HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 3rd, 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...

- Canada sought to restrict the application of human rights to climate ambition. This position was rebutted by **Chile**, the **Philippines**, **Cameroon**, **Colombia**, and **Bolivia** who all demanded that the judges apply human rights, including intergenerational equity.
- **China** and **Brazil** stressed the principles of common but differentiated responsibility and equity. However, they missed the opportunity to meaningfully engage with the key issues on State responsibility and remedies for climate harm - thus appearing primarily focused on deflecting responsibility.
- On remedy and reparation, **Colombia** invited the Court to clarify that compensation should be at a level corresponding to the harms suffered.
- **Belize**, the **Philippines**, **Chile**, **Bolivia**, and **Colombia** strongly affirmed that long-standing international environmental law extending beyond climate treaties, apply in the context of climate change. They argued that it should also include prevention.

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

Before the world's highest court, my nation stood proud and resolute, declaring that 'climate change is an existential human rights issue.' But it didn't stop there—it emphasised a paradigm of non-compromise, championing the principle of intergenerational equity to safeguard the rights of both present and future generations. I feel energised, inspired, and hopeful knowing that my government today acknowledged the plight of its people and demanded the enforcement of remedial actions and reparations, as we proposed an international version of the Writ of Kalikasan. Today, I felt heard.

NICOLE PONCE, (31), THE PHILIPPINES,
ASIAN FRONT CONVENOR, WORLD'S YOUTH FOR CLIMATE JUSTICE

As a young Colombian activist, I support the need for ambitious global climate action. This is about protecting human rights, biodiversity, and our vital ecosystems. Colombia has shown us that national efforts alone won't cut it. We need a united, international response rooted in fairness and justice. The principles of common but differentiated responsibilities and intergenerational equity ensure justice between generations. Climate change is a direct threat to our most basic rights, and no border can contain its impact. It is essential to uphold collective achievements and prevent environmental regression.

ADA VALENTINA GAVIRIA ERAZO, (25), COLOMBIA,
CAMPAIGNER, WORLD'S YOUTH FOR CLIMATE JUSTICE

Outside the Court

Today, civil society organisations launched **the People's Assembly**, amplifying the voices of frontline communities who cannot be inside the Court. Statements shared here will be summarised and delivered to the judges of the ICJ.

Powerful statements emphasising the need for international accountability for big emitters were shared by climate witnesses from Suriname, Kiribati, Vanuatu, India, Tuvalu, and Sudan. Isabella Teuea, youth climate activist from Kiribati said: "How many human rights must be violated before you take meaningful action? We ask big emitter countries and the court to affirm that the duty to protect the environment is not just an abstract principle, but a legal and moral obligation of states to preserve the dignity, rights, and future of all nations, especially those most vulnerable."

Pacific Islands Students Fighting Climate Change

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, Wednesday 4 December, we will report back on the oral submissions delivered by the following States: Costa Rica, Côte d'Ivoire, the joint submission by Denmark, Finland, Iceland, Norway, and Sweden, Egypt, El Salvador, United Arab Emirates, Ecuador, Spain, the United States, the Russian Federation, and Fiji.
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Report on each Intervention

 Belize

Belize emphasised that their island is uniquely vulnerable to the impacts of climate change, sharing an example of the profound human and environmental toll of climate change on their country. Their counsel cited the case of the Monkey River, once a thriving community engaged in fishing and eco-tourism, now in dire crisis due to rising sea levels and intensifying storms. Belize commented on the display of legal firepower from those States most engaged in carbon consumption or production, undermining hope that there will ever be agreement within climate negotiations on meaningful and binding treaty obligations to reduce emissions. Their counsel emphasised that for Belize the stakes are existential, and there is an urgent need for clarity on State obligations under international law to protect vulnerable nations. In its oral intervention, Belize almost exclusively focused on applying the customary international law obligation of prevention in relation to climate change, highlighting the importance of relying on the best available science and the precautionary principle.

The legal counsel of Belize strongly refuted the categorical assertion that because the harm caused by greenhouse gas emissions results from cumulative emissions and various sources and impacts, from not just one neighbouring State, the prevention obligation is inapplicable in relation to climate change. As their counsel stated, it would be perverse if a State were obliged under customary international law to assess the environmental impact of a factory in its territory emitting metal pollutants into a river that risks causing significant harm to one or more States, yet not as regards the factory next door pumping greenhouse gases into the atmosphere, contributing to catastrophic harm to all States. The due diligence obligation of prevention, which is universally recognised, must be applied in the given fact-specific context here–climate change and greenhouse gas emissions. In line with the International Tribunal for the Law of the Sea (ITLOS) advisory opinion, their counsel outright rejected the argument that compliance with obligations under the climate change treaty will automatically mean compliance with the obligation of due diligence under the prevention obligation. Their counsel focused, in particular, on the assessment aspect of the prevention obligation, which is vital for identifying risks of harm before they materialise, as well as ensuring public awareness since one only cares about what they know.

In calling on the Court for an opinion affirming the applicability of the prevention obligation under customary international law, Belize has acknowledged the importance of existing legal obligations extending beyond the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. Their almost exclusive focus on prevention might be considered a missed opportunity given the lack of engagement with other dimensions of the complex terrain of arguments at the heart of these advisory proceedings. On prevention, however, the submission persuasively refutes the many lines of arguments brought by major polluters against the applicability of the preventive principle in the climate context, mounting a strong defence of a long-standing tenet of public international law. Given escalating climate harm, this defence of prevention is commendable - prevention is a key piece of the puzzle in the fight for climate justice and in safeguarding a liveable future for present and future generations.

Bolivia

Bolivia delivered a powerful rebuttal to arguments seeking to downplay the international responsibility of industrialised States for harm to the climate system. Counsel for Bolivia argued that, because climate change disproportionately impacts those that have contributed the least to it, not only an issue of scientific fact, it is fundamentally an issue of justice. In this sense, it argued that responsibility for harm cannot be divorced from the structural causes of climate change: "the current anthropocentric model, particularly the capitalistic system of development that has dominated the last two centuries" that has precipitated the climate crisis and the violation of human rights. Regarding the applicable law, Bolivia underscored that States have obligations with respect to climate change outside of the specialised climate treaties, including customary international law and international human rights law. Accordingly, States cannot argue that complying with obligations stemming from climate treaties absolves them from their duty to comply with obligations under other sources of law.

With regard to the duty to prevent transboundary environmental harm, Bolivia stressed that States must take all necessary measures to ensure that greenhouse gas emissions do not cause climate change-related damage to the environment of other States. In this sense, it highlighted that this duty of due diligence is not limited to bilateral, localised cases of pollution. Rather, it applies to all forms of significant harm regardless of the specific pathway of pollution. If States are required to prevent pollution that affects a single neighbouring State, then this duty is even more critical when dealing with global environmental harm that endangers the well-being of all States. Bolivia also argued that complexities in causation cannot justify evasions of primary duties, and that, in any case, the issues of causation and attribution do not play a role in determining whether these duties apply.

On the issue of common but differentiated responsibilities and respective capabilities (CBDR-RC), Bolivia underscored that it applies beyond the specialised climate treaties because it is a principle of general application, as it operationalises equity in the climate context. The principle may also be relevant when it comes to determining State responsibility, because it modulates the content of the given obligation, implies consideration of the historical responsibility of industrialised States, and may affect how reparations operate.

Finally, on the issue of international cooperation, Bolivia considered that due to the cumulative causes of climate change, no State may solve it alone. Therefore, the duty to cooperate, which stems from multiple sources of international law, must be given concrete meaning in the climate context. It requires, among other duties, that developed States provide expedited access to adequate financial resources to developing countries. Ultimately, Bolivia urged the Court to recognise that funds provided voluntarily through cooperation do not displace the compensation owed as reparation for internationally wrongful acts.

Through its compelling legal arguments, Bolivia presented a strong case for the preservation of equity and upholding international responsibility for internationally wrongful acts. It countered defensive arguments from industrialised and high emitting States, who argue that no responsibility for harm to the climate system is owed, and that money is given on a goodwill basis - not because of a legal obligation to repair the harm they have caused. By underscoring the centrality of equity and common but differentiated responsibilities and applying them to issues of responsibility and cooperation, Bolivia seeks to maintain existing differentiation in the articulation of duties so that a disproportionate burden is not imposed on those least responsible for climate change.

Brazil

Brazil stated that its position on climate change was directly connected to climate justice, highlighting that the temperature rise we are experiencing today is mostly a consequence of historic emissions, as confirmed by the Intergovernmental Panel on Climate Change (IPCC). As a developing State, Brazil pointed out the importance of the principle of CBDR-RC, as well as of historical responsibilities, international cooperation, and financial assistance. Throughout its submission, Brazil focussed almost exclusively on the three climate treaties; however, despite not addressing the connection between climate change and human rights, Brazil stated that this should not be construed as being unimportant to the country.

Brazil stressed that CBDR-RC is the cornerstone of the climate framework and that the Paris Agreement expanded the obligations under this principle, including the need for developed states to assist with finance and technology transfer. Brazil also stated that CBDR-RC should be used to interpret the degree of due diligence expected from States, meaning that developing States should have a wider margin of discretion than developed States. Brazil pointed out that the Paris Agreement has certain obligations of result, such as Article 9(1) on the obligation of developed States to provide financial resources to developing States for both mitigation and adaptation. It also urged the Court to consider the decisions of the UNFCCC Conferences of Parties (COPs) as a source of international law and a refinement and clarification of the obligations States previously agreed upon under the climate treaties. Brazil also submitted that climate change should not be used as an excuse for States to breach international free trade obligations and discriminate between "like products" (i.e., products that are fundamentally similar, such as commodities like soybeans) and that the complexities around causality in climate change could be tackled through a science-based methodology on quantification of historic contributions to climate change.

Despite using the rhetoric of climate justice, Brazil's submission failed to tackle some of the key issues for developing countries and peoples from the Global South. The focus on the UNFCCC framework (of which the Paris Agreement and Kyoto Protocol are part) meant that customary norms and other treaties that create obligations on States, such as human rights treaties and the UN Convention on the Law of the Sea, were not addressed at all. However, it must be said that Brazil did not argue that those sources are irrelevant, nor that they override all other international obligations under general international law - an argument used by several high-emitting States. Brazil's primary objectives with this submission were (i) fleshing out the overarching relevance of the principle of common but differentiated responsibilities and respective capabilities and (ii) strengthening the UNFCCC framework, including by arguing that decisions by the Conference of Parties are relevant in determining the scope of obligations under the climate treaties, that developed States have obligations of result to mobilise funds for developing States to address adaptation and mitigation, and that the obligation of due diligence should be less stringent on developing countries than on developed countries. In short, Brazil's submission as a developing State had more to do with its own economic and developmental interests, rather than with the environmental and social impacts of climate change - although Brazil's position that past historic emissions are of the utmost relevance for determining state responsibility should be commended for its alignment with climate justice.

Burkina Faso

Burkina Faso framed their intervention as centring a primary question of justice - particularly the injustice faced by countries like Burkina Faso, which have contributed the least to the climate

crisis but are amongst the most impacted. Burkina Faso maintained that the entire corpus of international law is applicable, countering the argument of some States that the only applicable law is contained in the climate treaties.

On the first question, the legal counsel for Burkina Faso emphasised that the Court should operationalise norms and laws, including human rights law, and highlighted the obligations that are incumbent on all States, including the general obligation to protect and preserve the climate system and deriving obligations, such as the obligation to regulate private actors and implement adaptation measures. Their counsel highlighted the additional obligations of developed countries under the principle of common but differentiated responsibilities (CBDR). Meaning that they must take the lead in combating climate change by curbing greenhouse gas (GHG) emissions drastically and providing technical assistance to developing countries. Burkina Faso emphasised that developed countries have breached their obligations on climate change, including by failing to regulate private persons, to provide technical assistance, and to act in good faith. Burkina Faso emphatically called out the bad faith of developed States, which continue to grant fossil fuel subsidies and block access to the capital necessary for impacted countries like Burkina Faso to adapt to the impacts of climate change.

On the second question, Burkina Faso outlined clear consequences for breaching the obligations, including ensuring compensation, adequate reparation, the regulation of private actors, and the transfer of technical and financial assistance. Burkina Faso accused developed States of destroying with impunity a common good “just to get rich” while at the same time pushing back on the issue of their own responsibility and liability. They concluded their intervention with the powerful statement that no one may get rich unjustly and achieve economic development at the expense of the rights of States, peoples and individuals.

In their strong intervention before the Court, Burkina Faso called out developed States’ attempt to shift responsibility and liability for the internationally wrongful actions of destroying the climate system. Their legal counsels emphasised the profound injustice of the issue at stake and called upon the Court to find that there is a duty owed by all States to the international community as a whole to protect the climate system, reflecting the universal and collective interest in preserving the global environment. They asserted that all bodies of international law, including human rights law, apply to climate obligations—not just climate treaties. Burkina Faso emphasised that, under the principle of CBDR, developed nations have breached key obligations, including by failing to regulate private actors, highlighting their continued provision of fossil fuel subsidies as a clear example of bad faith. The lack of financial assistance and technology transfer from developed countries was also a key issue highlighted, particularly for countries impacted by desertification. On the second question, Burkina Faso demanded accountability through compensation, reparation, and cessation of internationally wrongful acts. Concluding powerfully, Burkina Faso condemned the impunity of wealthy States profiting from the destruction of a shared global good, declaring that no one may get rich unjustly at the expense of others.

 Cameroon

Cameroon called attention to the fact that climate change may put the shared future of humankind at risk. In light of this, Cameroon placed particular emphasis on human rights, the rights of future generations, the right to development, and the principle of CBDR-RC. Cameroon discussed the applicable norms of the general framework for State responsibility and the legal

consequences flowing from it for States that violated their obligations under international law. It invited the Court to recognise the crime of ecocide to complete the legal framework applicable to climate change. To that end, developing countries, as the main victims of climate change, should receive compensation for the harm endured, which is also key to supporting their climate mitigation and adaptation actions. Finally, Cameroon discussed the interaction between climate treaties and international investment obligations, asserting that States that follow their climate-related obligations cannot be considered in breach of their investment obligations.

With a strong focus on the applicable rights-based obligations, Cameroon argued that climate change affects several human rights, including the right to self-determination, the right to territorial integrity, the right to life, the right to access to water, the right to food, the right to health, the right to private and family life, the right to development, and the rights of future generations. Importantly, Cameroon invited the Court to take inspiration from the African tradition of international law and, in particular, Article 24 of the African Charter on Human and Peoples' Rights (AfCHPR), pursuant to which "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development." In this regard, Cameroon urged the Court to recognise the right to a healthy environment as a norm of customary international law. It is important to highlight that Cameroon explicitly stated that there is no conflict of norms between the existent obligations under human rights law - or other applicable norms - and States' climate-related obligations, as the relationship is one of both harmonious integration and interpretation. In inviting the Court to recognise the concept of ecocide and the legal consequences that flow from it, Cameroon submitted that ecocide constitutes a peremptory norm of international law according to which no one may commit or be allowed to commit acts of such gravity that they could be considered as leading to the destruction of the environment, the planet, peoples, or territories. If this norm is violated, States shall cooperate to bring an end to any violation of such a norm.

Cameroon's submission took a human rights perspective to clarifying the obligation of States. Similar to the interventions of other developing countries, they emphasised the right to development with a focus on sustainability. They urged the Court to consider the non-westphalian perspective on international law by highlighting the African and other non-Western legal traditions, thus offering unique but essential perspectives to an all-encompassing phenomenon, such as climate change due to its intertemporal dimension. In line with African legal traditions, the reference to "all peoples" in Article 24 of the AfCHPR is not only a recognition of the collective right to a healthy environment but is, indeed, understood to include generations across the spectrum of time, thus requiring that the rights of future generations have to be taken into account today. Moreover, Cameroon created an insightful and impactful link between intergenerational equity and ecocide, positioning itself at the forefront of recognising ecocide as a violation of international law and of the rights of all Peoples - now and in the future.

 Philippines

The Philippines opened its intervention by stating that climate change is a "great existential threat" that is a "key risk to international peace and stability." They expressed affinity with the Small Island Developing States (SIDS) as the Philippines also faces catastrophic impacts of climate change. This was emphasised by a witness statement highlighting the dying coral reefs and coral bleaching in the West Philippines Sea due to anthropogenic GHG emissions. Their counsel advanced several nuanced legal arguments to underscore the differentiated responsibility of States in addressing the climate crisis. Overall, the Philippines urged an integrated application of international environmental treaties, human rights law, and customary principles to address the multifaceted nature of the climate crisis.

The Philippines emphasised that principles, such as sustainable development and intergenerational equity, are “twin principles” applied to all State and non-State actors contributing to GHG emissions. They submitted that developing countries have the right to development, but, importantly, stressed that it should not compromise the ability of future generations to meet their sustainability needs. Their legal counsel underscored that climate change is a human rights issue, threatening the rights to life, health, and a sustainable environment, especially for marginalised communities, and that applicable human rights norms are enshrined under multiple treaties and anchored in cases across jurisdictions. The Philippines also invoked the UN Convention on the Law of the Sea (UNCLOS) as a critical legal framework, emphasising obligations to prevent marine pollution and to protect biodiversity, drawing on the recent climate advisory opinion issued by ITLOS. The Philippines further submitted that GHG emissions result in transboundary harm, violating well-established principles of customary international law. Relevant here is the principle of due diligence requiring States to prevent, mitigate, and regulate activities contributing to climate change. Their counsel went on to submit that in case of breaches of relevant obligations, legal duties are triggered under the law of State responsibility requiring States to cease harmful conduct and provide reparations.

Overall, the Philippines' intervention explained the human rights nexus to climate change and expanded on the applicable law, specifically emphasising intergenerational equity, the right to a clean, sustainable, and healthy environment, and other fundamental human rights. It underscored differentiated State responsibilities, grounded in customary international law, treaties, and human rights frameworks, to prevent transboundary harm and uphold intergenerational equity in the interest of future generations. The submission also emphasised due diligence obligations, accountability, and reparations for breaches of climate-related duties under international law. Innovative domestic measures like the “Writ of Kalikasan” were proposed as models for international mechanisms to address large-scale environmental damage. This focus on remedy and reparations is particularly significant given the devastating climate harm affecting communities in Asia and the urgent need for concrete redress. Finally, the Philippines urged the Court to recognise climate change as a violation of international law, calling for authoritative guidance on state obligations and remedies.

Canada

Despite listing the many ways in which Canada is facing adverse consequences from climate change and in which human rights and peoples’ rights are negatively impacted by climate change, as well as recognising that more needs to be done to combat this crisis, Canada’s main focus was to reject any legal obligation to do so outside of the climate treaties. Their counsel spent significant time rejecting the applicability of other norms of international law, as well as rights-based climate change obligations. Even under the Paris Agreement, Canada argued that only a few obligations are individual obligations as opposed to collective ones, thus implying that States cannot be found individually responsible for a violation of a collective obligation. Finally, Canada also rejected any legal consequences for violations of international law, except for those found in the UNFCCC and the Paris Agreement.

In particular, Canada strongly rejected that the principles of prevention, CBDR-RC, intergenerational equity, polluter pays, and precaution, as well as the right to a healthy environment, were part of customary international law. While recognising that other treaties, such as the Montreal Protocol, are relevant to the climate crisis, Canada argued that those instruments - as well as the aforementioned principles - should not be interpreted as imposing international legal obligations contrary to or incompatible with those in the climate treaties.

As for human rights, their counsel recognised the link between human rights and climate change, and that States should adopt a human rights-based approach to mitigation and adaptation measures. Nevertheless, Canada argued that the “positive impact” that climate action can have on human rights cannot be relied upon to broaden State obligations under international human rights law, and that there is no extraterritorial application of the duty to respect, protect, and fulfil human rights. In Canada’s words, “human rights obligations were not designed to address mitigation of anthropogenic greenhouse gas emissions to protect the climate system.”

In its intervention Canada tried to position itself at the forefront of climate action and as a supporter of human rights, while at the same time denying the application of human rights obligations in the context of climate change. Canada's submissions not only lacked sound legal reasoning, but stood in complete opposition to recognising the existence of effective and meaningful obligations under international law that compel States to, in the words of Canada’s Counsel, “do more” to combat the climate crisis. As made clear by others on the same day, such as Cameroon and Belize, States have climate-related obligations under numerous sources of international law, including human rights law. As for Canada’s submissions relating to an alleged incompatibility between norms found in the UN climate agreements and those found under other sources of international law, this is a moot point, as no such conflict of norms exists. States have simultaneous obligations under different treaties that may require different efforts of States, but this does not mean that any of these obligations are at odds with one another. Denying this and denying rights-based obligations not only undermines our international legal system, but also minimises any efforts required of States to combat the climate crisis. Finally, Canada’s rejection of basic norms of international law, such as the precautionary principle, or its opposition to the right to a healthy environment, stands in stark contrast to the progressive image it seeks to project politically.

 Chile

Chile emphasised that no single region on the planet is immune to the negative impacts of the climate crisis, noting that the Court has the historic opportunity to affirm the applicability of existing international law to the climate crisis, thus ensuring that the rights of present and future generations are not forsaken. Their oral pleadings focused on two key points: firstly, the interaction of the climate change regime and the general international obligations related to the protection of the environment and human rights in defining State obligations in relation to climate change; and, secondly, the legal consequences that arise from a breach of these obligations. Chile underscored how mitigation efforts implied by current policies will lead to global warming to a maximum of 3.1 degrees Celsius this century, exceeding all tipping points, and called for ambitious action.

On applicable law, Chile expressed that multiple sources of law govern State obligations in relation to climate change. Their counsel underlined that the general obligation not to cause harm is a binding obligation established by customary international law. The standard of responsibility is a due diligence obligation that extends beyond simple best efforts. Chile also clarified that the climate regime was never meant to be the yardstick against which to measure State compliance with the due diligence obligation not to cause harm, as ITLOS has clarified. Moreover, Chile considered it evident that a State's failure to limit GHG emissions may breach international human rights law, as recently reaffirmed by the European Court of Human Rights. Chile further highlighted the extraterritorial dimension of human rights obligations.

On the second question posed to the Court, Chile emphasised that the framework of State responsibility applies to the breach of climate change-related obligations for two reasons: i) because the climate change regime does not regulate State responsibility and liability for climate harm; and ii) because attribution can be established based on accepted scientific consensus, which, in any case, would be a matter for potential contentious proceedings. Chile noted that some States have argued that climate change is a collective responsibility, but when all are guilty, no one is. Nevertheless, their counsel recalled that the ICJ's jurisprudence has shown that it is possible to attribute individual State responsibility in situations of multiple wrongdoers. Chile, thus, set forth the applicability case for remedy and reparation in the context of climate change.

By highlighting the inadequacy of current policies and Nationally Determined Contributions (NDCs) to meet the Paris Agreement temperature targets, Chile beautifully articulated how those policies constitute breaches of international norms, such as the due diligence obligation not to cause damage. Particularly refreshing was its analysis on the extraterritorial application of human rights obligations, especially in light of some of the other submissions made today, such as Canada's, which plainly sought to undermine their relevance to the present case. On this point, Chile cited the German Constitutional Court judgement in the Neubauer case to defend the possibility of engaging in the responsibility of high emitting States for harms experienced by citizens of other States. Chile also rebutted with precision the fallacy that the complexities around causation of climate change can serve as a shield, protecting high emitting States from responsibility. To do so, they cited powerful precedents from the Court that clarify that when multiple actors have contributed to a breach of international law, their responsibility should be assessed proportionately to their contribution to the harm.

 China

China's intervention emphasised the primacy of the UNFCCC, the Kyoto Protocol, and the Paris Agreement, urging the Court to avoid fragmenting international climate law. It stressed that these instruments collectively govern climate obligations and that other branches of international law are only relevant to unregulated issues. China pointed out that the Paris Agreement's temperature target is a range of 1.5°C to 2°C and argued that its goals are collective rather than specific to individual States. It underlined the principle that NDCs represent obligations of conduct, with their scope and ambition subject to State discretion.

China further highlighted the need to differentiate obligations between developed and developing countries, emphasising that this distinction is grounded in equity, CBDR-RC, sustainable development, and the right to development. It objected to the ITLOS ruling that greenhouse gases constitute marine pollution, proposing that such issues be left to scientific determination. Additionally, China rejected the notion that GHG emissions constitute wrongful acts under international law, describing mechanisms like the Loss and Damage Fund and Paris Compliance Committee as adequate specialised arrangements.

China's intervention focused on rejecting broader climate-related legal obligations by affirming the primacy of the UN climate agreements and conservatively interpreting their terms. It opposed the recent ITLOS advisory opinion requiring States to prevent, reduce, and control GHG emissions, urging the Court to rebuke the tribunal's findings. China missed an opportunity to engage constructively with the second question before the Court, which could have allowed it to articulate a vision for State responsibility and climate justice - including by building on the principle of the differentiation of obligations that the country positioned at the centre of its submission.

Colombia

Colombia's legal counsel emphasised that the obligations to combat climate change extend beyond the UNFCCC and Paris Agreement, encompassing fundamental principles of international law, such as the obligation of due diligence, the duty to cooperate internationally, and the duty to prevent significant harm - which lies at the heart of international environmental law. Colombia also stressed the importance of considering the obligation to respect human rights. Their counsel underlined the necessity of a comprehensive and consistent application of these legal norms, cautioning against restrictive interpretations that could lead to further inconsistencies between international norms. Highlighting the extraterritorial application of human rights, their counsel stressed that the impacts of climate change transcend national boundaries, urging States to recognise the global consequences of their actions or inaction, particularly for vulnerable communities.

On legal consequences, Colombia underscored that failure to comply with climate obligations entails cessation of harmful activities, guarantees of non-repetition, and reparations, including compensation where necessary. Their counsel argued that compensation is not discretionary, but a legal obligation arising from continued breaches of international law, particularly excessive GHG emissions. The Court, their counsel urged, is uniquely positioned to provide authoritative guidance on the legal ramifications of such internationally wrongful acts, both current and future.

Colombia delivered a powerful, no-nonsense defence of the necessity for States to uphold their human rights and international environmental law obligations - offering a solid rebuttal to some of the arguments by polluting States that demanded that the judges ignore general international law in favour of the Paris Agreement. Colombia rightly pointed out that this would only fragment international law, and recalled that regional courts have already aptly dealt with the need for harmonious interpretation of States' legal obligations - stressing that it is the role of the Court to reaffirm the application of international norms related to State responsibility by determining the legal contours of the obligation of full reparation, which should be commensurate with the harm suffered as a result of climate change.

Commonwealth of Dominica

As presented by the counsel for Dominica, the country is at the frontline of a war that it did not start - the war on climate change. Their counsel's submission outlined how Dominica, similarly to other Small Island States, is particularly susceptible to the catastrophic consequences of climate change, especially those resulting from hurricanes. Consequently, Dominica is in a cycle of storm damage and recovery and reconstruction efforts, causing continuous debt incurrence. Dominica outlined the evidence confirming the causes and consequences of anthropogenic climate change based on the best available science, as represented by the IPCC reports. Dominica's legal arguments focussed on the customary norms of prevention and due diligence obligations, rights-based climate change obligations, and the legal consequences flowing from the breach of such norms, which include cessation and guarantees of non-repetition, as well as compensation obligations in the form of providing the necessary funds to Small Island States to address their loss and damage.

Dominica emphasised that each State is required to use all means at its disposal to avoid activities in its territories or in any area under its jurisdiction from causing significant harm to another State. Quoting from the ICJ's advisory opinion on nuclear weapons, where the Court recognised nuclear weapons as a constant and grave threat to the environment, Dominica's counsel then argued that anthropogenic GHG emissions constituted a similar threat. Indeed, having "weaponised the sea into a catastrophic threat," their counsel submitted that climate change is a daily threat to the life and the very health of human beings, including generations unborn. On human rights obligations, Dominica submitted that climate change is a direct threat to the life and enjoyment of life and mental well-being of every citizen and argued that the right to life, the right to a healthy environment, and the right to self-determination are human rights that have been breached by the emission of greenhouse gases and climate change.

Dominica's oral statement delivered a powerful message on the lived experiences of those most impacted, recounting the never-ending catastrophes they and other Small Island States are subjected to without the means for escaping it - an unstoppable cycle of suffering that has been imposed on their people as a result of the actions of other States. As rightly explained by Dominica's counsel, it is no small feat to rebuild your home and life after hurricanes and recover from the constant onslaught of adverse climate conditions over and over again, having to prepare every year for this uncontrollable threat. It is of the utmost importance to recognise the full extent of the threat faced by people today and in the future, as well as the devastating realities that people have to fight with on a daily basis as a result of the changes made to the climate system and other parts of the environment. Dominica has done justice in bringing this suffering to the forefront of these historic proceedings.

South Korea

South Korea acknowledged the centrality of climate treaties and the relevance of other sources of law, but denied claims for reparation for climate change-related environmental harm. For South Korea, the Paris Agreement has primacy over other sources of international law to address the questions in the advisory request.

Regarding applicable law, South Korea emphasised that the specific climate treaties are the primary source for determining State obligations and legal consequences for their breach. For example, it considered that mitigation duties under the Paris Agreement stem exclusively from that treaty. South Korea argued that the specific climate treaties, especially the Paris Agreement, have primacy over other sources of law, because it reflects the global agreement on how to collectively address climate change. South Korea underscored that the Court should be careful "not to identify new obligations" not grounded in existing State practice, because that would undermine climate negotiations.

Other sources of law, like the law of the sea, human rights law, and customary law, remain relevant where States have denounced or are not party to these specialised climate treaties. South Korea also stressed that the customary duties to prevent transboundary environmental harm and to cooperate in good faith remain applicable to climate change, and that they must be complied with due diligence.

Regarding legal consequences, South Korea stated that the rules for State responsibility, as codified by the International Law Commission, may be difficult to apply due to the cumulative

cause of the problem. It also put forward that the Court should pay attention to the interpretation provided by parties to the Paris Agreement, according to which the provision on loss and damage (Article 8 of the Paris Agreement) does not involve or provide a basis for any liability or compensation. It highlighted the importance of the Loss and Damage Fund as a way to help developing and vulnerable countries deal with climate impacts. South Korea also affirmed that the rules of State responsibility are, in principle, applicable to the duties to prevent environmental harm and to cooperate. Nevertheless, when they are breached, the applicable legal consequence is for States to act under a stricter due diligence standard.

The practical consequence of South Korea's arguments is denying responsibility for transboundary environmental harm in the climate context. Its position aligns with the view of major polluters that money given to countries most impacted by climate change is of a voluntary and not obligatory nature. Significant harm to the climate system has occurred and a stricter level of due diligence cannot, in of itself, be an appropriate consequence under international law. Paradoxically, South Korea facilitates impunity for climate polluters by affirming that prevention is applicable, but simultaneously arguing that breaching the same obligation and the harm caused as a result entail no right to reparation.

The **lead editors for today's** Daily Briefing are: **Aditi Shetye, Joie Chowdhury, Sébastian Duyck, Theresa Amor-Jürgenssen.**

The **contributors for today's** Daily Briefing are: **José Daniel Rodríguez Orúe, Katharina Maier, Mariana Campos Vega, Noemi Zenk-Agyei, Prajwol Bickram Rana, Quint van Velthoven, Rossella Recupero, and Yasmin Bijvank.**

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