



THE WAVE OF ADVISORY OPINIONS ON CLIMATE CHANGE: WHAT CONTRIBUTIONS FOR THE ISLAND TERRITORIES OF THE SOUTH PACIFIC?

Morgane Leclercq (UdeS), Enéas Xavier (UdeM), Nouwagnon Olivier Afogo (UdeM),
Cécile Radosevic-Batardy (UdeS) et Camille Martini (ULaval)

Crises are piling up – wars, geopolitical tensions, economic difficulties, energy imperatives – and diverting States' attention from their climate commitments. Promises then struggle to translate into action, in an international system that relies above all on the goodwill of States.

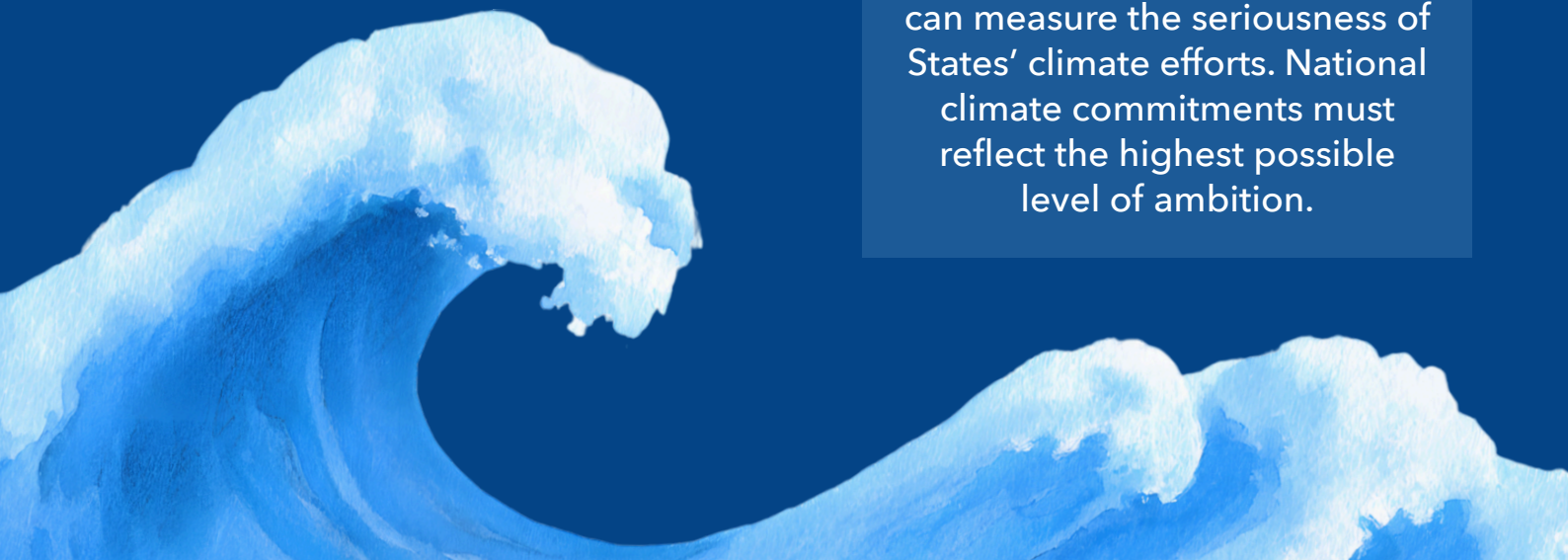
Island States are demanding clear answers: do major greenhouse gas (GHG) emitters have an obligation to reduce their emissions? To prevent damage caused to other countries? To protect the Ocean?



THE 1.5 °C TARGET: WHERE DO WE STAND?

In 2015, the Paris Agreement set the common objective of acting to limit the rise in global average temperature to 1.5 °C. However, to date, States' commitments are insufficient to achieve this objective.

On 23 July 2025, the International Court of Justice (ICJ) made this 1.5 °C target the barometer by which judges can measure the seriousness of States' climate efforts. National climate commitments must reflect the highest possible level of ambition.



The South Pacific, cradle of a legal revolution

In 2019, 27 law students from the University of the South Pacific decided to act so as to no longer be mere spectators of the climate crisis. For them, climate change was already no longer an abstract issue. Far from the grand halls of The Hague and New York, it threatened their territories and cultures.

Their idea was bold: convince the leaders of the Pacific Islands Forum to bring the issue of climate change and human rights before the ICJ. This was the campaign of the **Pacific Islands Students Fighting Climate Change**. In 2022, Vanuatu took up this initiative. It rallied a coalition of States around a draft resolution at the United Nations General Assembly.

The resolution was adopted on 29 March 2023 following intense negotiations and the examination of numerous proposed amendments, by 141 votes in favour, 8 against, and 28 abstentions. What had started as an intuition carried by Pacific students had then officially entered the diplomatic world and the UN.

In parallel, the **Commission of Small Island States on Climate Change and International Law (COSIS)** was created on 31 October 2021 by Antigua and Barbuda and Tuvalu. Its objective is to promote and contribute to clarifying what international law requires of States in the face of climate change, particularly to protect the oceans and repair damage caused by inaction.



What is an advisory opinion?

An advisory opinion is not a judgment rendered in the context of a dispute. It does not have the same binding force as a ruling. But it carries strong legal and political authority: it clarifies applicable law, guides States, informs judges, and provides arguments to stakeholders.



Why now?

The climate emergency is worsening while State action often remains insufficient. International courts are becoming spaces where States' climate obligations are clarified and made more visible. Civil society is asserting itself as a central and driving actor.

May, 21
2024

International Tribunal for the Law of the Sea (ITLOS), advisory opinion

In this opinion, ITLOS states that States have the obligation to take all necessary measures to prevent, reduce, and control pollution of the marine environment and transboundary pollution linked to anthropogenic GHG emissions into the atmosphere. They must also cooperate to protect and preserve shared fish stocks, living marine resources on the high seas, rare or fragile ecosystems, and the habitat of endangered species. They must, finally, adopt the laws and regulations necessary to give full effect to their commitments under international law. The Tribunal noted that "climate change represents an existential threat and raises human rights concerns."

May, 29
2025

Inter-American Court of Human Rights (IACtHR), advisory opinion

In this opinion, the IACtHR characterises the environmental crisis as a "climate emergency" requiring States to exercise enhanced due diligence, that is, to take all serious and proportionate measures to prevent foreseeable harm. Through an evolutive interpretation of inter-American instruments for the protection of persons, it further recognises the human right to a healthy climate and elevates, to the rank of peremptory norms of general international law, the prohibition of causing massive and irreversible environmental damage. It also establishes Nature as a subject of law and imposes, in the name of intergenerational equity and common but differentiated responsibilities, enhanced obligations of prevention, cooperation, financing, and protection of vulnerable groups.

July, 23
2025

International Court of Justice (ICJ), advisory opinion

In this opinion, the ICJ draws on the most comprehensive body of international law, not only relevant treaties but also other sources and principles (obligation to prevent environmental harm, duty to cooperate to protect the environment, human rights, sustainable development, common but differentiated responsibilities, intergenerational equity, and the precautionary principle). It recognises that States must take into account their human rights obligations when fulfilling their climate obligations. Above all, the Court narrows the margin of discretion available to States in setting their level of ambition for GHG emission reductions: they must do everything in their power to ensure that the 1.5 °C target is met.

upcoming

African Court on Human and Peoples' Rights (ACtHPR), request for advisory opinion (pending)

The Court has been seized of a request for an advisory opinion brought by a group of non-governmental organisations, represented by the Pan-African Lawyers Union. The request concerns the obligations of States parties to the African Charter and other relevant human rights instruments ratified by them with regard to a wide range of individual and collective rights (right to a satisfactory environment, right to life, right to family, right to development, right to existence of peoples, right to non-discrimination, etc.). One of the key issues of this request lies in the fact that the Court is asked to determine the obligations of States parties towards third parties (non-State actors, particularly private companies, multinational corporations, etc.).

When island territories knock on the door of international justice...

Before international tribunals, island States have asserted their **particular and disproportionate vulnerability to the climate emergency**. Sea-level rise, salinisation of coastal soils, extreme events and slow-onset phenomena of rising waters threatening their low-lying territories, even though they contribute only marginally to global GHG emissions.

They also requested recognition of the harm, already suffered, to a wide range of conventional rights of their inhabitants: right to life, to a healthy environment, to health, to cultural life and cultural heritage, to property, to private and family life and to the home, as well as the right to self-determination and the right to existence and survival of indigenous peoples. A central need concerned the **recognition of losses and damages already suffered and the obligation of responsible States to ensure their cessation and full reparation**, including monetary compensation taking into account equity, justice and common but differentiated responsibilities.

They insisted on State obligations of prevention, mitigation, adaptation and **international cooperation**. They highlighted the need for concrete support (climate finance, technology transfer, capacity building and reform of the global financial architecture), and called for enhanced protection of the most exposed groups, particularly children, future generations and persons displaced by climate change, notably under the principle of non-refoulement.

Recognised impacts on territories

- Sea-level rise is described as an "existential threat to certain small islands and certain low-lying coasts" (ITLOS, citing the IPCC).
- It is recognised that small island developing States are particularly affected and especially vulnerable, and are already experiencing sea-level rise, coastal erosion and ocean acidification (ICJ).
- The issues of territory disappearance, preservation of baselines, maritime zones and statehood in the face of rising waters are recognised (ICJ).
- Certain island territories are recognised as "territories of particular vulnerability" (IACtHR).

Recognised impacts on populations

- Threat to food security, water availability and livelihoods of communities dependent on marine resources (ICJ and ITLOS, citing the IPCC).
- Involuntary displacement and migration of affected persons; increased risks to health and well-being (ICJ, ITLOS, citing the IPCC); harm to the cultural dimensions and cultural heritage of coastal and island ways of life (ITLOS, citing the IPCC).
- Disproportionate impact on the most vulnerable populations, particularly children, indigenous and tribal peoples, Afro-descendant communities, farmers, fishers, and future generations. (IACtHR and ICJ)

...international courts recognise climate injustice

Common but differentiated responsibilities: Not the same efforts for everyone – and that is normal

All States are required to act in the face of climate change, but the intensity of the expected effort varies according to their capacities, resources and historical contribution to GHG emissions. The highest-emitting and best-resourced States must provide greater efforts.

French Overseas Countries and Territories emit very little GHG (approximately 1.8% of French emissions) but bear the full brunt of climate change consequences. The principle of common but differentiated responsibilities (CBDR) requires that their specific constraints be taken into account and justifies particular solidarity towards them, to finance adaptation and to repair losses already suffered.

A clarification of obligations concerning the ocean

In its advisory opinion, ITLOS recognised that anthropogenic GHG emissions constitute a source of pollution of the marine environment. ITLOS clarified that States are required to exercise enhanced due diligence. They must take all necessary, appropriate and reasonably available measures to prevent, reduce and control this pollution, in accordance with the best available scientific data.

Following this advisory opinion, COSIS published a guidance note summarising the main obligations of States parties to the United Nations Convention on the Law of the Sea and setting out the urgent actions that States must take to give effect to the Tribunal's advisory opinion.

Will the rights of island States survive rising waters?

What happens legally when the sea rises and threatens to engulf territories?

The ICJ ultimately provided an answer: island States have no obligation to update their maritime charts as the sea rises. A State does not cease to exist legally even if its physical territory disappears beneath the waters.



What follow-up is given to these advisory opinions?

The advisory opinions contribute to forging a shared legal language around key concepts (notably due diligence, climate ambition and common but differentiated responsibilities) that States can no longer ignore. The clarifications make circumvention strategies more difficult. The ICJ's advisory opinion was endorsed by the United Nations General Assembly on 20 May 2026. Resolution A/80/L.65 welcomes the importance and authority of the opinion, calls on States to honour the obligations thus clarified, and reaffirms that their violation may engage their international responsibility.

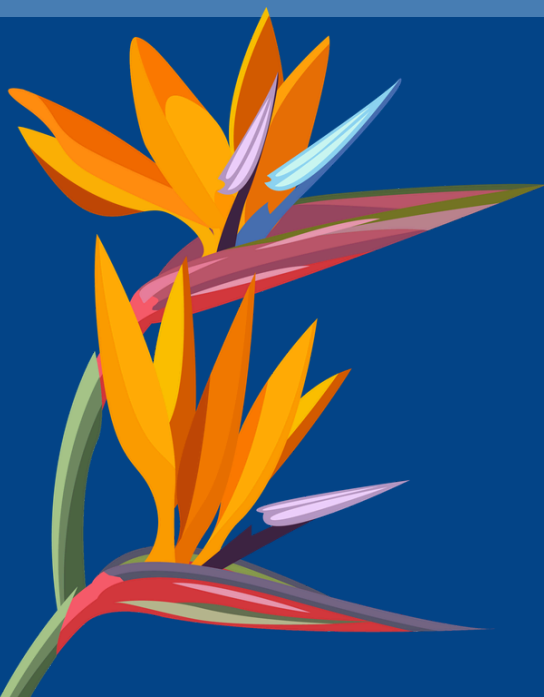
This endorsement is not insignificant. The standards developed by international tribunals are now spreading into the multilateral political space, feeding UN debates, climate negotiations and, potentially, future decisions of national and international judges.

What constitutes an ambitious national climate measure?

In its advisory opinion, the ICJ narrows the margin of discretion available to States, recalling that the content of climate policies must reflect the "highest possible ambition" and that this requirement is assessed in light of each State's capacities and the best available scientific data. The gap between declared commitments and effective action becomes a potential point of legal challenge, on two grounds. On the one hand, if the level of ambition of the objectives adopted is insufficient with regard to the 1.5 °C trajectory, and on the other hand, if the measures actually adopted do not credibly implement these objectives. In short, the ambition of a measure is assessed with regard to its progression over time, its alignment with the 1.5 °C trajectory, and the adoption of domestic provisions effectively aimed at achieving it.

The recognition of Nature as a subject of law

The IACtHR recognises Nature as a subject of rights and affirms the interdependence between human rights and the environment. International human rights instruments are subject to an evolutive reinterpretation that elevates the safeguarding of the environment and the climate system to a condition for the effective enjoyment of fundamental rights, from life to health.



International climate law: a tool to be seized

A State can now bring a case before an international court to denounce the internationally wrongful act of another State, arising from non-compliance with its international obligations regarding climate change. Moreover, persons who consider themselves victims of a violation of their rights due to their State's failure to meet its climate obligations can bring claims before regional and UN human rights protection mechanisms, in accordance with applicable procedural rules.

→ **A tool for civil society and non-State actors:** The aforementioned opinions clarify the content of States' climate obligations. They thus make them more directly understandable by civil society and non-State actors. By emphasising concrete obligations of conduct – due diligence requirements, obligation to adopt effective domestic measures, progression of commitments over time – these opinions strengthen the capacity of these actors to critically analyse national climate policies and the gaps between declared commitments and effective legal obligations. Non-governmental organisations and affected communities, in particular, now have a legal framework to initiate or support climate litigation or denounce failures in national and international forums.

→ **A lever to engage private sector responsibility:** The ICJ confirms that State responsibility may be engaged for failure to regulate private activities. The due diligence obligation requires, in particular, that States adopt adequate regulatory frameworks, regulate emitting economic activities and conduct impact assessments integrating climate effects. Subject to the advisory opinion of the African Court, this clarification helps to place private sector regulation at the heart of State obligations, as a condition for preventing climate damage.

→ **An opportunity to protect future generations:** The IACtHR's advisory opinion enshrines intergenerational equity as a structuring principle of the right to a healthy climate. The Court affirms that States' climate obligations must be interpreted in light of the protection of present and future humanity. Intergenerational equity requires taking into consideration the rights of future generations, including those of unborn children.





KEY MESSAGES:

- **The advisory opinions have clarified the scope of State obligations under international climate law.** Small island States of the Pacific could now have their losses and damages recognised, obtain the right to reparation and to the protection of the human rights of their population against climate impacts.
- **International cooperation is called upon to strengthen.** Pacific island countries have highlighted the obligations that States have to support more vulnerable countries in adapting to climate change, notably through climate finance and technology transfer.
- **Being particularly affected by the adverse effects of climate change, small island States can claim specific forms of reparation.** In addition to classical modalities of reparation (restitution, compensation, satisfaction, guarantees of non-repetition), small island States can claim specific forms of reparation taking into account the scale and irreversibility of climate damage suffered: technical assistance and climate action financing by the highest-emitting States, including on account of historical GHG emissions.