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The ICJ Climate Advisory Opinion: A Harmonious Fabric in Fractured Politics?

By Crisela Bernardino

The International Court of Justice's 2025 Advisory Opinion on climate change was widely heralded as a landmark in international legal doctrine. In a rapid response webinar co-hosted by the British Institute of International and Comparative Law (BIICL) and the Climate Change Legal Initiative (C2LI) and chaired by Prof. Malgosia Fitzmaurice, panelists—including Prof. Nilufer Oral, Prof. Christina Voigt, Prof. Surya Deva, Prof. Francesco Sindico, Dr. Kate McKenzie, and Monica Feria-Tinta—critically examined the Opinion and its interplay with the International Tribunal for the Law of the Sea (ITLOS) and Inter-American Court of Human Rights (IACtHR) Advisory Opinions. All agreed the ICJ's "climate verdict" was historic, ambitious in both reach and rhetoric. But the discussion quickly moved beyond praise to pointed critique: How far do these lofty pronouncements actually go?

This article distills and builds on their critical insights, unpacking the Opinion's conceptual framework, normative ambition, and institutional restraint. It then sets those reflections against post-ICJ Opinion developments, especially the 30th Conference of the Parties (COP30) held in Belém, Brazil in November 2025, to explore whether this legal milestone is shaping climate action or remains stranded in abstraction.

Ambition Meets Critique: A "World Court" Speaks, But How Loudly?

From the outset, Prof. Christina Voigt lauded the Advisory Opinion as a watershed for climate law. In her view, the ICJ rose to the occasion and "became the World Court" by addressing the General Assembly's broad questions with a sweeping survey of

international law. Prof. Voigt highlighted how the ICJ knitted together environmental treaties, human rights instruments, the law of the sea, and customary international law into a "harmonious" canvas of rules. The Court's message, she noted, was that climate obligations permeate the entire canvas of international law, with no treaty standing in isolation. This rejection of lex specialis arguments – the notion that the Paris Agreement would exclude other laws – was celebrated as affirming that all legal tools are mutually supportive in confronting climate change. Monica Feria-Tinta echoed this, praising the Court's clear stance that no one treaty or regime monopolises climate matters, thereby firmly embedding climate obligations in general international law.

Extending this analysis, Prof. Nilüfer Oral offered a critical bridge between the ICJ's conclusions and the earlier Advisory Opinion from the ITLOS. She underscored that ITLOS had already recognised anthropogenic greenhouse gas emissions as a form of marine pollution—triggering an obligation on states to adopt "all necessary measures" and apply stringent due diligence (¶179). The ICJ not only cited this finding with approval, but also built on it, reinforcing the notion that legal duties under the law of the sea are indispensable in the climate context. Prof. Oral also highlighted the ICJ's sea-level-rise holding that UNCLOS imposes no obligation on States to update duly established baselines—or the official charts and lists of geographical coordinates recording them—solely because physical changes from sea level rise have altered the coastline (ICJ AO, ¶362). The ICJ further stated, albeit without extended elaboration, that the loss of a constituent element of statehood would not necessarily entail loss of statehood (¶363), reinforcing the view that even extreme inundation should not trigger automatic "extinction," but a presumption of continued statehood.

Yet even as he acknowledged the Opinion's historic ambition, Prof. Surya Deva injected a note of caution. It was "not a given" that the ICJ would be so bold, Prof. Deva conceded, and indeed the Court "has not disappointed" overall. But in the next breath, he stressed that bold pronouncements are not self-executing. "I would have liked the Court to go a little deeper into the details of what it actually means in practice," Prof. Deva stated. His praise for the ICJ's recognition of an "absolutely vital" duty of international cooperation was tempered by frustration that the Opinion stayed mostly at the level of principle. For instance, the Court affirmed obligations on technology transfer and climate finance, key components of cooperation, but stopped short of outlining how those obligations translate into real-world action. Prof. Deva pointed out the glaring implementation gap: the new Loss and Damage Fund still has "not even 1% of what is needed" to help vulnerable nations. The ICJ had defined duties in theory, but offered no roadmap to meet them in reality, leaving him "a bit disappointed" on that score. This tension between the ambition of the ICJ's legal vision and the ambiguity of its practical guidance would surface repeatedly as the experts reflected on specific aspects of the Opinion.

Stringent Due Diligence: From Political Promises to Binding Obligations

One of the clearest "wins" the panelists identified in the ICJ's Opinion was its elevation of due diligence obligations, especially regarding nations' emissions targets. Dr. Kate McKenzie, coming from a climate litigation perspective, noted that "due diligence" appears over 80 times in the Opinion, a testament to how central this concept is to the Court's reasoning. Crucially, the ICJ made plain that states must act with stringent due diligence to reduce greenhouse gases, in line with the 1.5°C temperature goal (¶224, 242, 245–246). What had often been dismissed as purely voluntary national pledges, the Court reframed as obligations of conduct under international law. Nationally Determined Contributions (NDCs), once seen as non-binding political promises under the Paris Agreement, are now imbued with legal meaning. As Monica Feria-Tinta emphasised, the Court "clearly said [NDCs are] not discretionary"; aligning domestic climate targets with the global 1.5°C limit is an obligation of result, not just aspiration. This was a direct rebuke to the lax attitude many states took toward their commitments. No longer can a government treat its NDC as a paper promise; failing to pursue it with diligence could mean breaching international law.

Prof. Oral drew an explicit connection between the ICJ's articulation of due diligence (¶343, 346–347) and that found in the ITLOS Advisory Opinion (¶235, 239, 241). She emphasised that ITLOS had already recognised anthropogenic GHG emissions as marine pollution—triggering a duty for states to adopt "all necessary measures" to prevent transboundary harm. The ICJ, she noted, built upon this standard, reinforcing that states are now legally expected to exercise stringent, not symbolic, levels of care. Prof. Oral interpreted this convergence as the crystallisation of a coherent, cross-regime due diligence obligation—one that cuts across environmental, human rights, and law of the sea domains.

Prof. Voigt celebrated this point as "particularly impactful," noting the Court effectively declared that NDCs "are not just voluntary" actions left to each state's whim. Instead, countries must use "all means at their disposal" to fulfill their pledges, a high bar of effort. Dr. McKenzie concurred that the ICJ's framing raises the stakes: courts and compliance bodies can now probe whether a state's climate efforts meet this rigorous due diligence standard. She saw a "harmonised... stringent" due diligence definition emerging across this and other recent climate opinions, which could empower judges globally to hold laggard governments to account. From a litigator's angle, Dr. McKenzie enthused that domestic courts now have clear language to evaluate whether a state did enough; and if not, to potentially declare it in breach. In her view, this opens the door for future lawsuits to challenge insufficient climate policies as unlawful.

But will such legal strictures carry weight in the halls of diplomacy? Prof. Malgosia Fitzmaurice, moderating the webinar, mused on "how these general guidelines…are

going to be applied in concreto". In theory, every country must continually ratchet up its ambition and take "appropriate domestic measures" to implement its NDC. In practice, however, UN climate negotiations have no punitive enforcement mechanism to ensure nations actually deliver those emissions cuts (Paris Agreement, Art. 15(2)). As the COP30 experience showed, political will remains the linchpin.

In Belém, tensions emerged as several Parties resisted stronger 1.5°C framing, wary that COP language could carry legal/interpretive consequences and strengthen accountability arguments around NDC adequacy. This resistance underscores a persistent disjunction between the political design of the Paris Agreement and the legal implications articulated by the ICJ. While the ICJ Opinion establishes a minimum legal standard of conduct—requiring States to exercise stringent due diligence and to pursue the highest possible ambition consistent with the 1.5 °C goal (¶245–246)—many negotiators continue to frame climate commitments as products of diplomatic compromise rather than obligations susceptible to legal evaluation. The resulting tension raises a fundamental question as to whether the Paris Agreement's self-differentiated architecture, grounded in nationally determined ambition and national circumstances, can be sustained alongside an emerging understanding of climate obligations as binding norms of general international law. This friction between law and diplomacy was evident at COP30: despite formal acknowledgment that existing NDCs remain collectively insufficient to meet the temperature goal, several major emitting States continued to justify limited ambition by reference to development priorities and domestic constraints, revealing the limits of political processes in internalising newly articulated legal duties.

Condemning Fossil Fuels and the Ambiguities of Legal Responsibility

Arguably the most politically charged aspect of the ICJ Opinion was its direct reference to fossil fuel activities. For the first time, the World Court explicitly linked coal, oil, and gas exploitation with potential state responsibility for climate harm. Prof. Voigt, with evident approval, called it "very progressive and very important" that the Court did not shy away from naming fossil fuel production, consumption, licensing, and subsidies as practices that could violate a state's due diligence obligations. Dr. McKenzie underscored a critical passage (¶427): "the failure of a State to take appropriate action to protect the climate system from greenhouse gas emissions, including through fossil fuel production [and] the granting of fossil fuel…licenses or…subsidies, may constitute an internationally wrongful act". In plainer terms, if a government keeps handing out new oil drilling permits or propping up coal with subsidies – knowing the climate risks – it might be breaching international law. This was a stunning affirmation that continued fossil fuel expansion is not merely unwise or contrary to Paris goals, but potentially unlawful on the global stage.

The panelists largely agreed this was a game-changer – a sharp legal sword pointed at the heart of carbon-intensive development. States could now be held accountable for failing to rein in private actors' emissions (like those of fossil fuel companies) under their jurisdiction. Monica Feria-Tinta gave the example that a state might have to withdraw previously granted licenses for coal mines or oil fields if upon "assessment [they are] in violation" of its international obligations. In her words, cessation of a wrongful act could require "stop[ping]…a wrongful act" such as invalidating permits that enable excessive emissions.

However, for all the boldness of this language, the experts injected nuance about its ambiguity and enforceability. Notably, the ICJ couched its statement with "may constitute a wrongful act" – leaving a big room for state discretion. What level of fossil fuel activity crosses the line into illegality? The Opinion does not draw a bright line. Is approving a single new gas plant a breach, or only a massive coal expansion without mitigation? States will surely contest these boundaries. Prof. Deva remarked that he "would have liked the Court to go…deeper" into such specifics. The lack of clear thresholds means the battle shifts to interpretation: advocates will argue any expansion undermines due diligence, while fossil-dependent states may claim they can still fulfill their obligations while using some fossil fuels (perhaps by invoking carbon capture or future negative emissions). The absence of an explicit directive to "phase out" fossil fuels was noted as a missed opportunity by some on the panel. Indeed, Prof. Deva compared the ICJ's reticence unfavorably with the IACtHR's more transformative rhetoric on shifting to a new development paradigm. Where the IACtHR spoke of "transition to a new model of development" beyond fossil dependency (¶140-142, 163-166), the ICJ stopped at due diligence, leaving the pace of fossil phase-out implicit.

The real-world test of this came at COP30. The Advisory Opinion's moral and legal weight emboldened over 80 countries to push for a definitive "roadmap to transition away from fossil fuels" in the COP30 decision text. But the COP outcome starkly illustrated the limits of law when faced with politics: deep divisions meant no consensus on a fossil phase-out timeline or even the word "phase-out" itself. Major oil and coal producing states resisted, and the final agreement omitted any clear roadmap, leaving those 80+ proponents disappointed. The Court named and shamed fossil fuels, yet without an effective enforcement mechanism, it falls to political negotiations to operationalise that mandate.

State Accountability and Corporate Impunity

A striking feature of the ICJ Opinion underscored by all speakers is how it places responsibility squarely on states, even for emissions caused by private companies. The Court's formulation of due diligence means a country cannot hide behind the actions of its corporations or citizens: if polluters under its jurisdiction are wrecking the climate,

the state has a duty to control them or face legal consequences. "Rules and measures…must regulate the conduct of public and private operators within the State," Dr. McKenzie emphasised, quoting the Court (¶428). In effect, the ICJ Opinion pierces the veil between state and corporate emissions, making governments accountable for what their fossil fuel and industrial firms do. Dr. McKenzie called this an "important path to hold States accountable for private actors…failing to adequately regulate them". Monica Feria-Tinta likewise stressed that many historical and current emissions emanate from private parties, so it was "crucial" that the Court addressed state responsibility in relation to the regulation (or lack thereof) of the activities of those actors.

However, this raises a further question that the webinar panel did not shy away from: Where are the corporations in all this? International law traditionally holds states, not companies, as the subjects of obligations. The ICJ followed that script: it notably did not impose any direct legal duties on Exxon, Shell, or the like. This leaves a gap: if political will is lacking, the corporations driving climate change remain insulated from direct international accountability. Prof. Deva found this omission telling. He applauded the focus on cooperation and Common But Differentiated Responsibilities (CBDR) – principles which implicate wealthy nations and indirectly their industries – but noted that the Opinion "consciously" avoided certain frameworks like the Right to Development Declaration that might have more explicitly addressed equitable burdens.

COP30: A Diplomatic Test of Legal Influence

The ICJ Opinion laid down the law's ideals; COP30 exposed diplomacy's realities. In Prof. Fitzmaurice's terms, the ICJ gave "general guidelines," but applying them in concreto is intensely political. The 2025 UN climate summit in Belém, Brazil – what the COP 30 Presidency called "implementation COP" – unfolded just months after the Opinion's release, offering a natural proving ground for its normative ambitions. Where the ICJ clarified legal duties, COP30 illustrated how difficult it is to operationalise those duties in a fractured geopolitical landscape.

In COP30's final statement – the global "Mutirão", a term drawn from Brazilian Portuguese denoting a collective, community-based effort – meaningful commitments, such as a firm fossil fuel phase-out or binding financial transfers, remained elusive. As Prof. Francesco Sindico pointed out in the webinar's closing segment, the ICJ Opinion is less likely to catalyse sweeping interstate litigation due to jurisdictional hurdles and political constraints, and is more likely to influence domestic courts and legislatures. That is where its normative weight may shift behaviour. Importantly, Prof. Sindico framed the Opinion as a "normative shield" – a bulwark against populist attacks on climate science and legal backsliding – and a legal platform that legitimises phased removal of fossil fuel subsidies. The Opinion's erga

omnes character, he noted, allows states to invoke breaches even if they are not directly injured – though doing so, especially against powerful emitters, may have diplomatic costs that must be weighed against strategic gains. The ICJ's finding that fossil fuel subsidies and licensing "may constitute internationally wrongful acts" adds rhetorical and legal force to energy reform campaigns globally.

Ultimately, the experts converged on a key insight: the true measure of the ICJ's Climate Opinion will be how it is used. As Prof. Voigt noted, it "will stay with us and pave the way…for many years to come", but only if its principles are woven into the fabric of decision-making. At this crossroads of law and diplomacy, one cannot afford to be naive. The ICJ's Advisory Opinion is a milestone for climate justice, but it is not self-executing. It will live (or fade) through the actions of states, the rulings of judges, and the persistence of civil society. If some voices urge us to move on from the Advisory Opinion, that is precisely the moment to stay with it.

While the usual account treats the Mutirão text's omission of ICJ language as a setback for climate advocates, it can be read another way: the very silence is an implicit recognition of the Opinion's disruptive power, and it weakens the position of holdout States by conceding what they refused to name. That is why small and climate-vulnerable States possess real leverage, as Johanna Gusman's post-COP30 critique underscores. Turning that leverage into outcomes will require them—and their allies—to keep the Advisory Opinion alive: persistently cited and operationalised across courts, legislatures, and political processes.

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