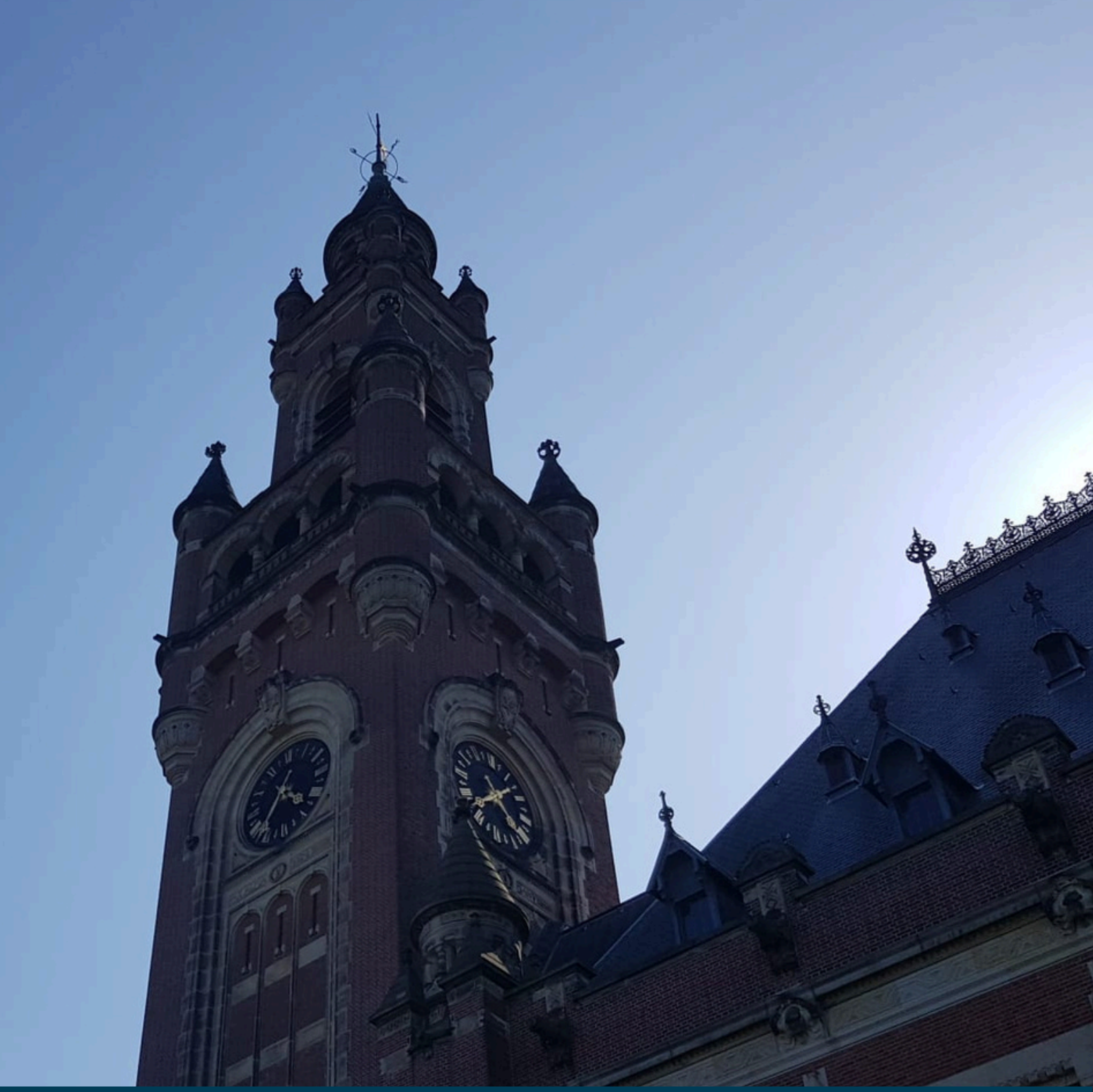


# HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

## DAILY DEBRIEF

December 2nd, 2024

*These debriefs will be sent daily from December 02 to December 13, 2024. All daily debriefs can be accessed here. This Daily Briefing is provided by the World's Youth for Climate Justice, the Pacific Islands Students Fighting Climate Change, and the Center for International Environmental Law, supported by a group of volunteers.*

# In a nutshell

Today...

- The joint submission by **Vanuatu** and **Melanesian Spearhead Group** opened the hearings with powerful arguments on climate justice, the right to self-determination, and the role of international law in protecting the rights of all peoples. It also affirmed the importance of accountability for past wrongs.
- **Australia, Saudi Arabia**, and **Germany** led the charge in arguing that States' obligations in relation to climate change were predominantly - if not only - found in the Paris Agreement and urging the Court to refrain from determining additional duties from other branches of law. **Antigua** and **Barbuda** countered this argument by denouncing polluting States seeking to hide behind the current climate regime and the Paris Agreement as a shield to escape accountability.
- One of the most striking features of the day was the gap between the legal arguments laid out by **Germany** and the climate leadership professed by the country. For example, it argued that the right to a clean, healthy, and sustainable environment is not legally binding under international law, despite having worked in the past for its recognition by the United Nations. The government was unexpectedly regressive in opposing the meaningful application of human rights law.

# Today's voices

*Today's conduct of Germany is beyond shameful, as it deliberately rejected the very notion of legal responsibility for its historical contribution to the climate crisis. Today, Germany missed the mark in a once-in-a-generation opportunity to address the existential threat that the world is facing, climate change, and to safeguard the continued existence of humankind. In particular, the dismissive position toward the recognition of the rights of future generations is incredibly regretful. Hypocritically, Germany emphasized its respect for international law while consecutively making statements against the legitimacy of international law.*

HENRIEKE BUENGER, (23), GERMANY,
DEPUTY EUROPEAN FRONT CONVENOR, WORLD'S YOUTH FOR CLIMATE JUSTICE

*Scattered in the relocation are the children of the land and sea. Their future is uncertain, reliant upon the decision-making of a handful of large-emitting States that are responsible for climate change. These States have not only enabled but proactively encouraged the production and consumption of fossil fuels and continue to do so today and every day. For my people, and for the world's youth and future generations, the consequences are existential.*

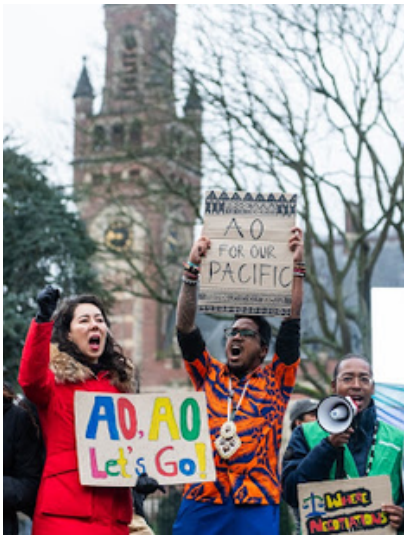
CYNTHIA HOUNIUHI, (29), SOLOMON ISLANDS,
PRESIDENT, PACIFIC ISLANDS STUDENTS FIGHTING CLIMATE CHANGE

# Outside the Court

On December 02, as the ICJ proceedings officially started, activists of all ages from across the world gathered in front of the Court for a youth-led solidarity demonstration. They demanded that the World's Highest Court upholds climate justice and recognizes that our human rights must prevail over the economic interests of a minority of States.

In solidarity with their submission and their fundamental role in the Global Campaign, demonstrators gathered outside the Peace Palace and watched as Vanuatu and the Melanesian Spearhead Group initiated the hearings, setting the stage for the discussions to come over the next 2 weeks.

**AO LET'S GO!!**



Lennard van der Valk. Supported by Interactive Media Foundation gGmbH

# Witness stand

The Witness Stand was established to make sure that the ongoing **ICJ advisory opinion proceedings on climate change are more inclusive and representative of those most affected**. Using this, anyone can send their message to the World's Highest Court as it rules on climate change for the first time.

**Watch the other testimonies**

# Next day

Tomorrow, Tuesday 3 December, we will report back on the oral submissions delivered by the following States: Belize, Bolivia, Brazil, Burkina Faso, Cameroon, Philippines, Canada, Chile, China, Colombia, Commonwealth of Dominica, and South Korea.
If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

# Report on each Intervention

## Opening of the oral proceedings

In opening the oral proceedings, the President of the Court, Nawaf Salam, spoke of the request to the Court for an advisory opinion to clarify State obligations in relation to climate change. The Registrar read out the text of the questions presented to the Court with regard to multiple sources of international law, which can be summarised as: a) What are the obligations of States under international law in relation to climate change? b) What are the legal consequences when States breach, or do not meet, these obligations? [The details of the request and full text of the questions can be found at this link.] The President provided further procedural details regarding time-limits and formal participation in the proceedings. More information on these procedural matters can be found on the ICJ climate advisory opinion webpage.

He also announced that written submissions by States and international organizations will be made available to the public via the ICJ website after the opening of the oral proceedings. The written statements and comments of States and organizations not taking part in the proceedings will be made public the first day of the oral hearings, while the written statements and comments of the States and organizations participating in the hearings will be made available at the end of the day in which they present their oral statements. He also explained the modalities by which the members of the Court may pose questions to the participants in the proceedings. Such questions will be asked at the close of the hearings on the afternoon of Friday 13 December 2024, after the last delegation has completed its presentation. The written text of such questions will be transmitted by the Registrar and must be responded to in writing by Friday 20 December 2024 at 6 pm (CET). These replies will be transmitted to all other participants who may submit written comments they wish to make on such replies by Monday 30 December 2024. For any questions posed to all participants, written replies should be provided by Friday 20 December 2024. No additional written comments are envisaged on such replies.

## Vanuatu and Melanesian Spearhead Group

In their joint intervention before the ICJ, legal counsel from Vanuatu and the Melanesian Spearhead Group (MSG) highlighted the existential stakes of the proceedings for their islands, and for all of humanity. Their counsel underscored that the climate crisis, which poses such a grave threat to their peoples and islands, has been fueled by the conduct of major polluters. Delegation members underscored that the injustice of the climate crisis is inseparable from our shared colonial histories, and movingly made the link between the climate crisis, the right to self-determination of Pacific Islanders, and intergenerational equity, expressing the importance for the judges to hear the testimonies of those at the frontlines of the climate crisis. Vanuatu and MSG insisted that this is not just about future commitments, but addressing current violations and ensuring justice for those whose rights have already been breached and continue to be breached today. Pointing to the systemic failure of international climate negotiations, Vanuatu and MSG called upon the Court to provide authoritative guidance, stressing the importance to ground climate action not in political convenience but in international law. Their counsel emphasized that no State is above the law and can remain unaccountable.

Vanuatu and MSG underscored that there are existing legal obligations of States in relation to the climate crisis that go beyond the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, and urged the Court to consider the full spectrum of international law. Their legal counsel made persuasive arguments on the right to self-determination and the right of people to determine their own fate, emphasising that climate change is depriving entire peoples of their ability to survive and thrive in their ancestral lands. It was recalled that the ICJ itself has characterised self-determination as both an essential principle of contemporary international law and as a fundamental human right with a broad scope of application, and noted that the conduct responsible for climate change has already infringed on the right to self-determination for the nations and peoples of Melanesia where climate related disasters caused by fossil-fuelled vandalism of major polluters have led to a near constant state of emergency.

Yet despite knowledge of climate harms resulting from the production and use of fossil fuels at least since the early 1960s, major polluters have continued to subsidise fossil fuel production. What emerged most clearly from their pleadings was that the conduct of polluters responsible for climate change and its catastrophic consequences is unlawful under multiple sources of international law, including, but not limited to, obligations to act with due diligence, to prevent significant harm to the environment, and to respect fundamental human rights. This triggers legal consequences under the law of State responsibility to cease such conduct, provide guarantees of non-repetition, and provide full reparation, including compensation, restitution, and satisfaction. The final word came from a Pacific youth delegate who reinforced the legal principle of intergenerational equity, calling on the Court to help course-correct and renew hope in humanity's ability to address the greatest challenge of our time.

*Vanuatu and the MSG powerfully called on the Court today to ensure international law serves its purpose—to protect the rights of all peoples and reaffirm the importance of accountability for past wrongs. Delegation members made clear that in the face of devastating climate harm, States cannot stay within the realm of empty pledges - there are existing legal obligations to act ambitiously on the climate crisis, and these extend far beyond the UNFCCC and the Paris Agreement. Building on extensive evidence and the entire corpus of relevant international law, the Vanuatu and MSG intervention compellingly argued that the conduct responsible for climate change, and its catastrophic consequences driving humanity to the brink of extinction, is unlawful. This then triggers legal consequences including cessation of climate-destructive conduct, guarantees of non-repetition, and the provision of full reparation. Vanuatu and MSG considered measures to ensure cessation of harmful conduct and guarantees of non-repetition would include stopping fossil fuel subsidies, adopting measures for deep and rapid emission reductions, and non-reliance on false solutions that risk aggravating harm, such as geoengineering. Further, it was made clear that reparation is not just about compensation, but also embracing structural measures, for instance, ecosystem restoration; tributes to victims; and recognition of the territories and maritime spaces of Small Island Developing States and their continued statehood and sovereignty despite the effects of climate change.*

## South Africa

South Africa's legal team opened their oral submissions by recalling examples of severe climate impacts affecting the country and stressing that these impacts are compounded by social and economic challenges. They underscored South Africa's commitment to address these issues and promote the right to a healthy environment in a manner that promotes economic and social development.

Their counsel emphasised the existence of a distinct legal regime on climate change, developed through careful negotiation and highlighted key instruments, including the UNFCCC, the Kyoto Protocol, and the Paris Agreement, underscoring that they embody principles of equity and Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC). Historical responsibility was emphasised, with the counsel recalling the cumulative emissions of industrialised nations as a basis for differentiated obligations. These obligations are also shaped by States' respective capacities, a principle reinforced by the *Pulp Mills* case, where the ICJ clarified that a State's duty to prevent harm is contingent on its means. Their counsel pointed to Annex 1 (industrialised countries and economies in transition) under the UNFCCC to illustrate the differentiated responsibilities embedded in the agreements. The South African delegation also emphasised the obligations provided in the climate agreements for developed States to provide the technological assistance needed by developing countries to tackle climate change and its impacts.

South Africa's counsel also emphasised that sustainable development principles and the pursuit of Sustainable Development Goals (SDGs) should guide the implementation of climate instruments. The significant adaptation costs faced by developing countries were identified as a pressing concern that should be considered when assigning responsibilities. The reference to human rights contained in the preamble of the Paris Agreement was discussed, with South Africa inviting the Court to consider the right to development as informing the scope of State obligations. On accountability, their counsel highlighted the existence of compliance committees under the Kyoto Protocol and Paris Agreement, presenting these mechanisms as evidence of specialised bodies entrusted with the responsibility to monitor and enforce climate-related obligations.

*South Africa's intervention strongly defended the principle of CBDR-RC, invoking a range of legal norms to support its position. The representatives appeared primarily concerned with ensuring that the Court refrain from attributing responsibilities to developing countries that exceed those explicitly outlined in the Paris Agreement. They relied on the existence of compliance mechanisms under the Kyoto Protocol and the Paris Agreement to argue against the use of alternative accountability measures for climate harms outside the climate regime. However, this approach appeared to lack persuasive force as a pathway towards enhanced accountability in the pursuit of climate justice because these mechanisms have extremely limited mandates and have been largely ineffectual to date.*

##  Albania

Albania's submissions stressed that climate change is a truly global crisis, and that no State will be spared from its far-reaching impacts. They urged the Court to be bold, direct, and clear in its interpretation of what the law requires to meaningfully address the threats we face from climate change. Underscoring the inequitable and disproportionate adverse effects on climate change, Albania highlighted the particular vulnerabilities of developing and middle-income nations - such as Albania and other Balkan States - who bear the greatest burden of climate change despite having contributed the least to it. Arguing that the law imposes differentiated responsibility on States, the counsel for Albania argued that developed, industrialised States bear the primary responsibility to take meaningful action to address the climate change crisis that they have and are continuing to contribute to, including by providing real and tangible support for developing and middle-income countries.

In reference to obligations under the Kyoto Protocol, the Paris Agreement, and the UNFCCC, counsel emphasised two overarching obligations of developed, industrialised States: i) to take material steps in significantly reducing emissions, and ii) to provide financial resources, facilitate technology transfer, and build capacity to enable developing and middle-income countries to implement mitigation and adaptation measures. Albania argued that States have obligations to protect fundamental human rights from the adverse effects of climate change - obligations that are separate and distinct from climate change agreements. Such obligations include, in particular: i) to prevent significant harm to the climate system and other parts of the environment that would foreseeably violate human rights; ii) to ensure that the measures taken in response to climate change do not themselves violate human rights; and iii) to provide redress for human rights violations, including those resulting from significant harm to the climate system and other parts of the environment. These obligations also operate outside the territory of a State as long as the conduct of a particular State can result in a direct and foreseeable impact on an individual's human rights.

*Albania's submissions correctly highlighted some of the inequities inherent in the climate change crisis and the already existing obligations of those who contributed the most to this crisis to reduce emissions and provide financial and other support and remedies to those harmed by it. In relation to human rights, Albania made a strong submission arguing that international human rights law includes obligations in relation to climate change and, particularly, highlighted the need for gender perspectives and an intersectional approach, outlining how the range of implications from climate change can impair the enjoyment of human rights in overlapping and layered ways, amplifying the exposure to harm of women, children, Indigenous Peoples, persons with disabilities, and those living in extreme poverty. Albania offered a particularly strong exposé of the importance for the Court to tackle gender equality in its Advisory Opinion by citing examples provided in the written submissions of other States and by referring to the work of relevant UN human rights bodies.*

##  Germany

The overarching argument of the oral submission made by Germany was that there are only very limited specific, legally binding obligations in international law that are applicable to climate change. To that end, Germany's counsel posited that the Paris Agreement formed the core of State obligations in the climate change context and forwarded several arguments limiting the obligations that exist under other sources of international law, such as customary international law and international human rights law. Germany's submissions highlighted that there is a difference between obligations that are legally binding, on the one hand, and political commitments made by States that are voluntary in nature and, thus, do not establish legally binding obligations. To that end, according to Germany's submissions, the majority of the articles set out in the Paris Agreement merely constitute "voluntary political commitments."

Among other arguments, Germany's counsel stressed that the principle of CBDR-RC does not constitute an independent obligation under international law and only exists as a principle established by the UNFCCC and the Paris Agreement.Finally, the counsel also highlighted that the Paris Agreement does not contain a legal obligation to provide compensation for climate change related loss and damage; any financial commitments made by parties are only on a purely voluntary basis. In relation to customary law, Germany argued that only sometime after the publication of the IPCC's first report in 1990 could norms of customary international law in relation to climate change have emerged.

The implication is that before 1990, States did not have any obligations under customary law and cannot be held accountable for their earlier emissions.

In relation to international human rights law, Germany asserted that as far as climate change is concerned, the Paris Agreement is the relevant treaty. Therefore, States that comply with the Paris Agreement automatically fulfil any and all of their human rights obligations. Additionally, counsel emphasized that under international human rights law, a State cannot be held responsible for harm caused to individuals outside its territory, even if the harm is the result of emissions emanating from said State. Germany rejected the idea that human rights treaties provide for rights or obligations in respect of future generations, as human rights treaties do not protect "abstract persons from abstract risks". Finally, Germany rejected the proposition that under international law, there is an independent and self-standing right to a clean, healthy, and sustainable environment.

Germany's submissions were strongly focused on limiting the State obligations that exist under international law in respect of climate change as well as any legal consequences that could arise for States for having caused significant harm to the climate system and other parts of the environment. In relation to human rights, in particular, the argument forwarded by Germany is essentially suggesting that while human rights treaties do apply, the obligations States have under human rights law are confined to obligations under the Paris Agreement – and few obligations in that treaty are legally binding. Additionally, Germany's arguments restrict the applicability of human rights treaties to their own territory and to the current generation.

As argued by other States, States have extensive obligations under different sources of international law, such as customary law, human rights law, and the law of the sea. These obligations are separate and distinct from, though complementary to, their obligations under the UN climate change agreements. This is especially true for States' obligations under international human rights law. Therefore, complying with the UNFCCC and Paris Agreement does not necessarily satisfy a State's obligations under international human rights law. States have significantly more extensive obligations under human rights law than under the Paris Agreement – obligations that exist vis-a-vis individuals and Peoples as opposed to States. These obligations also apply to individuals outside the territory of the State, including in relation to anthropogenic emissions of greenhouse gases, and take into account the rights of future generations. The arguments advanced by Germany would critically undermine the protection of human rights of individuals, Peoples, and future generations in the context of the climate change crisis, which poses an existential threat to all human beings. The German counsel relied on a selective use of cases in favor of its argument, preventing the judges from benefiting from a more comprehensive range of relevant case law.

##  Antigua & Barbuda

Prime Minister Gaston Browne of Antigua and Barbuda recounted the grave environmental, social, and economic consequences of climate change on Small Island Developing States. Antigua and Barbuda lost land to sea level rise, suffered declines in fisheries, and was devastated by Hurricane Irma in 2017. Prime Minister Browne mentioned that despite the climate treaties, global greenhouse gas emissions have continued to rise because of the failure of major polluting States to take adequate actions. The Prime Minister urged the Court to clarify the obligations and responsibilities of those who have contributed disproportionately to the climate crisis before; in his words, "the clock on survival runs out."

Counsel for Antigua and Barbuda cited the recent report of the Intergovernmental Panel on Climate Change, which described “a rapidly closing window of opportunity to secure a livable and sustainable future for all.” He warned that many high emitters try to use climate treaties as a shield to escape responsibility, and emphasised that other international rules (e.g. customary international law, human rights law) are not only relevant but vitally important to determining State obligations and whether their conduct is lawful. For example, the principle of prevention imposes due diligence requirements on historical major emitters to use all means at their disposal to achieve rapid, deep, and sustained cuts to emissions. These emission reductions must be consistent with the remaining global carbon budget, which identifies the volume of emissions in the coming years consistent with achieving the temperature goals of the Paris Agreement. Antigua and Barbuda highlighted that States responsible for harm to the climate system must cease their wrongful acts and pay reparations, including compensation for loss and damages.

*Antigua and Barbuda provided a powerful account of climate injustice by recounting the devastating impacts of climate change, their negligible contribution to the crisis, and the massive costs associated with rebuilding and adaptation. They challenged arguments of States that seek to avoid responsibility for inadequate action to address climate change. For example, Antigua and Barbuda forcefully rejected the idea that compliance with the Paris Agreement (e.g. filing an Nationally Determined Contribution) automatically fulfils other State obligations under international law. States must also comply with customary international law and international human rights law, obligations that cannot be negated by climate treaties. Antigua and Barbuda also confirmed that sufficient causal links can be established between breaches of international obligations and the injuries suffered as a result of climate change, clarifying responsibility for paying reparations.*

##  Saudi Arabia

Saudi Arabia acknowledged the urgency of addressing climate change, noting their own vulnerability to extreme heat and desertification. However, their counsel observed that efforts to reduce emissions must be balanced with other goals including energy security, food production, and economic development. The main point made throughout their oral submission was that the UNFCCC, the Kyoto Protocol, and the Paris Agreement form a specialized treaty regime, characterized by a global consensus, that precludes the application of principles and obligations established through other fields of international law, such as international human rights law. In other words, the climate treaty regime is the only relevant source in determining the obligations of States and the consequences of failures to fulfil those obligations. Therefore, the no-harm principle and human rights, including the right to a healthy environment, are irrelevant to the advisory process.

Saudi Arabia identified two bedrock principles of the climate treaty regime: common but differentiated responsibilities and respective capabilities (highlighting the heightened, historic responsibility of States that industrialised earlier); and the central importance of economic development and poverty alleviation. Saudi Arabia warned that the Court’s Opinion must not impose new or additional obligations, or it will risk undermining the integrity of the climate treaty regime.

*Saudi Arabia took a strikingly narrow approach to the framing of issues before the Court by asserting that the Advisory Opinion should focus exclusively on the three climate treaties, to the total exclusion of all other sources of international law.*

*Yet global, regional, and domestic courts have consistently determined that these other fields of international law are relevant, and do establish additional obligations upon States that complement obligations under the climate treaty regime. Examples include the International Tribunal on the Law of the Sea, the European Court of Human Rights, and the highest courts of Belgium, Brazil, Colombia, Germany, India, the Netherlands, and South Korea. Saudi Arabia suggested that the climate negotiations at the annual Conference of the Parties would be undermined if the ICJ relied on other sources of international law in answering the questions asked by the General Assembly resolution. In fact, a strong Advisory Opinion that relies on the entire corpus of relevant international law would strengthen the climate negotiations by providing clarity on legal duties and thus a firmer basis for multilateral solutions.*

#  Australia

Australia's legal counsel emphasised that the UNFCCC and the Paris Agreement are the central legal frameworks governing State obligations to address climate change under international law. However, parties are not yet on track to fulfil core objectives of this framework, so urgent individual and collective action is needed. At the same time, Australia acknowledged the relevance and applicability of other sources of international law to address the request, including the UN Convention on the Law of the Sea, environmental treaties, international human rights law, and the customary duty to cooperate. Therefore, the Court ought to harmoniously interpret obligations from other sources in line with the specialised climate regime that constitutes the primary source of obligations.

Regarding the relevance of customary international law, Australia asserted that the prevention of transboundary harm is not applicable to climate change. Australia contended that this rule has only been developed and applied in cases of direct transboundary harm, with spatial and temporal proximity, and from an identifiable source, which contrasts with the cumulative causes and widespread harm, detached from emission origins, that characterises greenhouse gas emissions. If, however, the Court disagrees, Australia made an alternative argument that compliance with the duty to prevent would be met by complying with the specific obligations under climate treaties. Australia also broadly supported the advisory opinion of the International Tribunal on the Law of the Sea and its conclusions, but highlighted that it would be difficult to clearly determine that the emissions of one specific State caused harm to the environment of another State.

Australia highlighted that the Court should not adopt a general causation standard for determining the applicable legal consequences for harm to the climate system. Reparation for climate change harm would require a clear causal link between emissions and injury; without this nexus, reparation is not justified. Additionally, the burden of proof should remain with the State seeking reparation. Finally, Australia stressed that the law of State responsibility does not support collective responsibility for climate harm; each State's conduct is a separate wrongful act, and while customary international law on responsibility remains relevant, it cannot fully address the complex issues of State responsibility in this context, especially whether and how reparations for composite acts would operate.

*Although it expressed solidarity for its Pacific neighbours and acknowledged the applicability of other sources of law to the climate problem, Australia effectively argues that international responsibility is inapplicable when it comes to harm to the climate system. Contrary to Australia's arguments, the duty to prevent transboundary environmental harm is not limited to bilateral cases, but refers broadly to respecting the environment of other States.*

*Responsibility for breaching this duty is also not limited to cases where causality is simple; possible complexities in specific attribution of harm do not render the duty inapplicable. In any case, advances in attribution science have significantly enhanced our ability to link specific harms to cumulative greenhouse gas emissions. Indeed, the complexities of climate change do not absolve States of their duty to prevent transboundary harm, their responsibility for its breach and the legal consequences applicable under customary international law.*

##  Bahamas

In their intervention before the ICJ, the attorney general and the legal counsel from the Bahamas highlighted the country's particular vulnerability to climate change, in particular due to extreme weather events such as hurricanes. The attorney general poignantly highlighted the real-life impacts of the climate crisis on Bahamians, such as displaced people, missing loved ones, and livelihood loss, all because developed countries ignored the warning signs of the climate crisis. He expressed concerns about the impacts of climate change on the archipelago of the Bahamas, such as ocean acidification, loss of mangroves and biodiversity, mass coral bleaching, and the rising sea level, which poses an unprecedented challenge to the very survival of the people. The Bahamas urged the Court to remember that this is not about numbers or projections, but what is at stake are lives, cultures, and histories that risk being erased. The attorney general concluded with a call to action, powerfully stating that the polluting countries must pay for the years of neglect and called for the clear need for developed States to provide financial support.

The Bahamas also highlighted the binding nature of States' individual mitigation obligations, which are based on customary law, including the prevention principle, and called for States to act with due diligence and in line with the best available science. The Bahamas highlighted the need for a nuanced approach to the CBDR-RC principle - calling on the Court to avoid seeing it as a free pass for high-emitting developing countries while also applying a proportional allocation of mitigation duty based on each State's greenhouse gas emissions contribution. It was highlighted that the Paris Agreement must be performed in good faith, meaning that Nationally Determined Contributions should reflect the highest possible ambition towards achieving the global temperature goal and that private actors must be regulated. The Bahamas called upon the Court to apply all the bodies of international law that apply to the climate crisis, including human rights treaties and the United Nations Convention on the Law of the Sea (UNCLOS), as they reinforce and complement each other.

In their intervention before the ICJ, the Republic of the Bahamas issued a powerful plea for accountability, underscoring the catastrophic human toll of climate change on their nation, from hurricanes and storm surges to rising sea levels that threaten to erase entire communities, cultures, and histories. The Attorney General emphasised that these impacts are not abstract but directly result from years of neglect by polluting countries. The Bahamas demanded that these nations be held liable for their contributions to the crisis and provide reparations for the displacement, loss of livelihoods, and ecological devastation they have caused. Highlighting the binding nature of individual mitigation obligations under customary international law, particularly the prevention principle, the Bahamas called for good faith implementation of the Paris Agreement, with ambitious Nationally Determined Contributions and regulation of private actors. They urged the Court to apply all sources of international law—including human rights treaties and UNCLOS— to ensure liability. Weaving powerful stories of loss with compelling science and legal arguments, the Bahamas' intervention was a strong call for reparation and liability for the climate crisis.

# Bangladesh

Bangladesh began its oral submission by expressing solidarity with Small Island Developing States and other climate-vulnerable States. It highlighted that Bangladesh is the seventh most climate-vulnerable country in the world. Climate change has impacted human rights to livelihood and culture and has put millions of people at risk of climate displacement. The delegation brought the Court's attention to the massive financial impacts of climate disasters, exceeding $3 billion per year. Bangladesh stated that they contribute "barely half a percent" to global greenhouse gas emissions, yet suffer some of the worst impacts. Therefore, the people of Bangladesh require climate justice now. The delegation also highlighted that in the face of severe climate disasters, it is becoming impossible to uphold human rights and balance sustainable development obligations. Their counsel emphasized that this year's COP yet again failed to deliver on its promises, which has been leading to increased inequity.

Their counsel emphasized the need to harmonize the multiple regimes of international law because its different branches all lead to a single overarching obligation: all States must take all necessary measures to deeply and rapidly reduce greenhouse gas emissions to avoid breaching the 1.5 degrees Celsius threshold, with the greatest burden to be taken on by high emitting States. This obligation arises from interrelated and mutually reinforcing legal regimes including the customary duty to prevent transboundary environmental harm, climate change treaties, and human rights law, and must be applied keeping in mind common but differentiated responsibilities. Bangladesh also drew on the International Tribunal of the Law of the Sea (ITLOS) Advisory Opinion, which established a stringent standard of due diligence applied in preventing harm to the marine environment. It was also stressed that the UNFCCC and the Paris Agreement are not the last words on State obligations, especially since the obligations are for the most part only procedural to ensure successive contributions to climate mitigation and adaptation. The UN climate regime, while vital for mitigation, does not fully define largely procedural State obligations. The Paris Agreement cannot override pre-existing duties, particularly when addressing global existential threats. Claims of inconsistency between the Paris Agreement and general international law were dismissed, as ITLOS and others reaffirmed the compatibility of these norms. Urgent, substantive action was called for to meet the imperative of environmental protection.

Bangladesh underscored that adaptation measures serve both primary and secondary obligations. Adaptation-related obligations are primary obligations and are not mitigation alternatives, but are rather required in parallel. The same measures may be required for both obligations, such as supporting ecosystem resilience. Adaptation-related obligations are also secondary obligations because States responsible for unmitigated emissions must assist injured States by providing necessary resources to remedy harm, guided by other sources of law and the best available science. Under this framework, Bangladesh submitted that developed States are obligated to mobilise and increase adaptation funds, fulfill existing finance commitments, and cooperate in sharing scientific and other critical information with developing and climate-vulnerable States. Furthermore, States must protect and restore climate-resilient ecosystems, adhere to stringent due diligence obligations—such as conducting environmental impact assessments for activities that could cause harm through greenhouse gas emissions—and take appropriate steps, including funding, to protect and uphold fundamental human rights.

*Overall, Bangladesh took a stand similar to other climate-vulnerable countries that presented arguments on the first day. The delegation for Bangladesh stressed the importance of the human rights nexus to climate change and warned that the devastating impacts of the crisis will progressively worsen. The oral submission pointed out the need to clarify States' legal obligations due to the slow progress of the climate negotiations. Their counsel rightly pointed out the applicable law that the Court needs to consider beyond the UN climate treaty regime, and focused on the clarity the Court would give on these secondary and primary obligations of human rights while keeping in mind the principles of differentiated responsibility and equity.*

# Barbados

Barbados highlighted the urgency of the climate crisis to Small Island States, which it argued is a matter of life and death for their people. Barbados pointed out that its economy is also at risk as a result of global warming and ocean acidification, which directly impacts tourism, fishing, and agriculture. For instance, earlier this year, hurricane Beryl destroyed 90% of the country's fishing fleet. The ability of the State to access insurance is being limited by climate change and this poses challenges to attracting the investment that is needed to develop the country. Barbados also mentioned its disappointment with COP29 and the amount committed by States so far to address climate change at a global level. Moreover, Barbados focussed its submission on four legal points: (i) applicable international law; (ii) the obligation to provide reparations and the doctrine of strict liability; (iii) causation; and (iv) foreseeability.

On applicable international law, Barbados submitted that all of international law applies to climate change, and not only the UNFCCC, the Paris Agreement, and the Kyoto Protocol. Regarding the obligation to provide reparations for climate harm, Barbados maintained that this obligation was one of strict liability, as since at least 1965 it has been established that hazardous activities (of which climate change is an example) give rise to strict liability. It added that the obligation to prevent transboundary harm is not an obligation of conduct, as defended by certain States, but rather an obligation of result, and that it is the harm alone that gives rise to the obligation of reparation. With respect to causation, Barbados rebutted the argument made by some States that the causes and impacts of climate change are too complex and far-reaching to be attributable to one single State, considering that the cause of climate change is direct, foreseeable and it is not remote. Barbados added that each major emitting State cannot evade its individual obligation to provide redress for climate-related harm simply because all major emitting States acted together to cause climate change, as under international law the obligation of redressing harm caused collectively falls on each State independently. On foreseeability, Barbados submitted that even before the first IPCC report was published in 1990, States already knew that climate change was happening - for example, as early as 1962, the United States National Academy of Sciences had informed then President John F. Kennedy that the extensive use of fossil fuels would disrupt the weather and ecological balances. Barbados closed by stating that major emitting States knew since the 1970s that climate change would shorten the lifespan of their own future citizens, but chose to do it anyway due to economic interests.

*Barbados made a legally sound, powerful submission to the Court. It addressed some of the main fallacies put forth by major emitting States, actively engaging with their written submissions. Particularly noteworthy was its review of historical documents that confirmed that the United States (as a proxy for other major emitting countries) knew about the dire consequences of climate change since the 1960s, but still chose not to take adequate measures to address its impacts.*

Barbados' rebuttal of the attempt by some States to limit the scope of obligations to specific climate treaties, rather than all of international law, should also be noted, as it clearly pointed out why the climate treaties cannot displace other rules of general international law - but rather, operate alongside it. Throughout its pleading, Barbados highlighted the severe economic and human rights impacts it is already experiencing due to climate change.

**Important Notice:** These Daily Briefings are aimed at providing an early summary of States' oral submissions to the International Court of Justice, providing critical elements of context to better understand the significance of key arguments made to the judges. These briefings are not meant as a legal product and do not provide a comprehensive summary of the arguments made by each State or Intergovernmental Organization appearing before the Court. Please refer to the video recordings and to the transcripts of the oral submissions for a full rendition of each of these submissions. The Earth Negotiating Bulletin also offers daily reports from these oral hearings which can be accessed here.

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