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Between The Hague and Brasília: Climate Obligations, the Oceans, and the Dialogue Among Courts

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The advisory opinion delivered in 2025 by the International Court of Justice (ICJ) stands as a landmark in international law, for it consolidates normative parameters regarding State obligations in confronting climate change. By underscoring the imperative of protecting the marine environment, the Court not only reaffirms the centrality of the oceans in global climate regulation but also broadens the legal horizon of international cooperation in environmental matters. The reverberations of this guidance transcend the international plane, radiating into domestic legal orders and, in particular, into Brazil, where environmental and climate jurisprudence increasingly enters into dialogue with foreign and international decisions and advisory opinions. In this context, the ICJ's pronouncement may be understood as a catalyst for transnational judicial dialogue, in which national courts – such as the Brazilian Supreme Court and the High Court of Justice – come to align themselves with, or to stand in tension against, international standards in the construction of an environmental hermeneutics committed to intergenerational stewardship and to the mitigation of climate impacts.

This blog post begins with an analysis of the 2025 ICJ advisory opinion on States' obligations with respect to climate change, with particular emphasis on the protection of the marine environment and of those countries most vulnerable to rising



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sea levels. It then proceeds to examine the influence exerted by prior decisions concerning the marine environment upon the outcome of the ICJ's 2025 pronouncement. The blog concludes with a discussion of the dialogue between the judgment rendered at The Hague and that of the International Tribunal for the Law of the Sea (ITLOS), and of the prospective development of Brazilian environmental and climate jurisprudence. Among the legal concepts that warrant deeper scrutiny and require greater normative density at the domestic level lies the obligation of *due diligence*, as enshrined in both the ICJ and ITLOS advisory opinions. The application of this standard demands a joint interpretation of international law and national legislation.

The ICJ's Advisory Opinion and the Protection of the Marine Environment

The International Court of Justice (ICJ) recently delivered an advisory opinion on climate change, clarifying States' legal obligations under international law. The opinion, while not legally binding, carries significant weight and is expected to influence climate-related litigation and policy. The ICJ affirmed that States have a legal obligation to act on climate change, emphasizing the need for ambitious action to limit global warming to 1.5°C, as outlined in the Paris Agreement.

First, the Court found that climate change treaties – notably the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement – set forth binding obligations for States Parties to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions. The Court further delineated obligations arising from customary international law – such as the duty to prevent harm and the duty to cooperate in good faith – as well as obligations stemming from a range of other treaties, including the United Nations Convention on the Law of the Sea (UNCLOS) and various human rights instruments.

The ICJ's opinion placed particular emphasis on the protection of the marine environment. Indeed, while analyzing the obligations of States under UNCLOS, the Court affirmed that anthropogenic GHG emissions may be characterized as pollution of the marine environment within the meaning of UNCLOS. The Court concluded that UNCLOS, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other. The Court also accorded due prominence in its opinion to the scientific consensus that anthropogenic GHG emissions alter ocean chemistry which causes deleterious effects for marine ecosystems, including ocean acidification and ocean warming; ocean warming notably deoxygenates the waters, bleaches coral reefs, disrupts marine ecosystems, and results in sea level rise. Furthermore, the Court noted that, in addition



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to threatening marine ecosystems, climate change threatens the very existence of many human communities, particularly in low-lying island States.

This ICJ advisory opinion, however, does not stand alone; it comes in the wake of other international rulings concerning the marine environment.

Judicial Dialogue on Climate and the Marine Environment

The duty of States not to cause significant harm to other States permeates the ICJ's advisory opinion. This duty traces its roots back to the very origins of international maritime law.

As early as 1941, an arbitral tribunal, in the seminal *Trail Smelter* case between the United States and Canada, held that no State has the right to use or permit the use of its territory in such a manner as to cause harm through the release of fumes into the territory of another. It was from that moment onward that the Transboundary Harm Principle began to acquire greater density in international law by providing that no State can use or allow the use of its territory in a manner that causes significant harm in the territory of other States.

Shortly thereafter, the ICJ, in its first contentious case, rendered a decision in 1949, in a case brought by the United Kingdom against Albania over mine explosions that damaged British warships passing through the Corfu Channel in 1946. In the judgment of the *Corfu Channel* case, the ICJ, in addition to defining the right of innocent passage, also consolidated the doctrine that a State may be held responsible for a failure to act, particularly when it does not prevent foreseeable risks caused by third parties within its territory.

Thus began a long evolution of international maritime law, above all with respect to the duty not to cause harm – today enshrined in international instruments, such as the *International Convention Relating to Intervention on the High Seas* (1969), which authorizes coastal States to take measures on the high seas to prevent, mitigate, or eliminate grave dangers of oil pollution following a maritime accident; the *London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* (1972), one of the first international treaties to regulate specifically marine pollution by the disposal of wastes; and the UNCLOS (1982), which expressly provides for the obligation not to cause harm to the marine environment (Articles 194.2 and 235).



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The rapprochement between maritime conventions and climate protection received significant reinforcement with the advisory opinion of the ITLOS, delivered on 21 May 2024. Although advisory in nature, the opinion may well serve as a precedent for future cases, both international and domestic. In its first opinion directly addressing climate issues, ITLOS declared that emissions from fossil fuels and other planet-warming gases absorbed by the oceans constitute marine pollution. This pronouncement will indelibly shape forthcoming climate litigation, marking an important initial step toward holding major polluters accountable.

This dialogue between the protection of the marine environment and the fight against climate change featured prominently in the ICJ's most recent advisory opinion of 2025. In delineating the applicable law governing States' obligations with respect to climate change, the Court derived duties under the UNCLOS. It held that anthropogenic greenhouse gas emissions may properly be characterized as pollution of the marine environment within the meaning of that Convention. Accordingly, the Court found Part XII of UNCLOS, devoted to the protection of the marine environment, to be applicable in the context of such emissions. The Court further observed that the obligation set forth in Article 192 of UNCLOS comprises a dual dimension: a positive duty to adopt measures to protect and preserve the marine environment, and a negative duty to refrain from its degradation. In the Court's view, the standard of *due diligence* incumbent upon States in implementing all necessary measures to prevent, reduce, and control marine pollution is a stringent one. Such measures may include legislative acts, administrative procedures, and enforcement mechanisms designed to regulate the relevant activities. The Court also emphasized that what constitutes a "necessary measure" within the meaning of Article 194(1) of UNCLOS must be determined by objective criteria, taking into account the best available science, the body of international rules and standards relating to climate change, and the means and capabilities at the disposal of the States concerned.

Both the advisory opinion of the ITLOS and that of the ICJ emphasized the role of the *due diligence* standard required of States in adopting measures to prevent harm. This principle assumes an important function in the reasoning of judicial decisions rendered by domestic courts, particularly in Brazil.

Judicial Dialogue Between International Decisions and Brazilian Courts, and the Place of Due Diligence

Brazilian courts – most notably the Supreme Court and the High Court of Justice – have drawn upon landmark international decisions to ground their environmental judgments.



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In the well-known *Climate Fund* case (ADPF 708), the Brazilian Supreme Court held that international environmental treaties possess a *supranational status*, as they fall within the broader category of human rights treaties. Consequently, environmental protection acquires a binding legal character, transcending the realm of political discretion and the prerogative of the Executive Branch. The need for global cooperation, together with the international responsibilities undertaken by Brazil, has been considered in several other judgments, such as the case concerning the protection of the Amazon rainforest (ADPF 760) and the decision concerning the legislative omission in protecting the Pantanal biome (ADO 63).

One theme that still leaves room for development in Brazilian jurisprudence is the *due diligence* standard that may be demanded of public authorities in order to establish State responsibility for environmental and climate-related harm, whether by action or by omission.

Environmental and climatic *due diligence* is interpreted by international courts in a convergent manner as an obligation of conduct, proportionate to the risk involved and to the means available to the State. Both the 2024 advisory opinion of ITLOS and the 2025 advisory opinion of the ICJ embraced the *stringent standard of due diligence* with respect to States' obligations to prevent harm through pollution and the emission of greenhouse gases. Moreover, in both cases, it was underscored that the implementation of the obligation of due diligence may vary according to States' capabilities and available resources.

The international courts have also determined that the core of the due diligence standard may encompass the preparation of a prior environmental impact assessment, notification and consultation, monitoring, precautionary measures, effective oversight of private actors, and the guarantee of access to information and public participation.

In sum, the advisory opinions of ITLOS and the ICJ show a clear capacity to influence domestic judgments, particularly in Brazil. Defining the contours of the obligation of due diligence is essential to determining the Brazilian State's responsibility for environmental and climate harm, especially where such harm arises from its omissions in failing to adopt precautionary measures or to implement regulatory instruments, such as environmental impact assessments, oversight of harmful activities, access to information, and participation in decision-making.

The evolution of jurisprudence may itself impel the Brazilian State to pursue a more rigorous protection of the marine environment against pollution and the impacts of

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greenhouse gases. After all, Brazil – with its vast and densely populated coastline – ought to be among the nations most vigilant in safeguarding the health of the oceans.

Conclusion

The jurisprudential dialogue traced between The Hague and Brasília discloses not merely an abstract convergence of legal doctrines, but the awakening of a shared responsibility before time itself. The seas, whose depths mirror both peril and promise, summon States to a discipline of due diligence commensurate with the fragility of creation. Should Brazil heed this call, it will not only vindicate its constitutional vocation but also partake, with dignity, in the concert of nations striving against climate's inexorable tide.

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