latin American and Caribbean jurisdictions consider IACtHR AOs to be binding under domestic law, which heightens their legal and practical consequences. She argued that this bolstered why states were right to seek judicial guidance, as the AO has the potential to shape legal standards and stimulate climate action across the Americas and beyond.

Dr. Charalampos Giannakopoulos, Senior Research Fellow, NUS Centre for International Law, remarked that the few references to investment treaties in the AO carried significant implications for how states should approach climate mitigation and future investment treaty drafting. Dr. Giannakopoulos discussed three main points. First, Dr. Giannakopoulos expressed that the AO situated the relevance of investment treaties within the broader context of the right to a healthy environment and states' obligations to mitigate greenhouse

gas emissions. In light of states' duty of enhanced due diligence in their climate-related activities, the AO underscored the need for legal coherence between their climate obligations and other commitments, including those in finance, trade, and investment. Further, he noted that the AO cautioned that investment treaty obligations could conflict with states' climate and environmental obligations, which could lead to regulatory chill. However, such tension could be avoided through reforming investment treaty obligations such that they do not obstruct climate action. Additionally, he observed that the IACtHR encouraged states to review their current investment treaties and investor-state dispute settlement mechanisms to ensure that they do not restrict climate action or human rights compliance.

Second, Dr. Giannakopoulos opined on how the IACtHR's suggestions for states to mitigate their emissions and respect the right to a healthy environment could affect their investment treaty obligations. For example, the reduction of greenhouse gas emissions may entail a ban on carbon-intensive activities and the phasing out of fossil fuel extraction. If a state made an explicit promise or assurance to the investor at the time the investment was made that the challenged measure would not be adopted, which could predate the Paris Agreement, an investment tribunal may find the state liable for breaching its investment treaty obligations. Additionally, if a state adopts differential treatment between companies in the same or adjacent sectors based on their emissions, there may be a prima facie case of discrimination if some of the affected companies are mostly foreign owned, whereas the companies that receive the more favourable treatment are mostly domestic. Ultimately, a finding that a state breached its investment treaty commitments would depend on various factors, i.e. the manner in which the state implemented the measure, the public purpose justification, and the composition of the tribunal. Dr. Giannakopoulos concluded by stating that although the AO offers important statements to support states' mitigation measures (e.g. clear acknowledgement that corporate actors have responsibilities concerning climate change and its human rights impacts), he hopes that states will adopt climate change mitigation measures after a careful audit of their investment treaty portfolios, so as to reduce the risk of an investment treaty dispute.

Lastly, Dr. Giannakopoulos stressed the importance of investment treaty design in reducing the risk of an investment treaty dispute. He acknowledged that investment treaty reform is not new, as states have made efforts to create more regulatory space for public interest concerns, including environmental goals. Yet, results have been mixed. Some investment tribunals have used clauses that are meant to safeguard a state's right to regulate (e.g. environmental protection) to inform the interpretation of investment protection standards, while others have interpreted these clauses too narrowly, which arguably deprived those provisions of any useful meaning. Dr. Giannakopoulos concluded by expressing that his three points were selected highlights from the much broader and nuanced AO. Other issues, such as corporate obligations and access to justice, also intertwine with investment law and merit deeper exploration.

Ms Elizabeth Wu, Legal Consultant, ClientEarth, addressed the AO's potential impacts in relation to two categories of corporate actors. The first category of corporate actors was those within the Organization of American States (OAS). Ms. Wu highlighted the

remarkable extent to which the AO clarified and reinforced the legal obligations of member states of the OAS to regulate private actors, which increases the likelihood of traditional climate litigation against corporations and opportunities for crafting novel legal strategies grounded in environmental and human rights law. For example, the AO made clear that states must implement laws requiring companies to conduct mandatory human rights and environmental due diligence, disclose critical information, such as greenhouse gas emissions and the climate impact of their projects, and reduce their emissions to align with climate targets. She opined that such legal obligations significantly increase the chances of climate litigation within OAS member states. When coupled with the IACtHR's recognition of nature as a subject of rights, new types of claims may emerge. For instance, it may become possible for litigants to obtain standing to act on behalf of nature.

Ms. Wu then turned to address the implications for the second category of corporate actors, that is, companies based in non-OAS states. She observed that a ground-breaking aspect of the AO was the IACtHR's declaration that the obligation to prevent human-caused conduct that irreversibly harms the climate has attained *jus cogens* status. This elevated the obligation to a peremptory norm of international law, from which no derogation is permitted. Given these developments, non-OAS states might increasingly feel pressured to reflect emerging international legal norms in their domestic laws. This could include enhanced scrutiny of the foreign activities of their multinational corporations to prevent extraterritorial human rights and environmental harm.

Ms. Wu concluded by describing the AO as historic and exciting, and one that will influence how companies, insurers and investors operate by accelerating the global trend toward mandatory due diligence legislation. She emphasized that corporations should not wait for regulations before acting. Instead, they should proactively implement transition plans informed by the best available science and assess legal and supply chain risks across jurisdictions. For civil society actors, the AO serves as a useful tool that offers a strong foundation for advocacy based on clearly articulated international legal obligations.

Dr. Nilüfer Oral, Director, NUS Centre for International Law, highlighted the IACtHR's recognition of climate change as a "polycrisis", and an issue from which impacts no living thing will be shielded. This urgency called for the breaking down of traditional silos, such as the separation of human rights from climate and investment law. She also acknowledged that the AO's focus on private actors, including corporations, was significant. Dr. Oral also commented that the notion of *jus cogens* in the context of climate change and human rights could eventually affect investment treaties by opening novel ways of addressing undesirable corporate actions and their role in climate degradation. Dr. Oral concluded by conveying her appreciation for the panel's insights.