

**Advisory Opinions on Climate Change – A Legal Bedrock of State Responsibility:
The ICJ Advisory Opinion on the Obligations of States in respect of Climate Change
5 August 2025, 4:00 pm - 5:00 pm on Zoom (Singapore Time)**

On 23 July 2025, the International Court of Justice (ICJ) delivered a historic advisory opinion (AO) on the obligations of States in relation to climate change. Requested by the UN General Assembly and spearheaded by Pacific Island states, the AO confirmed that States have binding obligations under international law, including customary law and human rights law, to prevent and respond to the harmful effects of climate change. It emphasised the duty to cooperate, to act in line with the best available science, and to protect the rights of present and future generations. This webinar, the second in a series of three webinars convened by the NUS Centre for International Law, brought together a range of distinguished experts to unpack the AO, and explore its legal, political, and policy implications. From treaty interpretation and customary international law to climate litigation, State responsibility, and global equity, the panel offered diverse perspectives on how the AO may reshape the future of climate accountability and environmental justice, as well as how it may influence the evolving balance between climate commitments and economic development.

Dr. Ntina Tzouvala, Associate Professor, University of New South Wales (UNSW) Sydney, highlighted three positive aspects and one significant concern about the AO. First, Dr. Tzouvala commended the ICJ's reinterpretation of the principle of common but differentiated responsibilities and respective capabilities (CBDRRC). Unlike the Paris Agreement, which tied the principle solely to States' capabilities to mitigate and adapt to climate change, the AO went further to emphasise that the principle, particularly concerning common but differentiated responsibilities, was also grounded in the historical contributions of industrialised States to climate change. Dr. Tzouvala opined that this reinterpretation should guide the decisions of domestic and international courts, including investment tribunals, especially when they evaluate questions on climate change.

Second, Dr. Tzouvala welcomed the ICJ's approach to nationally determined contributions (NDCs). While the ICJ acknowledged the relevance of climate treaties, it rejected the notion that States have broad discretion in setting their NDCs. Instead, it found that NDCs must align with the Paris Agreement's overarching goal of limiting global warming to 1.5°C above pre-industrial levels. Dr. Tzouvala opined that this finding was important for global climate justice, especially for States whose immediate survival was threatened by climate change. She further noted that States' current NDCs would lead to global warming of at least 2.5°C, which far exceeds the agreed goal. Thus, the AO puts major emitters on notice that they are acting in violation of their obligations under the Paris Agreement. Third, Dr. Tzouvala praised the ICJ's bold stance against fossil fuels, expressly stating that licensing, subsidising and consuming them could be unlawful under international law and thus result in State responsibility. She observed that this went beyond the often watered-down language used in climate diplomacy and believed this aspect of the AO would have the most direct practical effect in assisting domestic and international litigation and establishing proper administrative frameworks for licensing and subsidies of fossil fuels.

Dr. Tzouvala's main concern was the ICJ's limited engagement with international economic law. For example, she believed that the ICJ missed an opportunity to engage more with investment treaties, specifically the compatibility between the fair and equitable treatment (FET) standard and climate obligations. She contended that as science progresses, the duty for States to exercise stringent due diligence under their climate change obligations should trump broad interpretations of the FET standard. Additionally, regarding State responsibility, Dr. Tzouvala opined that the ICJ should have addressed the question of necessity, and whether climate change constitutes, in whole or in part, necessity as a circumstance precluding wrongfulness. This was important given the narrow interpretation of necessity that investment tribunals have adopted. Nevertheless, she appreciated Judge Sarah Cleveland's separate opinion, which warned of a regulatory chill stemming from international investment law. Dr. Tzouvala also observed that the AO failed to address whether fossil fuel subsidies and licences were unlawful under international law.

Dr. Tzouvala concluded that the AO's impact will depend largely on how States and civil society activists utilise the ICJ's findings in domestic litigation and political action. She characterised the ICJ's reluctance to tackle international economic law as problematic, suggesting it reflects a misguided view that the role of international law consists primarily of broad positive contributions. She called for a more substantive engagement with the mechanisms of global economic governance, where international law can play a decisive role in addressing climate change.

Mr. Danilo Garrido, Legal Counsel, Greenpeace International, expressed a renewed sense of hope within civil society following the ICJ's AO. He attributed this significant legal moment to the initiative of civil society, particularly the efforts of Pacific Island students whose idea blossomed into an international campaign. Their advocacy achieved the impossible of securing a General Assembly resolution by consensus and obtaining a unanimous decision by the ICJ Judges. However, this achievement stood in stark contrast with the limited formal role civil society played during the proceedings. Mr. Garrido noted that while the ICJ officially hears only from States and international organisations, civil society still made an impact through written submissions and direct participation, thanks to countries like Vanuatu and the Netherlands yielding time to activists. Mr. Garrido also highlighted symbolic actions that he found deeply moving, such as a nearby museum displaying artefacts from survivors of climate disasters.

Additionally, Mr. Garrido opined that the AO offered promising pathways for future legal and political action. He pointed out how the AO's analysis of NDCs, which requires governments to pursue the highest possible ambition, opened the possibility for judicial review and domestic litigation, especially against developed States if they fail to do their fair share to address the climate crisis. Mr. Garrido also welcomed the unexpected but crucial language on fossil fuels, which offered an example of the duty to regulate companies in high-emitting sectors. He opined that such an approach could extend to other sectors, like agribusiness.

Although the AO stopped short of affirming that the right to a clean, healthy, and sustainable environment was customary, the ICJ nonetheless acknowledged that this right

underpins the enjoyment of many other fundamental rights, potentially bolstering future human rights claims where such a right is not yet constitutionally recognised. On the international domain, Mr. Garrido praised the AO's clarity in stating that States that breach climate obligations are subject to full reparations under international law, including cessation, restitution, and guarantees of non-repetition. He urged small island developing States to strategically deploy this language in upcoming negotiations to hold developed States accountable and push for more ambitious climate commitments and financial support. Even if the AO is non-binding, Mr. Garrido stressed that its recognition of certain duties as customary norms (e.g., the duty to prevent significant harm to the environment and the duty to cooperate) makes it politically and legally difficult for developed States, including major emitters like the US, to deny their obligations. The ICJ's findings on customary international law affirmed that countries remain bound by these obligations even if they exit climate treaties.

Mr. Garrido also stated that, although the ICJ made a ground-breaking statement that the loss of territory did not equate to the loss of statehood, he believed the court could have gone further in addressing the human rights impacts of territorial loss. He was particularly proud of Greenpeace's submission, which argued that States' deliberate omission to take necessary climate measures could amount to a use of force in certain circumstances, a bold and progressive argument supported only by the Dominican Republic. In summary, Garrido reiterated that the true power of the AO lies in how it will be used. While non-binding, it contained substantial findings that civil society, governments, and academia can draw upon. Such continued discussion and application of the AO will consolidate its relevance as a key instrument of international law.

Mr. Kenneth Wong, Senior Director / Senior State Counsel, International Affairs Division, Attorney-General's Chambers, Singapore, provided insights on Singapore's approach to the ICJ AO proceedings. Mr. Wong emphasised that Singapore was strongly supportive of Vanuatu's initiative from the outset and that the proceedings were an opportunity for Singapore to reaffirm its commitment to contributing to the global fight against climate change, which was consistent with its advocacy for international law-based solutions. Given Singapore's disproportionate vulnerability to climate change, the request for an AO was seen as a valuable tool to strengthen multilateralism, rules-based cooperation, and to advance progress under the United Nations Framework Convention on Climate Change and Paris Agreement frameworks, particularly in areas like mitigation and climate finance.

Mr. Wong focused his intervention on two areas: (a) the key messages Singapore conveyed at the proceedings; and (b) Singapore's initial thoughts on implementing the AO domestically and internationally. On (a), Mr. Wong observed that Singapore's pleadings advanced four main messages, which were reflected in the AO. First, regarding customary international law obligations, Singapore argued that States have duties of due diligence and cooperation to prevent significant harm to the climate system. At the oral hearings, Singapore stressed that the climate change treaties are central but not the exclusive sources of obligations, and that even non-parties to the Paris Agreement must mitigate greenhouse gas emissions and have a duty to cooperate. Second, Mr. Wong observed that under the Paris Agreement, States parties have binding obligations relating to mitigation, adaptation, technology transfer, capacity building, and transparency. In particular, developed States

have additional finance responsibilities. Nonetheless, all parties must implement their obligations with a view to achieving the Paris Agreement's goals, specifically the long-term global temperature goal and the CBDRRC principle in light of different national circumstances and historical responsibility for emissions.

Third, under UNCLOS, Singapore argued that States have customary international law obligations to protect and preserve the marine environment, exercise due diligence, and cooperate to address the impacts of climate change on the oceans. Singapore supported the ICJ's findings that sea-level rise does not compel States to update established maritime boundaries, nor does complete territorial loss automatically entail the loss of statehood. Fourth, Singapore submitted that States are obliged under customary international law and the applicable human rights treaties to protect the human rights of individuals in climate change contexts. States must also cooperate with each other, as stipulated in Article 56 of the UN Charter, to respect and observe human rights within and beyond their own jurisdictions by addressing the adverse impacts of climate change. Mr. Wong noted that the ICJ considered that the duty to cooperate required sustained and continuous forms of cooperation. Mr. Wong also observed that, although Singapore did not explicitly address the right to a clean, healthy, and sustainable environment in its pleadings, it agreed with the ICJ's conclusions that such a right is inherent in and essential for the enjoyment of other human rights, such as the right to life, health, and adequate living standards.

On (b), Singapore submitted that the legal consequences for breach of a State's climate change obligations are those which arise under customary international law, such as cessation, assurances and guarantees of non-repetition, reparation, and satisfaction. Notably, the ICJ affirmed this. Mr. Wong also shared that the Attorney-General's Chambers and the relevant Singapore government agencies were still evaluating the AO internally. Nonetheless, Mr. Wong shared in his personal capacity that the legal team were encouraged by the AO and felt that the ICJ's response was commensurate with the urgent and existential nature of the climate crisis and was done within the confines of existing international law. In reaching a unanimous opinion, the ICJ tackled divisive issues and its conclusions did not contradict Singapore's key positions. Further, he opined that the AO provided useful practical guidance for Singapore's climate actions. Notably, the AO clarified that the Paris Agreement's temperature goal is firmly set at 1.5°C above pre-industrial levels and that the content of NDCs is not wholly discretionary. The ICJ also made clear that all States must exercise rigorous due diligence in preparing their NDCs, adjusted for national circumstances under the CBDRRC principle, which will have consequences for Singapore's successive NDCs (i.e., reflect the country's highest possible ambition while taking the CBDRRC principle into account). Mr. Wong concluded that the AO will serve as an important reference point for Singapore and other countries as they conduct global stocktakes to assess whether parties' collective NDCs are adequate to achieve the 1.5°C target.