

**Advisory Opinions on Climate Change – A Legal Bedrock of State Responsibility: Taking Stock of the IACtHR’s and ICJ’s Advisory Opinions on Climate Change and Looking Ahead
30 September 2025, 4:00 pm - 5:30 pm on Zoom (Singapore Time)**

In May and July 2025, the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR) delivered historic advisory opinions (AOs) on the obligations of States in relation to climate change and human rights. The two opinions clarified the binding obligations that States have under customary international law, international human rights law, and international climate change treaties to prevent and respond to the harmful effects of climate change. The two international courts further elaborated on a number of distinct legal issues. These include States’ duty to cooperate, in line with the best available science and under a duty of stringent due diligence, to meet climate targets; the *erga omnes* nature of climate change obligations; and the procedural human rights that States should guarantee as a pre-condition for ensuring the legitimacy and effectiveness of climate action. Crucially, it was emphasised that States’ failure to comply with their climate change obligations may constitute an internationally wrongful act giving rise to the full gamut of legal consequences permitted under customary international law.

The opening remarks were delivered by Dr. Nilufer Oral, Director, NUS Centre for International Law (CIL), and Ms. Danielle Yeow, Adjunct Senior Research Fellow and Lead, Climate Change Law and Policy, NUS CIL. Ms. Yeow set out the background to CIL’s trilogy of webinars on Climate Change AOs. She explained that CIL convened the webinar series to achieve four main objectives. First, to conduct a deep dive into the legal questions considered by the IACtHR and ICJ, as well as to address questions of implementation from the perspectives of both States and corporate actors. Second, to examine how international economic law, particularly the international trade and investment regimes, was (or is not) addressed in the AOs, as well as its implications for the legal landscape going forward. Third, how the AOs may influence the way legal arguments are crafted to support or strengthen climate-related claims in ongoing and future proceedings. Lastly, to bring an Asian and ASEAN perspective to the debate, situating the discussions about the AOs within the regional, legal, political and institutional context of the region.

Ms. Yeow also explained that the final instalment of the webinar series brought together distinguished experts to take stock of the two advisory opinions and discussed their wide-ranging legal and policy implications for States, individuals and corporations, including the implementation of the opinions’ findings through national, regional, or international mechanisms; the likely interactions with the international economic law regime (e.g. international investment

law); and the impact of the opinions on judicial and arbitral proceedings relating to climate justice, especially from the ASEAN perspective.¹

HE Ximena Fuentes, Ambassador of Chile to the United Kingdom of Great Britain and Northern Ireland, brought a State perspective to the discussion. She highlighted that the unprecedented State participation in these AOs can be attributable to States' desire to exercise leadership in the fields of environmental protection and human rights. She also explained how the IACtHR occupies a privileged position in the domestic systems of States Parties. Given imbalances in political and economic power between and within States, international courts appear as holders of power to 'correct' the consequences of such an unequal distribution of power.

HE Fuentes observed that the IACtHR AO provides two important clarifications. First, the AO established that the UNFCCC regime exists in conjunction with other international obligations, including customary international law. Second, the AO indicated that there exists a *strict* obligation not to cause harm to the environment. She also explained that the ICJ AO made a similar distinction between the UNFCCC regime and the obligation not to cause harm. It follows that the developed world is expected to continue enhancing its efforts to reduce greenhouse gas (GHG) emissions, lest it risk incurring liability in the fields of human rights and loss and damage.

HE Anita Ashvini Wahid, Indonesian Representative to the ASEAN Intergovernmental Commission on Human Rights, outlined several key takeaways from the AOs. First, that all States have obligations to prevent climate harm, regardless of the treaties they have signed; second, that these obligations to prevent climate harm are *erga omnes*—ones owed to the entire international community; third, that States must guarantee procedural rights such as access to information and public participation; and fourth, that a failure to act regarding climate change is not just a matter of policy—it may amount to an internationally wrongful act.

HE Wahid then offered the ASEAN perspective on the AOs, stressing at the outset that the region is one of—if not the most—climate-change exposed region. She highlighted that although State implementation and enforcement of environmental protection laws is non-uniform, civil society has been highly supportive of the AOs. She explained that these AOs matter to ASEAN as ASEAN States now face a higher risk of domestic and international lawsuits; coal, palm oil, and mining corporations may be targeted; and general diplomatic pressure may be applied. However, she warned that the impact of these AOs may be limited insofar as they are non-binding; the political economy of fossil fuels remains strong within ASEAN; and ASEAN's weak institutional enforcement mechanisms mean that requests for accountability can be avoided. Ultimately, the current AOs will not force immediate compliance within ASEAN, but HE Wahid remains optimistic that they can shift the baseline in the region. For instance, she believes that the upcoming

¹ The recording of Webinar 1 (30 July 2025) on the IACtHR's advisory opinion is available [here](#). The recording of Webinar 2 (5 August 2025) on the ICJ's advisory opinion is available [here](#).

AO from the African Court on Human and Peoples' Rights will help develop the Global South jurisprudence in this regard. She also believes that the AOs provide an opportunity to make ASEAN's future climate change commitments stronger, binding and more people-centered. Notably, HE Wahid highlighted that the proposed ASEAN Declaration on the Right to a Safe, Clean, Healthy, and Sustainable Environment has recently been finalised and may be endorsed at the 47th ASEAN Summit in Kuala Lumpur in October 2025.

Ms. Francesca Mingrone, Senior Attorney at the Center for International Environmental Law (CIEL) in Geneva, offered a civil society perspective, emphasising that although the AOs are non-binding, they are highly authoritative as they interpret binding law. She explained that CIEL has been involved in all recent advisory proceedings before the ICJ, IACtHR, ITLOS, and the forthcoming African Court on Human and Peoples' Rights, partnering with States, non-governmental organisations, and civil society actors. She highlighted key elements of the AOs, including reparation, intergenerational equity, the right to a healthy environment, and the implementation of adaptation and mitigation measures in line with the best available science.

Ms. Mingrone also noted that fossil fuels remain a politically sensitive topic in climate change discussions. While States are frequently urged to mitigate climate change and protect populations from its impacts, Ms. Mingrone lamented that it has not yet been possible to secure a single Human Rights Council resolution on climate change that explicitly references fossil fuels. She therefore welcomed the ICJ AO's explicit recognition that fossil fuel production, subsidies, and licensing may breach international obligations.

Ms. Mingrone observed that climate litigation is already a reality, with over 3,000 cases filed globally. Despite their recent release, the AOs are already being invoked in ongoing proceedings, such as South Africa's challenge to, and Brazil's suspension of, licences for coal plants. Looking ahead, she discussed the pending request for an AO before the African Court on Human and Peoples' Rights, initiated in May 2025 not by a State but by numerous civil society organisations. She noted that the request reflects the African context, where countries particularly vulnerable to climate change often rely economically on fossil fuel production. This petition will raise important questions concerning a just transition, historical responsibility, and corporate accountability.

Professor N. Jansen Calamita, Head of International Economic Law and Policy at CIL, examined the implications of the AOs for international investment law. He noted that investment tribunals have not always been diligent in interpreting treaties consistently with environmental and human rights norms, but the AOs could change this trajectory, given the authority of the issuing institutions, especially the ICJ. Prof Calamita observed that while the ICJ AO affirmed States' stringent due diligence obligations informed by the precautionary principle, it did not deem GHG emissions unlawful per se. This leaves unresolved the question of how specific GHG-emitting projects or investments should be assessed in light of States' general climate obligations.

Prof Calamita explained that the AOs' impact on investment treaty obligations will likely be nuanced. For instance, with respect to the fair and equitable treatment standard, particularly in relation to an investor's legitimate expectations, it is clear that a duly diligent investor should be aware of the possibility of regulatory change given States' climate change obligations. The AOs' emphasis on the precautionary principle may assist states in defending the reasonableness of their measures and regulatory changes taken to address climate change. Furthermore, the existential nature of climate objectives could strengthen States' defenses against claims of indirect expropriation or breaches of the fair and equitable treatment standard. Conversely, investors might attempt to rely on the AOs to argue that States have violated full protection and security obligations by failing to exercise due diligence in shielding investments from climate-related harm, although causation challenges may arise. Beyond litigation, Prof Calamita anticipated that the AOs could spur treaty renegotiations to better align investor rights with climate commitments.