HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 9th, 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...

- **Week 2, Question 2! Mexico**, **Micronesia**, **Myanmar**, **Namibia**, **Nauru**, **Palestine**, **Pakistan**, and **Nepal** kicked off the second week with a powerful focus on establishing State responsibility for cumulative emissions, strongly countering **Japan**'s and **New Zealand**'s attempts to escape legal consequences for climate harm.
- **Palestine** addressed critically important and often ignored linkages between militarism, occupation, and climate justice; and **Mexico** also highlighted that conflict and climate change exacerbate each other.
- Taking a strong stance on corporate accountability, **Mexico**, **Micronesia**, **Palestine**, and **Namibia** emphasised that States must regulate the climate-destructive conduct of private actors within and beyond borders, some specifying that such conduct includes fossil fuel production and use.
- Advancing a climate justice lens, **Mexico**, **Micronesia**, and **Nepal** uplifted the relevance of an intersectional approach for protecting the rights of those disproportionately affected by climate change impacts, including children, youth, women, girls, persons with disabilities, minorities, and Indigenous Peoples.

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

"I am proud that Nepal recognised and thanked the world's youth for their contribution in driving this ICJ AO proceeding. I was particularly impressed with their focus on an intersectional approach and on the disproportionate impact that youth, children, women, and Indigenous Peoples face due to climate change. Unlike its neighbours, Nepal has capitalised on this opportunity to focus on States' responsibility for both historical and current emissions."

PRAJWOL BICKRAM RANA (27), NEPAL,
MEMBERSHIP ENGAGEMENT COORDINATOR, ASIA FRONT, WORLD'S YOUTH FOR CLIMATE JUSTICE

"Mexico made it clear: climate obligations require results and legal consequences if those results are not met. States must be held accountable, including for the conduct of private actors and companies, if they fail to fulfill their obligations under the entire spectrum of international law – not only under climate treaties – but Mexico has boldly emphasised that other international environmental and human rights norms should also be taken into account."

MARIANA CAMPOS VEGA (23), MEXICO,
DEPUTY FRONT CONVENOR LATIN AMERICA, WORLD'S YOUTH FOR CLIMATE JUSTICE

Outside the Court

The start of the second week of hearings kicked off with the “Building Momentum for Climate Action” event, which brought together professionals from diverse sectors related to COP29. WYCJ organised one of the breakout sessions of this event on the nexus of the climate negotiations at COP29 and the ICJ Advisory Opinion (AO), highlighting how the ICJ AO can shape international climate talks and guide the UNFCCC’s work.

World's Youth for Climate Justice

Alongside these discussions, this event brought together advocates, legal experts, and climate leaders reflecting on COP29 outcomes and strategising future climate action. It demonstrated a collective push for stronger global climate governance, underscoring civil society’s critical role in mobilising support beyond the courtroom.

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, 10 December, we will report back on the oral submissions delivered by the following States: Palau, Panama, the Netherlands, Peru, Democratic Republic of Congo, Portugal, Dominican Republic, Romania, United Kingdom, and Saint Lucia.
If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

Report on each Intervention

Mexico

Mexico made a strong appeal to the Court to use its unique position to provide much needed clarification on the law, addressing the issue from a legal rather than political perspective, fostering accountability, and ensuring equity, justice, and sustainability. In its presentation, Mexico argued for the harmonisation of international law, which imposes stringent obligations on States, including in relation to the conduct of private actors, and presented a strong case and State responsibility and the legal consequences arising from non-compliance. As argued by its counsel, the complexity inherent in greenhouse gas (GHG) emissions and their effects on the climate system "cannot become a shield from accountability;" any other conclusion would constitute a denial of justice.

Mexico's counsel presented persuasive arguments in favour of a harmonious interpretation of international law, submitting that the obligations under the climate treaties coexist harmoniously with other principles under international law as a unified system. To that end, Mexico rejected the opposing point of view, which positions the UN climate treaties as the exclusive source of State obligations on the basis of the principles of *lex specialis* and/or *lex posteriori,* explaining that for such principles to apply there would have to be a clear conflict of norms or explicit intent expressed in the treaties to override other norms under international law.

On the content of obligations, its counsel underscored the due diligence principle, the duty of prevention, the precautionary principle, and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC). Compliance with due diligence can be assessed through four interdependent factors: i) the preparation and implementation of nationally determined contributions (NDCs); ii), addressing loss and damage; iii) providing financial resources; and iv) facilitating technology transfer and capacity building. Mexico also asserted that the obligations under the climate treaties are obligations of result. Meaning that States must achieve specific results or objectives in line with their obligations. On human rights, Mexico stressed the disproportionate effect of climate change on women and girls, the emerging right to a healthy environment, and the principle of intergenerational equity as an ethical and legal duty to safeguard natural resources for future generations.

Mexico presented a strong case for harmonious interpretation of the law. This is particularly relevant because of the many gaps that exist in the climate treaties. As pointed out by Mexico's counsel: they do not include any mechanisms for enforcing consequences for non-compliance, including reparation for environmental harm and rights violations. Another relevant point was Mexico's submission that NDCs are not arbitrarily set by each State, but rather, they must reflect the highest possible ambition in line with CBDR-RC. This, together with their point on having to achieve certain objectives (albeit more clarity on this could have been useful) and the emphasis on the best available science negated the idea that it is entirely up to States to decide how to fulfill their obligations. By underscoring the disproportionate impacts of climate change on girls and women, Mexico advanced a much needed intersectional approach to interpret applicable human rights protections.

Micronesia

In its opening, Micronesia referenced the severe impacts of the climate crisis on the people, natural environments, practices, and development aspirations of Micronesia. According to Micronesia, international law has recognised since at least the 19th century that States are obligated to exercise due diligence to prevent harm from activities within their jurisdictional control to other States, and by the mid-20th century, the links between these GHG emissions and climate change were well established and understood by States. Therefore, States cannot argue they lacked the requisite knowledge to prevent harm resulting from GHG emissions. Their counsel stressed that the Court must consider the questions before it as a singular one with multiple elements: (1) the relevant obligations of States; (2) the relevant conduct of States that breached those obligations; and, (3) the legal consequences of the relevant conduct. Additionally, Micronesia recognised the relevance of the right to a clean, healthy, and sustainable environment.

Diving into the first element, Micronesia echoed numerous other States, stressing that the Court must adopt a harmonious approach when determining the law applicable in defining States' climate related obligations, acknowledging that climate treaties are important but not exhaustive. While some States deny that international human rights obligations apply beyond a State's territory and are applicable *erga omnes* ("in relation to everyone"), the nature of the right to self-determination, at least, creates an extraterritorial obligation. With regard to the second element, Micronesia emphasised that the Court must look at the conduct that has caused significant harm to the environment. Echoing Vanuatu and the Melanesian Spearhead Group, Micronesia agreed that individual and cumulative releases of GHG emissions under a particular State's jurisdiction or control result in significant harm to the environment and people. It stated that many obligations have already been breached, including the prevention principle, the protection and preservation of the marine environment, the respect, protection, and fulfilment of core individual human rights, and peoples' right to self-determination. Micronesia denied the argument that there is no causal link between the significant harm to people and the environment and historical GHG emissions, stating that historical GHG emissions already caused, and will continue to cause, significant harm to the environment. Concerning the third element, Micronesia emphasised that, when answering the second part of the question, the Court must pay particular attention to affected States and peoples, such as Small Island Developing States, Indigenous Peoples, and present and future generations. Cessation and non-repetition must be at the core of the Court's ruling, and can include halting of government subsidies for fossil fuels, adopting legislation to phase out fossil fuels, and cutting emissions. Micronesia also stressed that legal consequences can include reparations in the form of restitution, compensation, and satisfaction for both States and individuals.

By answering the questions under a human rights framework, Micronesia reminded the Court of its essential role in providing justice to the most vulnerable. Micronesia emphasised the right to self-determination and its extraterritorial nature, debunking arguments of historical polluters seeking immunity for the human rights violations that they have caused. Most importantly, Micronesia called out the global support to the main industry causing the climate crisis: the fossil fuel sector. It stated that cessation and non-repetition as part of the legal consequences can take the form of cutting fossil fuel subsidies and phasing out fossil fuels, nudging the Court to take a practical and precise approach to answering the second part of the question.

Myanmar

Myanmar opened its submission by emphasising the urgent need for the Court to provide authoritative guidance on States' obligations under international law to combat climate change. It stated that climate change is a global crisis disproportionately affecting vulnerable nations, including itself, despite contributing minimally to global GHG emissions. Its counsel highlighted the island's unique vulnerabilities due to its geography, including rising sea levels, intensifying cyclones, and droughts, which have significantly impacted its socio-economic development. According to Myanmar, "the legal obligation of States to protect the climate system is beyond the direct terms of international [climate] conventions." At the same time, it highlighted that the Paris Agreement allows flexibility for States to choose how to fulfill their obligations, whether through legislation or other measures, based on their domestic legal systems. Myanmar further argued that the right to a clean, healthy, and sustainable environment is crucial for protecting human life, well-being, and dignity and that it requires States to fulfill corresponding obligations, such as "limit[ing] activities that cause GHG emissions and that harm the rights of people, both within and outside its territory."

Myanmar emphasised the applicability of the duty to prevent transboundary environmental harm to GHG emissions within and beyond their jurisdiction, invoking Articles 192 and 194 of the UN Convention on the Law of the Sea (UNCLOS) and the ICJ's Nuclear Weapons advisory opinion. In reference to question two, Myanmar stressed that applying these principles under international law is pertinent to clarify that "the issue of international legal claims rising out of environmental damage is still unclear under international law." Nevertheless, Myanmar stressed that, under the CBDR-RC principle, historical emitters and developed nations bear greater responsibility for mitigating climate change and supporting developing and least developed countries through financial assistance, technology transfer, and capacity building. In this regard, its counsel highlighted that nearly 80% of historical GHG emissions have come from the Group of 20 (G20), while least developed countries contributed only 4%. Myanmar concluded by urging inclusive international collaboration to ensure equitable and effective global responses to the climate crisis.

Myanmar stood strong on the applicability of the principles of customary international law and asserted that States have an obligation to prevent transboundary harm and to regulate GHG emissions to safeguard the rights of people both within and beyond their borders. Similar to many other submissions, it also argued that the right to a clean, healthy, and sustainable environment is now part of the international corpus of the law and, therefore, should be applied in the context of the climate crisis. Stressing that historical emitters bear greater responsibility, Myanmar rightly positioned itself by underscoring that these principles of customary international law would be necessary to clarify issues on international legal claims arising out of environmental damage caused by GHG emissions. However, Myanmar missed a critical opportunity to present helpful and substantive arguments on reparations.

Namibia

Namibia, the driest country in Sub-Saharan Africa, centred its arguments around climate change impacts on the hydrosphere and water sources, including the corresponding legal obligations to protect them and the resulting responsibility for harming them. According to Namibia, GHGs are causing rising temperatures and increased evaporation, stretching water resources to their limits while intensifying droughts. It urged the Court to recognise the right to water under both

customary international law and international human rights law, including the right to a clean, healthy, and sustainable environment and the right of self-determination. Its counsel also argued that States have a duty to regulate the conduct of private actors, including corporations, and are responsible for human rights violations of persons outside of their territory, when they have control over the activities that cause environmental harm. Namibia underscored the applicability of preexisting sources of law beyond the specific climate treaties, including the duty to prevent transboundary environmental harm, the law of the sea, and human rights law.

Counsel for Namibia urged the Court to recognise the right to water as an essential component of the rights to life, self-determination, and an adequate standard of living, supported by customary international law and relevant treaties. To respect, protect, and fulfil these rights, States must avoid damaging water resources, protect them against third-parties (including through regulation), and facilitate access to water. Namibia also strongly rejected claims from some States against the application of customary international law, and stressed that the due diligence obligation to prevent harm to the hydrosphere extends to global impacts on the water cycle caused by GHG emissions. Accordingly, States must: 1) reduce GHG emissions, including through regulation of third parties such as corporations; 2) increase the resilience of the water system to climate change impacts, and 3) cooperate so that activities of other States are appropriately sensitive to impacts on the hydrological system. On legal consequences, Namibia joined the majority of States in these proceedings in arguing that the existing climate treaty framework is not comprehensive and does not displace the law of State responsibility for harm, and thus, States owe reparations for causing harm to the hydrosphere and violating the right to water.

Namibia offered a refreshingly focused approach to the questions before the Court, emphasising the concrete impacts of climate change on water to the detriment of human rights and the environment, and the corresponding duties of States under multiple sources of law to take effective mitigation and adaptation measures and to provide reparation for harm caused. Namibia appealed to the Court to ensure that the interpretation of applicable obligations is consistent with the fundamental rules of international law that cannot be violated by any country (right to self-determination). It strongly rejected claims by major polluters that had argued against considering other sources of law, the extension of human rights obligations beyond a State's borders, and the need to repair harm resulting from breach of international obligations. By urging the Court to recognise the right to water as one especially affected by climate impacts, Namibia reflects both the urgent needs of its people and the contemporary interpretation of human rights law.

Japan

Japan echoed arguments presented by other major emitters throughout the past week, including its narrow conception of applicable law focused tightly on the climate treaties and its denial that States' historical contributions to GHG emissions causing climate change can form the basis for legal responsibility. At the outset, Japan called attention to the importance of the 1.5°C limit and the IPCC's climate science, highlighting its own national climate targets and its voluntary contributions to the Green Climate Fund and Loss and Damage Fund. It made a point, however, of characterising its climate action and climate finance as political commitments.

Japan insisted that the climate change treaties are the most relevant law to answer both questions before the Court, not only what States' legal obligations are with respect to climate change, but also in relation to the legal consequences States may face for any failure to uphold them.

Its counsel acknowledged the longstanding customary obligation to prevent transboundary damage to the environment, which it says informed the development of the climate regime. However, it argued that this preventive duty is an obligation of conduct, not of result, and its content is found in the Paris Agreement, which provides a variable and evolving standard of due diligence, defined primarily with reference to procedural obligations in Paris–not an objective measure of the adequacy of State action. With regard to legal consequences, Japan maintained that the Paris Agreement makes clear in Articles 8 and 9 on loss and damage and climate finance, respectively, that there is no basis for liability or scope for application of the rules of State responsibility. Japan argued that historical contributions to climate change are not the basis for legal responsibility, and that there can be no retroactive application of obligations to prevent GHG emissions causing climate change. Moreover, it asserted that question 2 is too abstract to be answered by the Court, as it does not identify specific States, conduct, or injuries.

Japan's intervention joined the minority position of big polluters, urging the Court to look no further than the climate treaties and certainly not to look back to history. While acknowledging, as it must, that the longstanding transboundary harm principle predates the climate regime, Japan insists that it did not apply to GHG emissions and climate harm before the climate treaties came into force. The implication is that major emitting States had no prior duty to rein in their planet-warming pollution over the many decades that they knew of its harmful consequences. Although Japan helpfully referred to the pursuit of the Paris 1.5°C temperature limit as an obligation requiring States to take action reflecting their highest possible ambition, its Counsel rejected the notion that States should be held accountable for their failure to achieve this result - as evidenced by mounting climate devastation. Addressing CBDR-RC, Japan rejected the notion of differentiation based on cumulative contributions to the climate crisis and emphasised that "climate solidarity cannot be held hostage by outdated categories, frozen in time." Yet Japan's position on legal responsibility and reparations for climate harm would hold climate justice hostage to a refusal to acknowledge the past. As the failed outcomes of COP29 in Baku make clear, unless they are grounded in legal obligations, climate solidarity and cooperation will remain woefully insufficient to protect people and the planet from climate catastrophe.

 Nauru

Nauru started with a strong emphasis on the threat that climate change poses to its right to self-determination, calling on the ICJ to address the existential challenges climate change presents to Small Island Developing States (SIDS) through the lens of international law, including the obligation to prevent transboundary environmental harm. Drawing on established jurisprudence from the Court, in particular the *Corfu Channel* case, Nauru invoked the due diligence obligations of States to mitigate environmental harm. It highlighted the inseparability of climate change impacts from the fundamental issue of self-determination and territorial sovereignty, highlighting that the right to sovereignty also entails a corollary duty to protect within a State's territory the rights of other States, in particular, their rights to integrity. Nauru's legal counsel emphasised that each State has an obligation not to knowingly allow its territory to be used for acts contrary to the rights of other States. In this regard, Nauru stressed that this duty, as a general principle of international law, has always been understood to apply generally and to have application "in the full range of factual contexts possible." This is further supported by the practice of States applying this principle to unforeseen transboundary issues, such as terrorism, cyber security, and atmospheric testing. Therefore, Nauru refuted arguments made by France that this principle only applies to direct and manifest injury in bilateral affairs, stressing that States may not use or allow their territory to be used in a way that may cause injury to other States through anthropogenic

climate change and that any such action or negligence will result in international responsibility. Nauru's counsel also rebutted arguments that confined the relevant law to specific climate change treaties. In this regard, its counsel dismantled the arguments made by some States that fulfilling procedural obligations under the Paris Agreement would satisfy obligations under general international law. Nauru argued that this is impossible since climate treaties cannot form the basis of a general rule of law. On the temporal aspect of the duty of prevention, Nauru argued that if the Court determines that the obligation of prevention applies to climate change, its interpretation will have a retrospective effect, meaning it will apply as long as the obligation has existed. This is because, as established in earlier cases, the Court's interpretation clarifies the meaning of obligations from the moment they were created rather than changing them. Consequently, Nauru argued that any State that failed to meet this obligation in the context of climate change would have been in violation of the law from the time the obligation first arose, which was well before the ratification of the climate treaties.

Nauru came out strongly against the retrograde arguments made by some large historical emitters, in particular France and the Nordic States, on the obligation to prevent transboundary harm, emphasising that a State's failure to prevent transboundary harm in the context of climate change will result in international responsibility. Like many other SIDS, Nauru made a compelling argument on the right to self-determination, highlighting that this also entails a corollary duty to prevent transboundary harm to other States including threats to their territorial integrity due to climate change. Finally, Nauru argued that the duty of prevention has a retrospective effect, meaning States are accountable for violations from the moment the obligation arose, regardless of when they adopted the climate treaties. Overall, Nauru chose to focus on making a few arguments powerfully, complementing the oral submissions of Pacific States and rebutting those of high-emitting European States.

 Nepal

Nepal opened their intervention reflecting the importance it attaches to the question of climate justice, recalling how, even though their own carbon footprint is negligible, Nepal is bearing the brunt of climate change, with climate-induced disasters posing a significant threat to Nepal's development pursuits and taking many lives. Nepal's glaciers and snow-fed rivers, which are vital for humanity's survival, are at risk due to climate change, with melting glaciers and permafrost threatening ecosystems, infrastructure, and livelihoods, particularly in vulnerable mountain regions. Nepal stressed the need to consider specific geographical vulnerabilities of landlocked and mountainous countries as well as overall economic capabilities and constraints. Grounding its remarks in harrowing examples of climate devastation in their country, Nepal cited the United Nations Secretary General Antonio Guterres's remarks on Nepal's vulnerability, *"What is happening in this country as a result of climate change is an appalling injustice and a searing indictment of the fossil fuel age."* In its overall intervention, Nepal focused on the need for a comprehensive approach to legal sources defining State obligations in relation to climate change as well as redress for climate harm.On the issue of applicable law defining States' climate obligations, Nepal's counsel asserted the relevant legal landscape as comprising the international climate treaties like the UNFCCC and Paris Agreement, human rights treaties, and customary international law principles, including due diligence, prevention of transboundary environmental harm, and cooperation. Nepal highlighted the intersectional nature of climate impacts on human rights, disproportionately affecting women, youth and children, persons with disabilities, minorities, and Indigenous Peoples. Its counsel specifically highlighted the extraterritorial

obligations of States whose acts or omissions lead to climate catastrophe beyond borders, infringing on rights and preventing other States from fulfilling their human rights duties. Nepal underscored that the preventive principle and due diligence obligations apply to greenhouse gas emissions, consistent with the Court's jurisprudence, arguing that countries responsible for significant emissions must take preventive measures. Nepal stressed the principle of common but differentiated responsibilities (CBDR) based on States' historical and current emissions and their unique vulnerabilities and capabilities, emphasising the need for developed nations to fulfill their commitments and raise ambitions urgently. On legal consequences, Nepal focused on the law of State responsibility focusing on compensation as a form of reparation, and asserted developed countries' collective duty to compensate for harm caused by historical emissions, given their longstanding knowledge of the consequences.

Nepal's explicit expression of gratitude to the world's youth acknowledged their pivotal role in driving the ICJ climate advisory proceedings. Substantively, its focus on climate justice considering both historical and current emissions, mirrored the strong push from climate-vulnerable nations to lay a foundation for accountability for climate harm. Also notable was Nepal's intersectional and human rights-based approach to climate obligations. Nepal's strong stance on due diligence and the importance of extraterritorial obligations was significant given the nature of climate change. Its counsel eloquently pointed out that it cannot be that isolated sources of transboundary pollution are unlawful, but the most widespread extreme forms, such as GHG emissions, are not. Finally, on legal consequences, while suggesting the Court consider the current loss and damage funding mechanism in relation to compensation flows for climate harm, Nepal strongly reinforced what countries like itself are calling for is not mere handouts or charity, but compensatory climate justice required by international law.

 New Zealand

New Zealand's intervention centred around the argument that climate change is an unprecedented issue for humanity that "cannot be addressed except by effective cooperation and based on a careful balancing of principles, interests, and capacities" and by the climate change treaty regime, as it was "specifically designed to respond to the global challenges posed by climate change" and is the only framework capable of addressing this crisis through the good faith cooperation of States. In light of this, New Zealand presented extensive arguments on the centrality of the climate change regime, the duty to cooperate, and the non-contentious mechanisms of support, accountability, and dispute settlement available under these treaties.

Counsel for New Zealand rejected arguments positing that the climate change treaties exclusively determine State obligations in relation to climate change and strongly urged the Court to adopt the principle of systemic integration in its answer to the questions at hand. In the words of New Zealand, this principle "seeks the accommodation of coexisting obligations and not the triumph of one norm over another." Nevertheless, New Zealand simultaneously described the climate change treaty regime as the main source of States' legal obligations. Regarding State responsibility and legal consequences, New Zealand acknowledged that the general rules of State responsibility apply "in principle" to internationally wrongful acts that cause significant harm to the environment of other States, but, at the same time, contended that the application of these rules to the climate change context "is uncertain and characterised by complex unresolved legal and factual issues," rendering them unsuitable for answering the question at hand. Instead, New

Zealand invited the Court to take note of the cooperative model of support accountability and dispute resolution under the climate change treaty regime, which, according to its counsel, is an "essentially cooperative, non-contentious model of accountability and dispute resolution" to be applied in a "facilitative, non-intrusive, non-adversarial and non-punitive manner respectful of national sovereignty."

New Zealand attempted to appear aligned with the arguments forwarded by many other States, such as Mexico or Micronesia, today, spending a considerable amount of time discussing the principle of systemic integration and rejecting the argument that obligations under climate change treaties displace other applicable obligations under international law. Nevertheless, when discussing the actual content of obligations and, especially, the legal consequences that flow from breaching them, New Zealand digressed from this alignment. In fact, New Zealand defended a blatant contradiction to the principle of systemic integration by arguing that, in practice, only the climate change treaties and no other obligations are applicable to this issue. Thus, the only form of legal consequences available is what its counsel described as a non-compulsory regime for obligations based on voluntary assistance. Such argument negates any legal consequences for polluting States and the possibility of those who were unjustly harmed as a result of receiving reparations. This, ultimately, signifies a denial of justice and a contradiction of well-established rules on State responsibility.

Palestine

Palestine, in its opening remarks, asserted its firm beliefs that international law must take centre stage in protecting humanity from the dangerous human-made destruction resulting from climate change. Despite being responsible for less than 0.001% of global emissions, Palestine faces severe climate impacts exacerbated by Israel's illegal, belligerent occupation, which restricts its control over territory and resources. Palestine emphasised that the Israeli occupation also hinders its ability to implement its international climate commitments, citing the ways that Israel's occupation of Palestinian territories and the death and destruction caused by Israel's unfolding genocidal assault on the Gaza Strip over the past 14 months, coupled with the systematic pillaging of Palestinian land and resources more broadly, intensify negative climate impacts by destroying ecosystems and biodiversity. Palestine's counsel stressed that the ongoing war in the Gaza Strip was responsible for emissions of between 420 and 650,000 tonnes of carbon dioxide (CO_2) and other GHGs in just the first 120 days, equivalent to the total annual emissions of 26 of the lowest emitting States. Israeli bombing missions and military transport flights emitted over 316,000 tonnes of CO_2, with additional emissions from missile production, launches, and fires. Moreover, the emissions from military activities globally, including exercises and weapons production, are largely unaccounted for in international climate commitments. Palestine urged the Court to address these issues in its advisory opinion to ensure the equitable application of law and uphold the principle of "leaving no one behind." In its substantive legal arguments, Palestine primarily addressed one key issue: the responsibility of States for impacts on the climate system caused by armed conflict and other military activities, including Israel's illegal occupation of Palestinian territories.

On applicable law, Palestine argued that the Court should consider the full breadth of international law including rules applicable to armed conflict or other military activities as well as occupation. Its counsel clarified that, although Israel, as an occupying power, has a legal obligation to protect the environment and to conserve the natural resources of the occupied territory for the benefit of the protected population, this obligation is often violated in the

occupied Palestinian territories, as the Court has already concluded. Palestine's counsel referenced the obligation under customary international law to prevent significant transboundary harm, emphasising that in meeting this obligation, States must adopt appropriate rules and measures, and be vigilant in their enforcement and their exercise of administrative control over public and private actors. Palestine also underscored that the climate crisis requires the application of the same stringent standard of due diligence to the protection of the global environment from all GHG emissions that contribute significantly to global warming, including those from armed conflict and other military activities. This is supported by long-standing obligations under international law to protect the environment during armed conflict. Among other sources, Palestine's counsel pointed to the International Law Commission's principles and customary international humanitarian law on the protection of the environment in relation to armed conflict, arguing that those rules and principles should, by necessity, apply to the protection of the climate system from harm caused by GHG emissions released into the atmosphere due to armed conflict and other military activities. On legal consequences, Palestine invoked the law of State responsibility and argued that any State that fails to exercise the appropriate level of due diligence to control or reduce its GHG emissions, including from armed conflicts and other military activities as well as occupation, incurs international responsibility.

While confronting an unfolding genocide perpetrated by Israel, Palestine made a resonant intervention today on the critically important and often ignored linkages between militarism, occupation, and climate justice. These linkages affect fundamental rights enshrined in international law, including the inalienable rights of peoples to self-determination and the permanent sovereignty of people over their natural resources. In its intervention, Palestine referenced a recent warning from the UN Special Rapporteur on the Human Right to a Clean, Healthy, and Sustainable Environment, who cautioned that armed conflict pushes humanity even closer to the precipice of climate catastrophe. The threat to the well-being of present and future generations of humankind in this context requires an immediate and urgent response and clarity on States' related legal obligations.

Pakistan

Pakistan started with a harrowing account of the impacts of catastrophic floods in 2010, which submerged one-fifth of the country and displaced 6 million people. Even worse, the 2022 floods submerged a third of the nation, affected 33 million people, destroyed millions of homes, schools, and health facilities, and caused over $15 billion in economic losses. Pakistan highlighted the unfairness of the situation by quoting the UN Secretary-General, that Pakistan is "responsible for less than 1% of greenhouse gas emissions, but its people are 15 times more likely to die from climate-related impacts than people elsewhere." Pakistan outlined, but did not expand on, the agreement it has with other like-minded developing countries on three key points: the Paris Agreement as the primary treaty framework, the importance of interpreting state obligations under climate treaties with principles like equity, CBDR-RC, climate finance and mitigation, and the resolution of disputes through mechanisms established within these treaties.

Instead, Pakistan focused on the parallel obligation under customary international law to prevent transboundary harm, States' recognition of this obligation, and the actual or constructive knowledge that triggers its application. Pakistan joined the majority of participants in these proceedings in emphasising that the obligation to prevent transboundary harm is central to the proceedings and the main substantive rule of international environmental law, which is cited in the preamble of the UNFCCC but goes well beyond the modest obligations contained in the

climate treaties. Pakistan argued that this obligation requires States to prevent significant harm to all areas beyond their jurisdiction or control, including the environment of any other State, regardless of its geographic proximity. On the latter point, Pakistan specifically rebutted the regressive arguments made by Australia, the United States, and the Nordic States that the prevention obligation does not apply to climate change because of the diffuse nature of the harm. Pakistan highlighted four treaties, specifically the UNFCCC, the Geneva Convention on Long-Range Transboundary Air Pollution, the Vienna Convention for the Protection of the Ozone Layer, and the United Nations Convention to Combat Desertification, as examples where the international community recognised the obligation to prevent transboundary harm, even where the harm is diffuse harm beyond the neighbouring States.

Pakistan concluded with the argument that the obligation of prevention in international law arises once a State has actual or constructive knowledge of the harmful effects of its actions. However, ignorance of the potential climate impacts cannot excuse polluting States, as the principle of objective responsibility, established in cases like Corfu Channel, requires States to act with due diligence to prevent harm once they are, or should be, aware of the risks.

Pakistan focused the majority of its intervention on two main issues: the disproportionate, deadly and costly impacts of climate change on its population, the majority of whom are under 30 years old, and the importance of applying the Court's jurisprudence on the prevention of transboundary harm to climate change. On that point, Pakistan powerfully countered the efforts of Australia, the United States, and the Nordic States to deny that the preventive principle applies to climate change, citing several treaties to which they are Party that explicitly provide for an obligation to prevent diffuse harm. Pakistan strongly asserted that the longstanding duty of prevention applies from the point when States had knowledge of the harmful effects of climate change and that polluting States could not now claim past ignorance of such effects. Notably, on the eve of International Human Rights Day, "human rights" was not mentioned once. Overall, Pakistan's intervention was more progressive than that of neighbouring India and China and solid on the application of the obligation of transboundary harm to climate change, but could have engaged in a more holistic interpretation of State obligations to include human rights, as Nepal did earlier in the day. In relation to the second question before the Court, Pakistan also missed an opportunity to expand on its short statement that compensation is the best form of reparation.

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

The **lead editors for today's** Daily Briefing are: **Joie Chowdhury, José Daniel Rodríguez Orúe, Nikki Reisch,** and **Theresa Amor-Jürgenssen.**

The **contributors for today's** Daily Briefing are: **Aditi Shetye, Adriana Silveiro, Erika Lennon, Mariana Campos Vega, Noemi Zenk-Agyei, Prajwol Bickram Rana, Quint van Velthoven, Rossella Recupero, Sumeyra Arslan,** and **Yasmin Bijvank.**

Our deepest gratitude to all those who helped with **taking notes** during the hearings:
Adibur Rahman, Adriana Silverio, Dulki Seethawaka, Johanna Ritter, Katie Davis, Manon Rouby, and **Syed Tanvir Azam Taif.**