HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 13th, 2024

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

A concluding issue of the Daily Debrief will be released on Tuesday, 17 December, offering an overview of the key arguments and significant highlights from these historic weeks at the International Court of Justice.Stay tuned! Thank you for your support and attention!

In a Nutshell

Today...

- Youth Power, Climate Justice! The Pacific Community and OACPS ceded time to the "amazeballs" Pacific Island Students Fighting Climate Change and the World's Youth for Climate Justice to directly address the judges. The youth who "dreamed up this case" made powerful calls for climate justice, urging the Court to end emissions impunity, safeguard intergenerational equity, hold the line on reparations, and protect human rights – "ensuring that the legacy we leave behind, is a legacy of resolve."
- Notably, OACPS imperatively debunked and rejected all arguments from major polluters, showcasing how their claims hold no legal water and affirming that those States with cumulative historical emissions must be held accountable for the significant harm caused in the past (and still ongoing) to the climate system due to their unlawful conduct.
- A striking trend throughout the past two weeks was the overwhelming alignment of States and International Organisations on States' obligations and the legal consequences of their breach, underscoring that the most conservative views are ultimately held by a small, influential minority driven primarily by their own narrow economic interests.

Today's Reactions

Quotes can be used by journalists for their reporting. For questions or follow up, please reach out to Quint van Velthoven at quint@wy4cj.org

These testimonies recall great pain, sadness, and loss, but they should not be taken as a call for pity or for favours - instead they are a united call for fairness and justice. ... Just as the wayfinders of the Pacific held the wisdom to guide us through the vast ocean to safe harbor, you hold the knowledge and responsibility to guide the international community to ensure the protection of our collective future. And you can do this simply by applying international law to the conduct responsible for climate change.

VISHAL PRASAD (29) FIJI, DIRECTOR, PACIFIC ISLANDS STUDENTS FIGHTING CLIMATE CHANGE

The principle of intergenerational equity compels us to act decisively and responsibly today, to safeguard the planet for present and future generations. We are custodians of Earth's resources, whose current trajectory, if not corrected, will leave a legacy of scarcity and hardship.

BRENDA RESON SAPURO (32), KENYA, AFRICA FRONT CONVENOR, WORLD'S YOUTH FOR CLIMATE JUSTICE

Outside the Court

Civil society has kept the pressure on States and the Judges inside and outside the courtroom, urging them to deliver a progressive advisory opinion. Around the world, youth stood in solidarity, tuning in to watch the hearings unfold.

World Youth For Climate Justice

Watch parties were organised all over the world, including in Germany, Chile, Bangladesh, Switzerland, Australia, and Kenya. Although the ICJ is based in The Hague, the advisory opinion is for the whole world. Despite difficult timezones, youth all over the world proved to the world and the ICJ that We Are Watching!

Peoples' Petition

Today, civil society delivered to the Court the People's Petition: the outcome document of last week's People's Assembly where over 50 people, including youth, Indigenous Peoples, and experts across various fields gathered to share how their lives have been heavily impacted by climate change.

Read their testimonies

What's next?

Today, the Court posed its questions to the participants, marking a crucial step in the proceedings. Written responses are expected by Friday, 20 December 2024, with optional comments on these responses due by Monday, 30 December 2024.

The questions are:

1. What are the specific obligations under international law of States within whose jurisdiction fossil fuels are produced (including subsidies) to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gasses, if any?
2. To what extent, and how, does the object and purpose of the Paris Agreement, and the broader climate change framework, influence the interpretation of obligations under Article 4 of the Paris Agreement, particularly regarding nationally determined contributions?
3. What is the legal content of the right to a clean, healthy, and sustainable environment in international law, and how does it relate to other relevant human rights related to this advisory opinion?
4. What is the significance of State declarations on becoming parties to the UNFCCC and Paris Agreement stating that no provision under the Agreement may be interpreted as derogating from principles of general international law or any claims or rights concerning compensation or liability for adverse climate change impacts?

In 2025, the Court will work on drafting an advisory opinion that will provide clarity on the legal duties of States to safeguard people and the planet from climate harms – offering a decisive moment for global climate action. The advisory opinion is expected to be delivered next year.

Report on Each Intervention

Commission of Small Island States on Climate Change and International Law

The Commission of Small Island States on Climate Change and International Law (COSIS) highlighted the dire impacts of climate change on Small Island States, emphasising the threat to their people, culture, heritage, lands, and ecosystems. “As the waves wash away the graves of our ancestors, we sit and wait and wonder what our future will bring, hoping for our future generations.” With the future of humankind at stake, COSIS noted, “history will record [if] we refuse to stay silent. No, we won’t be silent in the face of a situation we are least responsible for.”

Counsel for COSIS asserted the role of the best available science – as represented by the IPCC reports – in informing States’ legal obligations, as already endorsed by the Court’s case law. Scientific evidence has unequivocally confirmed that anthropogenic greenhouse gas (GHG) emissions have caused, are causing, and will continue to cause harm to the climate system, with risks escalating even below the 1.5°C global threshold. In light of this clear causation, COSIS’s counsel highlighted that the prevention obligations undoubtedly apply to GHG emissions and that the best available science determines an objective standard of due diligence required, which in light of the catastrophic risks of climate change is, and must be, exceedingly stringent. Science is also clear that the current Nationally Determined Contributions (NDCs) undertaken so far by States under the Paris Agreement are clearly inadequate to prevent environmental harm. Its counsel highlighted that the necessary measures that States must take to meet their obligations must be assessed in light of the best available science, which tells us that drastically cutting GHG emissions is an imperative.

On applicable law, COSIS urged the Court to harmonise the various sources of international law and affirm that States’ have clear obligations to prevent transboundary harm where emissions originated on their territory. Its counsel asserted that the Paris Agreement does not modify or limit the obligations under other sources of international law and must not be interpreted in such a way as to frustrate the very goal of protecting the environment and human rights. Regarding the rules of State responsibility, COSIS highlighted that claims that climate responsibility is too diffuse are baseless and risk creating impunity for major polluters, turning vulnerable States into sacrifice zones. Building on the recent advisory opinion issued by the International Tribunal for the Law of the Sea (ITLOS), COSIS urged the court to address the legal consequences of GHG pollution, including by clarifying that the obligations of cessation and non repetition require a deep, rapid, and sustained transition away from fossil fuels.

COSIS underscored the factual reality of climate change while presenting poignant and sound legal arguments, founded in scientific evidence. After outlining the catastrophic effects of a world beyond 1.5 degrees Celsius, its counsel stressed that “measures that fail to provide a means of avoiding these outcomes simply cannot be considered to fulfill obligations to take necessary action.” COSIS systematically countered numerous unhelpful arguments presented by a minority of participants that promoted fragmentation of international law under the guise of systemic integration or, otherwise sought to delimit States’ obligations to the maximum extent possible. Overall, COSIS’s message was clear: in the face of this existential threat, science must be at the

heart of the Court's opinion and form the basis of States' existing legal obligations under the entirety of international law – a prerequisite to preserve the Earth for present and future generations.

Pacific Community

The Pacific Community (SPC) started by fleshing out the best available science, citing the IPCC findings that the collective ambitions of States remain woefully inadequate to keep global warming below 1.5 degrees Celsius, a non-negotiable line for planetary health and Pacific habitability. SPC highlighted the impacts of climate change on tuna fish stocks and on sea-level rise, which pose threats to the peoples of the Pacific and to the ecosystems of the region. SPC also called out the global financial flows that fund fossil fuels, despite the incompatibility of a fossil-fuelled future and the temperature thresholds of the Paris Agreement. Their delegation stressed the urgent need to ensure that the livelihoods and self-determination of Pacific people and cultures are protected for future generations.

SPC dedicated a good part of its intervention to the need for financial assistance, addressing what loss and damage already looked like in the Pacific region and the elusivity of promised climate finance for the most vulnerable. SPC highlighted the experience of Niue, which was affected by a category 5 cyclone that caused damages worth five times the gross domestic product (GDP) of the island nation, in addition to washing out the nation's only museum, with huge and irreparable non-economic damage to its cultural heritage. SPC also pointed out that it has taken three decades for a loss and damage fund to be operationalised under the UN Framework Convention on Climate Change (UNFCCC) framework, and that it remains severely underfunded for the task at hand.

Finally, SPC called on the "amazeballs" director of the youth-led Pacific Islands Students Fighting Climate Change (PISFCC), to plead before the Court. He stressed that the Paris Agreement and UNFCCC exist alongside other norms that are relevant to climate change, such as the duty to prevent significant transboundary harm, the right to self-determination, and the human rights of present and future generations. Drawing on compelling frontline testimony from the People's Petition, he asserted that there is nothing abstract about the human rights crisis caused by climate change. He ended with a powerful message to the judges: "...you have the opportunity to course-correct by holding those responsible for the climate crisis accountable, by reinforcing the importance of existing frameworks for liability and reparations, by ending emissions impunity, and protecting human rights, ensuring that the legacy we leave behind, is a legacy of resolve."

SPC's submission, as a technical and scientific organisation, rightly focussed on two areas where it has the most potential for influence – climate science and the finance needed for Pacific countries to adapt to and mitigate climate change. Particularly noteworthy were its remarks around the incompatibility between the Paris Agreement goals and fossil fuels, the consumption of which continues to increase. It was also commendable that SPC yielded some of its time to the youth-led civil society organisation that originated this campaign for an Advisory Opinion, PISFCC, who in turn debunked some of the main fallacies put forth by some States in these proceedings, and expressed that just as the wayfinders of the Pacific held the wisdom to guide the Pacific people through the vast ocean to safe harbor, the Court holds the knowledge and responsibility to guide the international community to ensure the protection of our collective future.

Pacific Islands Forum

The Pacific Islands Forum (PIF), recognising the efforts of sister Pacific organisations and the youth-led campaign advocating for this advisory opinion, highlighted the critical role of the ocean — not only as a cultural and spiritual cornerstone, but as an integral part of their identity and way of life. Representing 30% of the Earth's surface, the Pacific region faces severe threats from climate change, with low-lying States particularly vulnerable to risks impacting livelihoods, security, and wellbeing. Its legal counsel emphasised the urgency of action, stating that "the future of the Pacific cannot be left to chance, but requires a long-term vision, strategy, and commitment." The PIF's arguments focused on three key points. First, maritime zones as established and notified to the UN should remain unchanged despite sea level rise. Accordingly, the sovereignty, rights, and duties of States within these zones must also be preserved. Lastly, collective cooperation was identified as an essential principle to protect people affected by sea-level rise, safeguarding their civil, political, economic, social, and cultural rights.

The PIF submitted that the maritime zones and the associated rights, such as the sovereignty over natural resources, should be preserved despite physical changes caused by sea-level rise. It was stressed that the preservation of maritime zones in the context of sea-level rise was not considered during the negotiation of the UN Convention on the Law of the Sea (UNCLOS), as it was drafted on the assumption of stable coastlines. In response, PIF Member States have endorsed the Maritime Zones Declaration in 2021, which clarifies that the treaty imposes no obligation to review baselines or update charts and coordinates due to sea-level rise once they are deposited with the UN Secretary-General. This interpretation is supported by legal principles enshrined in UNCLOS, including stability, certainty, predictability, equity, fairness, and justice. Its counsel asserted that the 2021 Maritime Zones Declaration is a targeted solution to the issue of sea level rise in line with the good faith requirement under Article 300 of UNCLOS. In light of the above, Member States have also endorsed the 2023 Statehood Declaration, which reaffirms this interpretation and supports the presumption of continuity of statehood, and expresses Member States' commitment to protect persons affected by sea level rise. The PIF urged the Court to take note of these declarations in its interpretations of State obligations and to affirm that under international law there is a presumption of continuity of statehood.

The PIF submission highlighted the urgent need to address sovereignty issues in the international law of the sea as a matter of survival. It stressed that preserving maritime zones is not merely a technical matter under UNCLOS, but is vital to the continuity of statehood, self-determination, and cultural heritage. This also encompasses protecting civil, political, economic, social, and cultural rights, underscoring the profound impacts of climate change on Pacific communities. The arguments presented are paramount in the pursuit of stability, justice, and fairness, safeguarding the rights, sovereignty, and future of Pacific States and their peoples.

Organisation of African, Caribbean and Pacific States (OACPS)

The Organisation of African, Caribbean and Pacific States (OACPS) representing 79 member States and 1.3 billion people, opened by highlighting the historical GHG emissions by a small group of identifiable States, including former colonial powers. It stated that acts and omissions resulting in such emissions, including the promotion of fossil fuels and the failure to regulate emissions, are unlawful and discriminatory, perpetuating the inequities rooted in colonialism.

Its counsel powerfully refuted arguments made by major polluter States throughout the proceedings. OACPS dismissed the claim that the obligation of prevention does not apply to the protection of the climate system, emphasising that the principle encompasses global commons such as the marine environment, the ozone layer, and the climate system and that this is affirmed by the UNFCCC and UNCLOS. It further rejected attempts to limit State responsibility to post-UNFCCC obligations, highlighting that the risks of anthropogenic emissions were well known by the 1960s and that prevention governed States' conduct before specialised treaties entered into force. Its counsel rebutted the argument that only climate treaties define what States must do, and advocated for systemic integration of treaty law, customary international law, and principles such as the no-harm rule, due diligence, and human rights obligations. On the relevance of causation, pointing to IPCC consensus linking anthropogenic emissions to significant harm, its counsel urged the Court to reject any denial of this connection. Citing the ITLOS advisory opinion, OACPS criticised attempts to treat the Paris Agreement as a "safe harbor" for polluters, pushing back against claims that by respecting a single obligation under Paris, a State would be respecting all other relevant obligations. It was further asserted that historical and ongoing emissions constitute composite wrongful acts under customary law. Scientific advances now allow proportional attribution of emissions and harm. Its counsel refuted claims that climate harm is too diffuse for responsibility, highlighting transboundary and global damage under established legal principles. OACPS affirmed the UNFCCC's recognition of historical responsibility and called for robust legal consequences, including cessation of harmful activities, reparations, and support for mitigation and adaptation. Invoking obligations of the international community as a whole, its counsel urged the Court to establish accountability mechanisms that ensure justice for vulnerable States and equitable solutions to the climate crisis.

To close, OACPS gave the floor to the African Coordinator for World's Youth for Climate Justice (WYCJ). She represented youth from Kenya and the Masaai Peoples and explained the interrelation between intergenerational equity, self-determination, and climate accountability. "This reality is not a mere 'abstract risk,'" she emphasised, "but a lived experience requiring urgent action." She called on the Court to set a precedent that upholds intergenerational equity by affirming that the States responsible for climate change have violated their international obligations and, therefore, must face the consequences of their wrongful actions.

The OACPS argued compellingly for holding historically high-emitting States accountable for climate harms, emphasising the applicability of customary international law alongside climate treaties. Its counsel refuted attempts to limit obligations to post-UNFCCC frameworks, highlighting preexisting duties under principles like prevention, no-harm, and due diligence. OACPS stressed that causation includes harm to global commons, relying on ITLOS to affirm that emissions are composite wrongful acts attributable to specific States. Its counsel called for reparations, including financial assistance and compensation, as necessary remedies under erga omnes obligations. OACPS's argument reinforced the need for systemic integration of international law to ensure justice for vulnerable States and accountability for climate inequities.

World Health Organization

The Director-General of the World Health Organization (WHO) told of meeting a young boy, Falu, in Tuvalu in 2019. Falu and his friends were talking about what to do if their homeland sinks. Some were for taking refuge in Fiji; others wanted to stay and sink with their beloved homeland. Eleven to thirteen year olds talking like this, not playing, shows the profound impact of our actions and

inactions on young people's lives. Affirming that its mandate uniquely positions it to address the Court on the health dimensions of the climate crisis, the WHO asked the Court to place health and science at the centre of its advisory opinion, and thus "give full effect to the fundamental right of every human being to the highest attainable standard of health."

The climate crisis is fundamentally a health crisis, and it's here and now. WHO has been collating evidence of climate change health impacts for over 25 years: how reduced access to safe water results in increased malaria, dengue, and cholera, and how 7 million deaths a year are linked to the impacts of air pollution on cancers and cardiovascular diseases. Addressing climate change is a matter of equity. Already an estimated 920 million children face water scarcity. 154 million people currently live less than one metre above sea level. Without action, 130 million people will be pushed into extreme poverty by 2030. Women, children, ethnic minorities, poor communities, migrants and displaced persons, older people, and those with underlying health conditions will suffer disproportionately.

Fossil fuels account for 80% of global primary energy, with government fossil fuel subsidies at over US$600 billion per year. Only a rapid and equitable phase out of fossil fuels can protect the health of both people and the planet from the climate crisis. The International Monetary Fund (IMF) suggests that pricing fossil fuels in line with their health and environmental impacts could save roughly 1.2 million people from air pollution related diseases each year.

From a finance perspective, WHO estimated that every US$1 spent on specific climate and health actions will bring an average return of US$4. Failing to respond to climate change is the costliest approach. Robust and sustained financing is essential to limit GHGs and to prepare health systems. Addressing the climate crisis is about urgently protecting people, place, and planet for a healthier world now and for the future we leave our children. Science and technical evidence should be at the heart of the Court's consideration, since the UN General Assembly explicitly referred to the right to a clean, healthy, and sustainable environment in seeking the Court's advice.

WHO took a three-pronged approach to the Court, beginning by taking the court to the heart of Pacific Islanders' immediate fears for present and future generations. Next, its counsel marshalled stark statistics on health and poverty inequalities, calling on the judges to take a science-based and equitable approach, noting that the General Assembly had specifically referenced the right to a clean, healthy, and sustainable environment. Finally, WHO insisted that phasing out fossil fuels is essential to protect the health of people and the planet, appealing to the developed States' bottom line, by showing that failure to provide robust financing today will prove costlier tomorrow.

European Union

The European Union (EU) underscored the historical significance of the Court's advisory opinion, framing it as an opportunity to clarify and harmonise the obligations of States under international law concerning climate change. It highlighted the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) and emphasised the importance of aligning climate action with human rights. The EU's arguments sought to strengthen the coherence of climate obligations under the Paris Agreement, customary international law, UNCLOS, human rights law, and other international instruments while urging stringent due diligence standards in addressing the global climate crisis. In doing so, it rejected the notion of treating the Paris

Agreement as the only relevant legal instrument (*lex specialis*). Instead, the EU argued that obligations across these sources are complementary and must be harmonised to provide a comprehensive legal framework.

The EU argued that States define their respective contributions through their NDCs, but do not have unlimited discretion in doing so. The due diligence standard for complying with obligations under the Paris Agreement and related treaties require States to act with the highest possible level of ambition. Like ITLOS, the EU maintained that due diligence is particularly stringent due to the severity of the climate crisis. The EU clarified that the obligation to prevent transboundary harm does not imply automatic liability for harm, but rather necessitates proactive and diligent efforts to prevent it. While acknowledging the disproportionate contributions of developed States to historical emissions, it rejected proposals to allocate obligations based on historical emissions or carbon budgets, arguing that the Paris Agreement's approach to developing NDCs already reflects an equitable approach to differentiation. Additionally, the EU stressed the interplay between human rights and climate obligations, arguing that States' due diligence in mitigation and adaptation must be consistent with their duty to respect, protect, and fulfill human rights. It also urged the Court to clarify extraterritorial human rights obligations in the climate context, referencing the European Court of Human Rights' (ECtHR) Duarte Agostinho judgement. On legal consequences, the EU argued that the rules of State responsibility, as codified by the International Law Commission (ILC), remain applicable in the context of climate change, but urged the Court to avoid applying them to the conduct of any specific State or group or States.

The EU demonstrated a firm commitment to advancing coherent and ambitious climate action, but certain contradictions merit scrutiny. While the EU advocated for systemic integration, it maintained that the Paris Agreement is the "clearest expression" of States' obligations, seemingly undermining the more onerous standards found in customary international law, such as the prevention of environmental harm and human rights protections. This selective approach risks diluting the harmonisation principle it champions. Additionally, while rejecting historical emissions-based allocations, the EU's emphasis on NDCs as equitable mechanisms glosses over disparities in ambition and capacity that persist under the Paris framework. The EU's reliance on obligations of conduct and stringent due diligence is laudable, but requires broader acknowledgment of the legal consequences of noncompliance, including reparations for harm. By emphasising ambitious action and systemic integration, the EU aligned with helpful interpretations of international law, but could have more robustly engaged with issues of accountability and equity to uphold the justice it seeks to promote. On the question of extraterritorial application of human rights, the EU's reference to the Duarte decision indicated that they are implicitly endorsing the narrow approach adopted by the ECtHR, which stands in stark contrast to the broader interpretation adopted by the Inter-American Court of Human Rights in its 2017 advisory opinion on the environment and reiterated by the UN Committee on the Rights of the Child in the Sacchi case.

International Union for Conservation of Nature

The International Union for the Conservation of Nature (IUCN) highlighted that the law must move faster to address the escalating planetary crisis because the future of humanity is at risk, and thus the destiny of humanity is in the hands of the Court. In answering the first question on State

obligations, counsel for the IUCN asserted that every State is obligated to do its utmost to limit global warming to 1.5 degrees Celsius, to minimise and reverse any overshoot of that goal. This is an obligation of stringent due diligence based not only on the climate treaties but also on UNCLOS, international human rights law, and customary international law. Due diligence requires States to take urgent action to reduce global GHG emissions by 43% by 2030, and 60% by 2035 (relative to 2019 levels). All States must contribute, but the extent of their contributions is influenced by the principle of CBDR-RC. IUCN's counsel urged the Court to acknowledge that international and regional human rights treaties impose positive obligations on States to take all necessary mitigation and adaptation measures to respect, protect, and fulfill the human rights of all persons in their territory or under their jurisdiction. The IUCN referred to recent decisions of the European Court of Human Rights and the UN Human Rights Committee involving climate-related violations. States must also avoid imposing undue burdens on future generations.

In response to the second question on the legal consequences of causing significant harm to the climate system, the IUCN relied on the customary rules of State responsibility. These consequences include the duty to perform the obligation the State has breached, cease any actions contributing to the breach, guarantee non-repetition of the breach, and provide full reparations for the injury (in the form of restitution, compensation, and/or satisfaction). The IUCN emphasised the need to consider the particularly devastating impacts of the climate crisis on Small Island Developing States and future generations when determining legal consequences.

The IUCN made a clarion call for urgent climate action grounded in the legal obligations of due diligence rooted in climate treaties, human rights law, and customary international law. These due diligence obligations, described as stringent, require States to do their utmost to rapidly reduce emissions, establish, implement, and enforce effective legislation, and regulate the conduct of private actors. Rejecting the suggestion made by a few States that climate treaties are the sole source of climate-related obligations, the IUCN took a holistic approach to the harmonious interpretation of international law.

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