HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 6th, 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.

In a Nutshell

Today...

- Most astonishingly and most disrespectfully to those pleading for their very existence in front of this Court, today **Kuwait** openly defended fossil fuels, rejecting any legal obligation for phasing out their production and use. Instead, it attempted to greenwash the pollution of its State-owned petroleum corporation.
- In spirited response to problematic attempts by major polluters like **Kuwait** to undermine legal claims for climate redress, **Jamaica**, the **Maldives**, **Papua New Guinea**, and the **African Union** presented robust legal arguments for comprehensive, structural reparations for climate-destructive conduct, including for debt relief and ensuring continued statehood for affected States.
- Another strong day for customary law, **Kenya**, **Malawi**, the **African Union**, **Jamaica**, and **Kiribati** stressed that the prevention of transboundary harm duty applies globally to greenhouse gas emissions - this obligation complements climate treaties, requires action on foreseeable risks, and aligns State sovereignty with environmental responsibility.
- Developed States - **Latvia** and **Liechtenstein** - are setting a good example by supporting the Small Island States in their fight for the right of self-determination, a vital cause for climate justice.

Scroll down for all interventions!

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

Those responsible for creating and fueling the climate crisis that is negatively affecting Small Island States can no longer deny the role that they have played over decades. Justice must be served. Jamaica made clear that through International Law, our human rights must be protected and upheld in addressing the impacts of climate change. The devastating impacts of climate change cannot be addressed by any one country, international cooperation must play a role including through climate reparations and finance.

MARIO GALBERT (25), JAMAICA, EXECUTIVE COORDINATOR,
CARIBBEAN YOUTH CLIMATE COUNCIL

I am proud of Kenya's strong submissions at the ICJ today. I appreciate Kenya's focus on the principle of prevention as a counter to arguments that wrongly try to limit State obligations and responsibility to emissions only after international climate treaties were signed. We must sincerely acknowledge and take responsibility for environmental destruction.

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

Outside the Court

Tonight, at the People's Hub, we held a candlelight vigil and Tok Stori to take a moment to pause, remember, and honour the people and communities who have dedicated their lives to the fight against climate change. This gathering emphasised the strength and connection of communities across nations and generations during these historic weeks of climate justice hearings.

Activists shared poems of resilience, challenges, and triumphs in their battle for a just future.

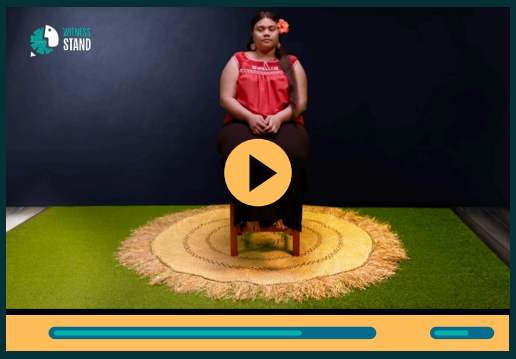
Pacific Islands Students Fighting Climate Change

"A papia largu, deliberá, negoshá delantá!
Pero poder kombina ku egoismo a surpasá e mente
I awó nos TUR ta changá."

There have been so many conversations, discussions, negotiations!
But power, combined with selfishness, corrupted the mind.
And now we are ALL trapped.
- **Jackie Bernabela**

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 week

On Monday, 9 December, the Court will hear from the following States: Mexico, Micronesia, Myanmar, Namibia, Japan, Nauru, Nepal, New Zealand, Palestine, and Pakistan.

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Report on each Intervention

Jamaica

Jamaica delivered its opening statement by emphasising how Small Island Developing States (SIDS) like Jamaica are most affected by the effects of climate change, confronting a continuous cycle of loss and damage with little room to recover. In order to provide a recent example, its counsel referred to hurricane Beryl, which resulted in billions of dollars in loss and damage, as well as impacts experienced at the national, sectoral, community, and individual levels, sometimes to devastating degrees. Jamaica emphasised its firm belief that international law plays a central role in addressing the urgent and existential climate crisis. While Jamaica acknowledged that climate multilateralism has yielded some positive results, it stressed that more is required by clarifying the existing obligations of States under international law. Jamaica focused its intervention on the effects of the breaches of climate change obligations and the legal consequences arising therefrom.

Jamaica clearly asserted that States bear human rights obligations linked to climate change impacts, including extraterritorially, underscoring the rights to life, health, and a clean, healthy, and sustainable environment. The Paris Agreement preamble, Jamaica noted, recognises the need to respect human rights when addressing climate issues. Highlighting the right to development, Jamaica stressed its importance for SIDS like itself, whose sustainable growth is undermined by climate crises. Jamaica's legal counsel agreed with the written submissions of Vanuatu regarding relevant conduct at stake in the proceedings and the application of rules under the law of State responsibility for climate harm. Pushing back on arguments made by some major polluters undermining the legal basis for remedy and reparation, Jamaica recalled ICJ jurisprudence on redress for environmental damage. Drawing from the law of State responsibility, Jamaica identified restitution and compensation, for both material and non-material losses, as two important reparatory options for SIDS. As one of the examples for such losses, its counsel highlighted the permanent loss of biodiversity, harming both present and future generations. Jamaica made it very clear that voluntary contributions under the UN Framework Convention on Climate Change (UNFCCC) Loss and Damage Fund would not satisfy the duty to make reparation under the law of State responsibility. Jamaica's counsel concluded by lamenting the devastating climate impacts on its people, calling for comprehensive reparations encompassing technology transfer, capacity building, and accessible climate financing.

Jamaica's strong support for human rights was a clear affirmation of putting people and the planet first in the climate crisis. Its counsel brought to life the existential stakes of these proceedings by connecting rigorous technical arguments with the devastating loss and damage Jamaica is forced to confront as major polluters continue on climate-destructive pathways while simultaneously denying, diluting, and evading their legal responsibilities. The question before the Court on legal consequences is of paramount importance. As Jamaica's intervention so powerfully illustrates, in this era of devastating and escalating climate harm, redress is essential to ensure public and planetary well-being. Jamaica made clear that the right to remedy and reparations is a long-standing fundamental tenet of international law and jurisprudence and that accountability and reparations for climate damage are a matter of obligation and justice — not charity.

Papua New Guinea

Papua New Guinea (PNG) opened its submission by stating that climate change was the single greatest threat to the livelihoods, security, and well-being of the peoples of the Pacific. Citing examples of climate-induced forced displacement, it stressed how climate change was already harming its people, territory, and nature. PNG highlighted the cumulative impact of greenhouse gases (GHG) over time, in line with the Intergovernmental Panel on Climate Change (IPCC) science, and the multi-dimensional impact that this conduct has had on Small Island Developing States (SIDS), covering human rights, environmental integrity, and intergenerational equity. It stressed that the entire corpus of international law is relevant to answering the question of the obligations of States, making special note of human rights law and the right to self-determination. PNG sustained that, in light of the principle of common but differentiated responsibilities, the primary responsibility to address the global challenges of climate change lies with high emitting States, as PNG and other SIDS lack the technical capacity and resources.

PNG submitted that the right to self-determination, which is a peremptory norm of international law, had been breached by the conduct of States that caused climate change - including the right to permanent sovereignty over their own natural resources. PNG also debunked the argument that there would be no breach of this right, as the States that violated it were not bound by the relevant obligations when the historical emissions occurred, stating in turn that the obligation to respect the self-determination of peoples was in place since at least 1945 when it was codified in the UN Charter. In relation to the legal consequences for breaches of those obligations, PNG submitted that the framework of the law of State responsibility should be applied and that full reparation should include restitution, compensation, and satisfaction - which, in this case, means that responsible States should provide financial and technical assistance to PNG for preserving its natural resources; and compensation for the losses and damages that have already occurred and continue to occur for SIDS.

Papua New Guinea's first-ever appearance before the ICJ was historic not only for this fact, but also for the emphasis it gave to the right to self-determination and to the ensuing obligation of States to respect this right, which is a peremptory norm of international law. It was clever for PNG to focus on this key issue, as it added to the web of arguments that are being put forth by the Pacific States. PNG asserted that this obligation has existed since 1945, thus countering high-emitting States' claims that historic emissions should be excluded from addressing breaches and their consequences. PNG's clear call for remedies, including compensation for losses and damages, also rightly fully brought the Court's attention to the second question posed by the UN General Assembly in its resolution.

Kenya

Kenya emphasised the urgent need for clarity on States' legal obligations regarding climate change and the duty of the international community in upholding justice as it addresses the climate crisis, underlining the Court's role in reversing the current trajectory. Kenya highlighted that climate change's severe impacts are already a reality threatening its society, despite its minimal contribution to the crisis. It also argued that its heavy debt stems from a global financial system unfairly biased against it. Its counsel argued for the applicability of all relevant legal sources, emphasising clear obligations under UN climate treaties, differentiated responsibilities under the common but differentiated responsibilities (CBDR) principle, customary obligations of States, and responsibility of States for historical emissions.

To that end, Kenya stressed that States responsible for historical emissions must provide reparations for the climate harm they caused, potentially through compensation and debt relief.

Strongly rejecting arguments positing that relevant State obligations are exclusively found under the UN climate treaties, Kenya asserted that applicable obligations are found within broader international law, including customary and human rights law. Kenya criticised States for attempting to "smuggle" in this argument by incorrectly suggesting that customary law obligations of prevention do not apply or that the content thereof is to be determined exclusively by reference to the UNFCCC and the Paris Agreement. Its counsel also countered claims that the Paris Agreement replaced previous treaties, emphasising that the UNFCCC and Kyoto Protocol must inform its interpretation, and that the Paris Agreement involves binding commitments, not just voluntary goals. Kenya asserted that the principle of CBDR does not give an excuse to States to reduce their emission efforts, but can offer flexibility and additional time, while also placing enhanced responsibilities on developed States to support vulnerable ones. Rejecting the claim that historical emissions should be shielded from legal consequences due to the principle of non-retroactivity, Kenya's counsel argued that all States have been under the obligation to prevent harm from GHG emissions well before the UNFCCC was adopted in 1992, citing long-established principles such as the "no-harm" rule and the undeniable foreseeability of harm. Furthermore, Kenya highlighted that non-retroactivity "cannot be so ossified as to exclude the perspectives of developing States, many of which were under colonial domination until the late 20th century and lacked all agency in the original elucidation of the principle," a rule that, in any case, is not inflexible.

Kenya's submission brought forceful arguments on climate justice, the applicable legal framework, the historic responsibility of States for their GHG emissions, and in relation to the content and application of the principle of CBDR. Forwarding important arguments on integrating different obligations under the different sources of international law, Kenya demonstrated that customary obligations should inform climate treaties rather than the latter replacing the former, as posited by several other States. Overall, its counsel skillfully countered many arguments so far presented by major historical polluters by highlighting that States have had binding legal obligations in relation to their GHG emissions under customary law well before the adoption of the climate treaties, with more than sufficient foreseeability as to the consequences of GHG emissions. Kenya, thus, focused on ensuring that States will not be able to avoid responsibility for their historic GHG emissions.

Kiribati

Kiribati opened its intervention with an account of how gravely it has been impacted by climate change, from displaced people to poisoned soils that violate their right to food, water, and life. In its oral statement, Kiribati set out the landscape of the relevant State conduct that leads to increased greenhouse gas emissions, explaining the context of the no-harm rule that applies in the broader spectrum of international law and its principles, focusing on the right to self-determination and sovereignty. Kiribati then continued to apply the no-harm obligation, also known as the prevention principle, to the GHGs emitted by countries and explored the legal consequences, focusing on Small Island Developing States. It then explored the territorial scope of international human rights obligations and interpreted the climate-related treaties

The no-harm principle, according to Kiribati, is not in dispute here. What is in dispute is whether this principle is applicable in the context of GHG emissions as transboundary harm. International law does not make a distinction between harming another State's territory and harming the atmosphere.

In its submission, harming the atmosphere is in and of itself a violation of international law, if it causes harm to other States. According to Kiribati, the sovereignty of States and their margin of appreciation to dispose of their natural resources is limited if they cause harm to the atmosphere. Kiribati submitted that its right to self-determination is threatened by the impact of climate change and all States have the obligation to act positively to facilitate the realisation of this right under international law. Kiribati also submitted that human rights obligations have an extraterritorial scope because the GHG emissions threaten the existence of States like Kiribati and, therefore, breach their right to sovereignty, a right that must be protected by all States. Kiribati concluded with the argument that the climate treaties cannot deviate from the basic peremptory principles, the no-harm principle, and the self-determination principle, and that the UNFCCC and the Paris Agreement do not derogate from principles of international law.

Kiribati's oral statements constituted strong arguments that distilled the responsibility of States under different areas of law. While explaining the responsibilities of States under customary international law, international human rights law, and climate-related treaties, Kiribati eloquently explained that greenhouse gases fall under the scope of these responsibilities and that the atmosphere is a crucial part of the transboundary harm concept. In support of the Bahamas, it stressed that greenhouse gases qualify as fumes and that no state has the right to "cause injury by fumes in or to the territory of another," as affirmed in the Trail Smelter case. Rebutting the argument that human rights treaties only apply to individuals that are under the direct control of the State and informed by the subsidiarity principle, Kiribati rightfully explained that the subsidiarity principle aims to point to individual States as the primary rights provider and protector, and that this rationale failed in the face of emissions that threaten the existence of Small Island Developing States. By tackling the argument that greenhouse gas emissions do not fall under State responsibilities due to its cumulative nature, Kiribati debunked a key argument in these proceedings.

 Kuwait

Kuwait's submission emphasised the legal framework of climate obligations under the UNFCCC, Kyoto Protocol, and Paris Agreement, arguing that these treaties provide the exclusive basis for regulating GHG emissions and addressing climate change. It highlighted the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) as a cornerstone of these agreements, affirming that States' obligations are limited to "conduct" rather than "result," granting flexibility based on national circumstances. It argued that this regime strikes a necessary balance between State sovereignty over natural resources and environmental responsibilities, particularly for economies reliant on fossil fuels like Kuwait's. Its counsel argued that Kuwait's State-owned Petroleum Corporation "is one of the least emission-intensive oil and gas producers worldwide, which has already undertaken a number of significant projects to reduce greenhouse gas emissions with a view to achieving the net zero emissions target by 2050."

Kuwait stressed that general principles of customary international law, such as the precautionary principle and the duty to prevent transboundary harm, have been expressly subsumed into the specialised climate treaty regime and cannot override its carefully negotiated provisions. Specifically, it argued that compliance with Nationally Determined Contributions (NDC) obligations under Article 4 of the Paris Agreement signifies due diligence in preventing transboundary harm from GHG emissions. Kuwait, therefore, stressed that States may argue breaches only with regard to obligations under climate treaties, and that, in any case, reparation would be inapplicable due to a lack of a direct and certain causal link between the State's wrongful act and the injury suffered by the claimant State.

As ITLOS has rightly clarified, national circumstances or capacities may affect how the duty to prevent environmental harm is carried out (i.e., the expected diligence), but do not exempt developing and least developed countries from complying with it. It is interesting to note the difference between Kuwait's and the UAE's submissions on the CBDR-RC principle, as the UAE specifically acknowledged that developing countries should not hide behind this principle to justify lack of action. Although Kuwait's fossil fuel dependence as a developing country is a relevant factor to keep in mind, its legal stance missed a critical opportunity to demand that historical polluters provide reparations for climate harm, which the country is already experiencing, and technical support for a just and equitable transition to cleaner energy. Kuwait ranks among the world's top oil producers and exporters - its position is self-serving and aligned with major historical polluters.

Latvia

Latvia focused its submission in major part on question A, emphasising the obligations under the Paris Agreement and the UN Convention on the Law of the Sea (UNCLOS). Latvia highlighted that they support the Small Island Developing States in their arguments that, as a matter of international law, the statehood of SIDS is not affected by climate change-related sea-level rise because factual control over territory is not always a necessary criterion for the continued juridical existence of States. Latvia also highlighted the due diligence obligations of States under both the Paris Agreement and UNCLOS, especially the obligation to preserve and protect the marine environment from the deleterious effects of climate change. Latvia's counsel emphasised that, as the International Tribunal for the Law of the Sea (ITLOS) determined, the precautionary principle and the best available science inform the most appropriate measures to prevent harm caused by greenhouse gas emissions. Citing ITLOS, Latvia affirmed that where action by more than one State is required to avert a particular outcome, each individual State is expected to take all measures that are within its power. Based on the Court's established case law, Latvia argued that the duty to cooperate is essential to fulfil the obligation of prevention.

Latvia also supported the human rights-based approach to the protection of the climate system, recognising differentiated impacts, but noted that for a breach to occur there should be a foreseeable and serious direct adverse effect on an individual's rights. Latvia highlighted that States enjoy a large amount of discretion under the Paris Agreement and relevant human rights instruments, but less discretion in determining whether to take measures to combat climate change. Counsel for Latvia urged the Court to acknowledge the differentiated impact of climate change on the rights of Indigenous Peoples, people in vulnerable situations, including the elderly, children, and persons with disabilities, and individuals within SIDS and least developed countries. Finally, Latvia sought to limit the scope of question B, arguing that the question is limited to the content of responsibility for States that have caused significant harm, and does not extend to other States. Latvia also invited the Court to restate the International Law Commission's rules on State responsibility.

Latvia, the only State in the Eastern European group of States to make written and oral submissions in front of the Court, presented mostly helpful arguments before the Court. Reflecting on Latvia's history and experience as a State emerging from the Soviet system, Latvia made a strong endorsement of the principle of continuing statehood, not being dependent on factual control over a territory, and showed solidarity with SIDS at risk due to sea-level rise. Latvia also made a strong rebuttal to Russia's arguments on UNCLOS, inviting the Court to follow the ITLOS advisory opinion's findings on due diligence.

Latvia recognised the importance of human rights obligations in the context of climate change, including the differentiated impacts that it has on various individuals, but also highlighted the wide margin of appreciation that States enjoy in determining the measures to combat climate change. Interestingly, in its oral submissions, it did not question the global recognition of a healthy environment. While Latvia's submission was not as helpful as the Pacific Island States it publicly supported, it provided clear legal argumentation based on the established case law from the Court and ITLOS.

 Liechtenstein

Liechtenstein underscored the profound impact of climate change on the right to self-determination, linking it to disruptions in the management of vital natural resources, threats to statehood, and the undermining of livelihoods. Liechtenstein invoked in this context the Maastricht Principles on the human rights of future generations, which confirm the applicability of the right to self-determination to present and future generations. Stressing the inalienable nature of self-determination, Liechtenstein indicated that the presumption of continued statehood must remain intact, even for States whose territories are inundated by rising sea levels and whose populations may be forced to relocate. Its counsel further noted, referencing the UN Charter, that all States share a duty to promote equal rights and self-determination through joint and separate action. Turning to the right to a clean, healthy, and sustainable environment, Liechtenstein explained that this right, recognised in UN resolutions, declarations, and regional treaties, requires the preservation of a safe climate, clean air, water and adequate sanitation, healthy and sustainably produced food, non-toxic environments, and healthy biodiversity and ecosystems. Having noted that all of these elements are directly impacted by climate change, especially in the context of children, Liechtenstein's counsel noted that the failure to secure a clean, healthy, and sustainable environment breaches the obligation to safeguard the ability of future generations to enjoy it.

Liechtenstein's counsel also emphasised the urgent need for authoritative legal guidance from the Court in addressing unsustainable anthropogenic greenhouse gas emissions, which jeopardise the health and rights of current and future generations. Acknowledging the difficulty of assigning responsibility for actions previously deemed lawful, Liechtenstein stressed the opportunity to consider all accountability measures, including individual claims against States for breaches of international obligations and collective responsibilities. Proposed remedies included a collective obligation for major emitters to finance mitigation and adaptation efforts, while underscoring the importance of ensuring continued statehood for affected States.

Liechtenstein's intervention delivered a powerful and much-needed bridge between the perspectives of developed nations and the urgent pleas of the most vulnerable States, underscoring that the rights to self-determination and a healthy environment are fundamentally at stake in these proceedings. Its constructive engagement with these arguments demonstrated that concerns about climate-induced threats to sovereignty and human rights are universal, transcending geographic and developmental divides. By emphasising the critical need to safeguard human rights, including those of future generations, Liechtenstein not only reinforced the positions of many countries, particularly in the Global South, but also provided a compelling counterpoint to the attempts by some States to exclude future generations from consideration. This principled stance highlighted the shared responsibility of all nations to address the climate crisis and the imperative to uphold human rights as an integral part of climate action.

Malawi

Malawi began its oral statement by unequivocally stating that we have already had over a century and a half of anthropogenic GHG emissions; and the climate emergency poses the greatest threat to our planet and an existential risk to vulnerable communities worldwide, including present and future generations. After highlighting its status as one of the least developed countries with one of the smallest GHG emission footprints in the world, Malawi outlined the disproportionate burden of the climate-induced consequences it is bearing. In light of this crisis of inequity, the principle of CBDR-RC forms a fundamental principle of international climate change law, creating differentiated mitigation, prevention, and climate finance responsibilities. Its counsel urged the Court to consider all the existing obligations under different sources of international law and to affirm the wide array of legal consequences that exist for States that have breached their responsibilities.

Counsel for Malawi argued that "it is radical and wrong to suggest that customary international law is irrelevant," emphasising that the UNFCCC and Conference of the Parties (COP) meetings were never intended to negate existing customary law obligations. The due diligence obligation to prevent significant transboundary harm is recognised by the UNFCCC and has been repeatedly confirmed by ICJ case law. In Malawi's view, customary obligations complement the Paris Agreement, thus requiring States to take effective action to ensure global temperatures do not exceed 1.5°C above pre-industrial levels. This includes concrete measures like adopting regulatory frameworks to reduce emissions, enforcing them, conducting environmental impact assessments, and providing technical assistance to climate-vulnerable States such as Malawi. Finally, Malawi posited that it is a cardinal principle of international law that an internationally wrongful act of a State triggers specific legal consequences. Such consequences include cessation and guarantees of non-repetition, as well as financial, legal, and structural remedies, such as debt cancellation. There is no valid reason to exempt climate change from these rules.

Malawi emphasised that the Court is not being asked to legislate or make new law, but to interpret and uphold existing law. Following in the footsteps of some previous countries, Malawi argued persuasively that if the principle of transboundary harm applies to localised environmental issues, it must also apply to the global threat of climate change. Indeed, it would be illogical to argue that the magnitude of the issue exempts it from this longstanding principle. Instead, the existential threat of climate change ought to make the due diligence standard more stringent, not less. Malawi also highlighted the importance of the potential legal consequences, noting that they could be both financial and non-financial, requiring a range of diverse measures to address the harm caused.

Maldives

The Maldives articulated the extensive impacts of sea level rise and coastal erosion that are causing damage to their livelihoods, critical infrastructure, and surrounding environment, and emphasised its unyielding commitment to adaptation and avoiding relocation. The Maldives stressed that the Court must interpret States' obligations in the context of climate change without limiting itself to climate treaties, but rather looking to other parts of international law as well. The Maldives then highlighted the duty to cooperate, which is enshrined in international law and goes beyond mere procedural obligations.

Its counsel referred to four specific normative aspects of cooperation in the context of the climate crisis. First, while cooperation has been a long-standing duty in international treaties and declarations, States must cooperate where it is necessary to perform their treaty obligations.

Second, cooperation includes a duty to act in good faith to achieve a collectively agreed outcome. Each party should pay reasonable regard to the interests of others and should refrain from acting in a way that would not be aligned with the outcome they are pursuing together. Third, all States must cooperate to achieve universal respect for, and observance of, human rights, including the right to a clean, healthy, and sustainable environment. The fourth aspect of the duty to cooperate is related to the second question posed to the Court, regarding legal consequences of acts and omissions that have caused significant harm to the climate system and other parts of the environment. In this regard, the Maldives argued that the duty to cooperate requires wrongdoing States to cooperate with the injured State to determine whether and to what extent restitution is possible. However, some adverse effects of climate change are irreversible and can thus be remedied only through compensation.

The Maldives, an atoll nation facing an existential threat from the climate crisis, highlighted the duty to cooperate within the existing climate change regime and, more generally, in international law. The shortcomings of the duty to cooperate in the current climate regime are a testament to why this Advisory Opinion is needed. The duty to cooperate is a cornerstone of the fight to address the climate crisis and must be governed by the broader context of international law. By eloquently articulating what cooperation specifically requires from States, the Maldives provided a pathway to stronger collective efforts and, therefore, enhanced protection of, and justice for, vulnerable States. Finally, the Maldives eloquently highlighted their will to survive, a goal that depends on more urgent, ambitious, and collaborative action by high emitting States.

African Union

The African Union (AU) provided a clear message to the Court: its opinion must have climate justice and the use of the best available science at its core. The AU underscored that Africa has the youngest population in the world, and therefore intergenerational equity is also a principle that informs its arguments before the Court. Climate justice applied to the questions posed before the Court requires an acknowledgement of the asymmetries between responsible and injured States, the recognition of historical responsibility, and the disproportionate burden imposed on those least responsible, including African States. Science is a cornerstone of climate justice because it reinforces States' obligations to protect the climate system and hold those responsible for harm accountable. The AU also rejected arguments on the primacy of climate treaties over other sources of law and invited the Court to consider the "irreducible core of obligations" stemming from the climate treaty regime, multilateral environmental agreements, human rights law, and trade and investment obligations.

According to the AU, all States have obligations to protect the climate system and must follow specific principles in their implementation. These obligations include the prevention of environmental harm (an obligation owed to the international community as a whole), undertaking environmental impact assessments, and monitoring the conduct of private activities that may cause pollution. Regarding the relevant principles, the AU stressed that CBDR-RC, intergenerational equity, and sustainable development are, without a doubt, duties of customary international law.

On the issue of foreseeability of risk of harm, the AU underscored that, at least since the 1960s, States have had sufficient awareness of the devastating impacts of climate change. Furthermore, the UNFCCC recognises the historical responsibility of a specific set of States, to the point of listing them in its Annex I.

Regarding legal consequences, the AU underscored that States responsible for harming the climate system must cease their wrongful conduct and provide reparations. These include debt cancellation or at least debt relief, which can be obtained through cooperation if catalysed by the Court's opinion.

By tying legal duties to scientific evidence, the AU challenges attempts to dilute accountability, urging the Court to integrate climate science into binding preventive and reparative measures, ensuring equity for vulnerable States and populations. Its broad conception of the applicable law and the need for a tailored approach around obligations, responsibilities, and reparations reflect a pressing need for the Court to integrate a climate justice approach to its opinion. If disregarded "the Court would be rewriting international climate law to the detriment of a large majority of member States of the international community" providing "carte blanche to continue harming the climate system."

The lead editors of today's Daily Briefing are: **Aditi Shetye**, **Joie Chowdhury**, **José Daniel Rodríguez Orúe**, and **Sébastien Duyck**.

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Our deepest gratitude to all those who helped with **taking notes** during the hearings: **Adibur Rahman, Jamyang Kinley Pema, Jeli Santos, Katie Davis, Moumita Das Gupta,** and **Pyelma Syeldon.**