HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 4th, 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...

- The **United States** and the **Nordic States (Denmark, Finland, Iceland, Norway, and Sweden)** led a retrograde charge suggesting a very narrow focus of States' climate obligations centered on the climate agreements, in particular the Paris Agreement, outright dismissing the applicability of human rights law to climate mitigation, and shrugging off the principle of prevention of transboundary harm.
- **Costa Rica**, **El Salvador**, **Spain**, and **Fiji** pointed out that to protect human rights in the context of climate change, States must reduce greenhouse gas (GHG) emissions - with **Costa Rica**, **El Salvador,** and **Spain** emphasising the relevance of the right to a healthy environment. **Costa Rica** and **Fiji** strongly argued that the protection of human rights extends beyond a State's territory. The **United States** and **Russia** refuted both claims, stressing that the right to a healthy environment lacks international legal protection.
- **El Salvador, Ecuador, UAE,** and **Egypt** reinforced the centrality of the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) towards a climate justice approach, while the world's greatest cumulative emitter, the **United States** outrageously argued that CBDR-RC is neither an overarching principle of the Paris Agreement nor implies any differentiation of commitments between countries.
- While the world's major polluters including the **United States** and **Russia** attempted to tear apart the legal arguments to establish the claim for reparations, their arguments were forcefully countered by some of the world's most climate-vulnerable nations, including **Fiji** and **Costa Rica**, who persuasively set forth the legal basis for climate reparations proportionate with climate harms.

Cote d'Ivoire also made interventions in Court today.

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

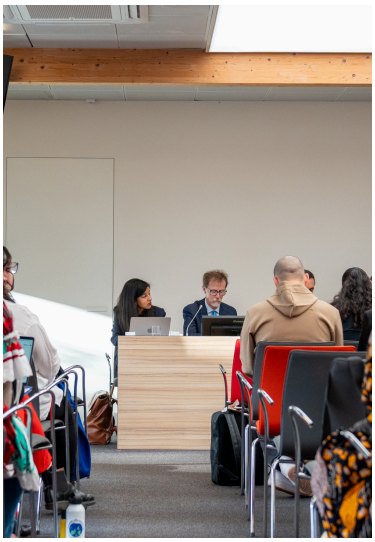
Today's intervention by the U.S. at the International Court of Justice is a betrayal to the world's youth and our futures. By failing to take accountability for historical emissions and downplaying its legal obligations to act on climate change, the U.S. undermines the foundation for global collective action in this escalating climate emergency. We need urgent, ambitious leadership now more than ever. We are the last generation that can make a real difference now and prevent going beyond the 1.5°C guardrail to keep the planet safe and habitable for current and future generations.

TRINA CHIEMI, (27), USA,
CO-FOUNDER, FACE INTERGENERATIONAL JUSTICE

The Nordic countries, who got rich thanks to their extractive and polluting activities, failed to recognise their substantial responsibility for causing the climate crisis. Appearing jointly, it seems that more progressive States rallied behind the retrograde stand of Norway as it seeks to escape its legal responsibility and undermine international law to protect its own fossil fuels vested interest. A staggering disrespect to the peoples and ecosystems who are losing their lives and homes for a crisis they did not create.

IDA IDLING, (25), SWEDEN,
SPOKESPERSON AND LEGAL SCIENTIFIC COORDINATOR, AURORA

Outside the Court



Credit: Pacific Islands Students Fighting Climate Change

On the 2nd day of the People's Assembly, organised by civil society organisations to amplify the voices of frontline communities who cannot be inside the Court, we heard powerful statements from witnesses from the Kichwa People of Sarayaku in the Ecuadorian Amazon, Cabo Verde, Honduras, Colombia, Libya, Mozambique, and Pakistan.

Patricia Gualinga, of the Kichwa People of Sarayaku, affirmed the rights of Indigenous Peoples and the Rights of Nature: "Today more than ever, in the midst of the climate emergency and ecological collapse, it is time to understand Nature as a basic condition of our existence and, therefore, also as the basis of collective and individual rights. Just as individual rights and the rights of peoples can only be exercised within the framework of the same rights of other human beings and of all peoples, individual and collective rights can only be exercised within the framework of the Rights of Nature."

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, Thursday, 5 December, we will report back on the oral submissions delivered by the following States: France, Sierra Leone, Ghana, Grenada, Guatemala, Cook Islands, Marshall Islands, Solomon Islands, India, Iran, and Indonesia.

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Report on each Intervention

Costa Rica

Costa Rica opened the session with powerful arguments on climate justice, stressing that the Court has not been asked to create new law, but rather apply the breadth of existing legal obligations that go beyond existing climate treaties. On applicable law, Costa Rica underlined that it would be a pitiful exercise in law for the Court to stop at the UN Framework Convention on Climate Change (UNFCCC) and other climate treaties. Costa Rica argued that addressing climate change and providing compensation and financing for loss and damage transcends voluntary commitments and instead rests on long-standing obligations under international law. It further detailed that States must protect human rights in the context of climate change, including the right to a healthy environment, and that this duty is owed to people beyond a State's territory. Overall, Costa Rica underscored that the Court's opinion can set a milestone for unified global action and that its fundamental role is to examine, interpret, and apply all relevant rules of international law.

Contrary to what some States have argued, Costa Rica stressed that obligations under these treaties do not extinguish other independent obligations of States outside of the specialised climate regime. Accordingly, climate treaties must be interpreted in light of and consistent with more general, pre-existing obligations of international law. Key obligations include: respecting human rights, including the right to a clean, healthy, and sustainable environment; demonstrating due diligence in reducing greenhouse gas emissions; and preventing environmental harm caused by emissions originating within their territories. On the latter, Costa Rica emphasised that the duty to prevent harm across borders is not limited to neighbouring countries. Even if the harm happens far away, States are still responsible for preventing it. All these obligations must be interpreted in light of the principles of intergenerational equity, common but differentiated responsibilities and respective capabilities (CBDR-RC), and applying an ecosystem approach.

On responsibility for harm caused to the climate system, Costa Rica underlined that States responsible for breaches of these obligations must cease harmful actions, provide guarantees of non-repetition, and fulfil duties to comprehensively repair the damage through restitution, compensation, or satisfaction. Specifically, it submitted that a State's international responsibility for harm to the climate system can be determined by reference to certain States historical and current contributions to greenhouse gas (GHG) emissions.

Costa Rica strongly dismissed arguments from other States that the Court was being asked to create new law, and that, on the contrary, by applying existing, long-standing international law, it could reach important conclusions on climate justice. It championed the protection of human rights beyond a State's territory, an argument regrettably denied by States like Germany and the United States. Costa Rica also debunked Australia's claim that preventing transboundary environmental harm applies only in a bilateral context and recalled that the Court has already ordered compensation for environmental damage in its case against Nicaragua in activities of the border. By highlighting that international law provides for a right to a healthy environment and that States must factor in the protection of future generations in climate mitigation, Costa Rica positioned itself as one of the most ambitious pleadings, among others.

Côte d'Ivoire

Côte D'Ivoire emphasised that climate change and fighting against it is a major and pressing cause for their country, highlighting the disruption to the environmental balance and the socio-economic life of their people. Côte d'Ivoire's oral intervention made specific references to precise points of the States' written submissions and oral pleadings. Their counsel compared and contrasted different State submissions while engaging in a detailed legal analysis of wording in the Paris Agreement. They very comprehensively cited recent domestic and international climate precedents to answer both questions posed to the International Court of Justice (ICJ) in the climate advisory proceedings.

Côte d'Ivoire agreed with Australia's position that the Paris Agreement's touchstone is a non-binding collective duty to reduce GHG emissions. According to their counsel, the interpretation of the Paris Agreement's temperature goal is not fixed at 1.5 degrees but rather represents a range, with 1.6 degrees as a realistic and precautionary mid-point that balances ambition with feasibility, given the current global efforts and constraints. Their counsel countered the arguments in the written submissions made by Kuwait, Saudi Arabia, and the United States that Nationally Determined Contributions (NDCs) should be determined by each State Party and noted that NDCs must be aligned with the collective objective and evaluated against the global stocktake in the annual synthesis reports under the enhanced transparency framework. Citing recent domestic climate cases in Europe, including the European Court of Human Rights (ECtHR) decision in KlimaSeniorinnen v Switzerland, Côte d'Ivoire maintained that simply having a NDC is insufficient and that States must also provide a carbon budget and align it to the annual synthesis reports. Côte d'Ivoire agreed with the United States' position that the next NDCs should have economy-wide emission reduction targets covering all sources of GHG emissions. However, counsel for Côte d'Ivoire also agreed with Switzerland and others that there is consensus amongst States that the obligation is one of conduct, not result, meaning that the Paris Agreement does not demand the achievement of emissions reduction targets, only that States do their utmost to reach the expected goal, while still ensuring that they implement their NDCs and carbon budgets. Supporting the Bahamas, Côte d'Ivoire also emphasised the duty to enforce rules and regulations, including on private actors. Concurring with the arguments made by Sierra Leone and others, their counsel reiterated the important duty of States to conduct environmental impact assessments (EIAs), which must also cover indirect emissions from downstream consumption (scope 3 emissions), as found in domestic court decisions in Australia and the UK. Côte D'Ivoire highlighted that most States before the ICJ agreed that human rights obligations can apply to climate change. On the second question, their counsel articulated that there should be no historical responsibility before the adoption of the climate treaties.

Côte d'Ivoire presented a mixed bag of climate justice-aligned and unhelpful arguments, engaging in a thorough analysis of State submissions. On the less progressive side, Côte d'Ivoire agreed with Australia's position that the Paris Agreement's touchstone is a non-binding collective obligation and additionally held that the temperature goal is 1.6°C, departing from the best available science of the 1.5°C limit. Côte d'Ivoire also strongly stated that there should be no historical responsibility before the adoption of climate treaties, even though States knew long before 1992 of the consequences of their actions on the climate system. On the positive side, Côte d'Ivoire countered the arguments by Kuwait, Saudi Arabia, and the United States that simply having NDCs is sufficient and followed the recent ECtHR decision in KlimaSeniorinnen that States must also calculate carbon budgets and ensure to the best of their ability implementation of these measures - including, they argued additionally, on private actors and ensuring that EIAs cover all sources of emissions, including scope 3 emissions. An engaging comparative analysis of the ICJ submissions so far, Côte d'Ivoire's submission could have been more helpful - but will be one that will be studied in years to come.

 Denmark, Finland, Iceland, Norway, and Sweden (jointly)

The Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden) submitted that the UN climate regime is the primary source of obligations relating to climate change, and that decisions from the Conference of Parties (COP) on the implementation of the obligations in the climate treaties are also key parts of this regime. While the Nordic countries recognised that the world is not on track to meet the Paris Agreement goals, they emphasised that the Paris mechanisms are our best available path to achieve such goals and combat climate change. The bloc reiterated that the core obligations under the Paris Agreement are procedural in nature, as exemplified by the NDCs and the obligation of progressive ambition, and clarified that while the obligation of establishing NDCs is one of the result, the obligation to meet such NDCs is one of conduct.

The Nordic bloc argued that, in case of conflicts between norms relating to climate change, the Paris Agreement should prevail, as both lex specialis and lex posteriori. Due to the principle of CBDR-RC, they posited that the level of ambition of measures to be taken depends on the capabilities of different States (which is not static and may change as the capabilities of States progress) and that the Paris Agreement is the instrument that best articulates this principle in the climate context. The Nordic countries also stressed the role of the Court in clarifying how the various legal instruments interact in relation to climate change, including human rights treaties and the UN Convention on the Law of the Sea (UNCLOS) - although stressing the centrality of the three climate treaties. For example, in relation to the protection of the marine environment, they argued that while the norms in UNCLOS are certainly relevant, the regulation of harms caused by anthropogenic GHG emissions must be interpreted in light of the obligations under the Paris Agreement, as that is the agreement that, they allege, fleshes out the due diligence expected in relation to emissions.

The Nordic countries addressed the relevance of customary norms. They argued that the precedents of the ICJ on transboundary harm were developed in the context of bilateral relations between States, and that the same rationale cannot be transposed to multi-source harm such as climate change, as there is no State practice and opinio juris in that respect. The Nordic countries complemented that, even if it were possible to be applied, an eventual obligation to prevent transboundary harm in the context of climate change would necessarily be one of due diligence, taking into account the obligations in the Paris Agreement.

Finally, in relation to the legal consequences, the Nordic countries submitted that historic emissions should not be taken into account, as they were expressly rejected in the Paris Agreement negotiations, and that causation and attribution of a "specific detrimental effect" to specific States is complex and cannot be addressed in abstract.

The submission by the Nordic countries is one of the most dangerous ones so far, as it is one of the more legally sophisticated articulations of the (fundamentally flawed) arguments by high-emitting countries. By centering the Paris Agreement as the cornerstone of the climate obligations of States and muddying the waters on the applicability of long-established principles of international law (such as prevention of transboundary harm), the Nordic countries are essentially attempting to evade historic responsibilities for the climate crisis and avoid the legal consequences for causing climate harm. Similarly, their interpretation that the degree of due diligence for the protection of the marine environment, which has recently been found by the International Tribunal on the Law of the Sea to be stringent, needs to be interpreted in light of the (largely procedural) obligations of the Paris Agreement seeks to effectively undermine the efficacy of the UNCLOS regime when it comes the harm caused by GHG emissions ot the marine environment. This is legally inaccurate, and would effectively mean that the marine environment is worse off because of the Paris Agreement, which is incompatible with the ethos of both the Paris Agreement and UNCLOS. One silver lining is the importance that the Nordic countries gave to the role of the ICJ in giving a systemic interpretation to the different legal regimes that are relevant to the climate - and, in doing so, hopefully, the Court will call out the Nordic bloc on their flawed representation of the interaction between different treaties and norms.

 Egypt

Egypt's legal counsel began by highlighting the severe impacts of climate change on the country, particularly regarding water scarcity. Egypt stressed that the Court must interpret the questions posed in light of the entire corpus of international law, not solely within the framework of the climate change legal regime. Egypt argued that the climate change regime, while important, does not comprehensively address all aspects of climate change, such as the protection of human rights, marine environments, or atmospheric emissions from aviation and shipping. It further noted that restricting obligations to the climate regime would leave non-parties or states that withdraw from it without legal accountability for greenhouse gas emissions, an untenable position given the magnitude of the crisis. Egypt recalled that awareness of the adverse impacts of emissions predates the UN Framework Convention on Climate Change, underscoring the broader temporal scope of obligations.

Turning to loss and damage and remediation of harm, Egypt rejected claims that provisions within the climate regime preclude the application of general State responsibility. The Ambassador underscored the discretionary nature of loss and damage mechanisms under the UNFCCC, which cannot substitute reparations, including compensation, under international law. Egypt noted that States opposing reparations have, themselves, previously maintained that the climate regime does not establish liability or compensation frameworks, so it is contradictory for them to argue that the loss and damage mechanism replaces compensation. Egypt emphasised the distinction between financial assistance as a primary obligation of the climate regime and compensation as a consequence of internationally wrongful acts causing harm under the law of State responsibility.

Egypt's intervention delivered a strong rebuttal to several States, emphasising the connection between the UN climate agreements' loss and damage mechanisms and compensation for harms under the law of State responsibility. This argument gained particular resonance as the Fund for Responding to Loss and Damage held its board meeting in Manila during the ICJ hearings. Egypt also sharply criticised the hypocrisy of major industrialised nations, highlighting that the wealthiest historical emitters are still expanding oil and gas exploration. Its Ambassador underscored the troubling trend of these countries—despite their immense resources and low dependence on fossil fuels—issuing new drilling licenses at unprecedented rates. Notably, five of the wealthiest nations accounted for most of the new oil and gas licenses in 2023. Egypt's critique carried extra weight as Norway, the United States, and Russia presented their views on the same day, underscoring the tension between their actions and the global push for climate justice.

El Salvador

El Salvador started its submissions with two general points. First, their counsel highlighted that the climate change treaties do not address many pertinent issues and that they do not exclude the application of other rules of international law, such as human rights and the right to a healthy environment. Second, El Salvador discussed the centrality of the principle of common but differentiated responsibilities and respective capabilities in the overall framing of these proceedings to ensure a climate justice approach. As a well-established principle in international law, CBDR-RC reflects the heightened responsibilities, obligations, and liability of developed States based on their contributions to the climate crisis. Counsel for El Salvador predominantly focused on one issue in particular: the preservation of sovereign and jurisdictional rights of States in the face of sea level rise.

The territory (of a State) is one of the constitutive elements of statehood under international law, which is significantly threatened by climate change. In this respect, States' rights to their maritime zone and their statehood may be impacted by sea level rise. Regarding this point, El Salvador argued that the existing sovereign and jurisdictional rights of States are not affected by sea level rise caused by climate change and supported this conclusion with emerging State practice and relevant legal principles, including the principles of legal certainty and stability, territorial integrity, self-determination, and permanent sovereignty over natural resources. Therefore, climate change does not alter existing rights and statehood - a conclusion that is further supported by the fundamental right of every State to survival.

As correctly pointed out by El Salvador's counsel, certain adverse effects of climate change simply cannot be prevented or mitigated. Climate change has catastrophic consequences on this planet and humanity. Indeed, the territory of many States is already being affected by climate change, and it is of utmost importance to ensure legal certainty as to what that means for the State and its people under international law. In this respect, El Salvador managed to draw a persuasive picture of how State practice and many relevant principles under international law come together to give a clear answer to this problem, thus enabling stability, continuity, and the preservation of the rights of States and peoples over time.

United Arabs Emirates

The UAE underscored the critical role of the Court in clarifying international obligations concerning climate change. They emphasised the existential threat posed by climate change and reaffirmed the scientific evidence establishing its anthropogenic drivers. They highlighted the interplay between the “no harm” principle and the relevance of the principle of CBDR-RC; and the importance of international cooperation. The UAE submitted that, under the no-harm rule, States have a due diligence obligation to prevent transboundary environmental harm. This duty is operationalised through the UNFCCC and the Paris Agreement, which aim to prevent dangerous anthropogenic interference with the climate system through mitigation and adaptation measures. The UAE highlighted the role of the UN Climate Change regime as a living framework that complements the no-harm rule by providing benchmarks and tools for collective climate action.

The UAE further elaborated on the principle of CBDR-RC, asserting its foundation in equity and sustainable development. It argued that this principle is central to the UNFCCC and therefore by extension to the Paris Agreement. They underscored the need to take into account historical emissions of developed countries, recognising their greater responsibility to lead in climate action due to their disproportionate contributions to climate change. The UAE stressed that developing countries cannot resort to CBDR-RC to avoid their responsibilities. Additionally, the UAE highlighted the indispensable role of international cooperation, as reflected in mechanisms like the operationalisation of the Loss and Damage Fund. Such cooperative processes, though complex, enable dynamic responses to evolving climate challenges and foster consensus-driven solutions. The UAE expressed confidence that the Court's opinion would significantly contribute to shaping global climate governance and guiding future negotiations.

In contrast to the oral submission made by the United States, the UAE positively reinforced the role of the no-harm rule under customary international law and its guidance in interpreting the Paris Agreement and the UNFCCC. As one of the high-emitting Non-Annex I States, their focus, unsurprisingly, was on the principle of CBDR-RC, which they asserted was at the core of the specialised climate regime. Overall, UAE’s submission highlighted that the Court’s opinion would positively influence climate change negotiations.

Ecuador

Ecuador, emphasising the persistent lack of meaningful mitigation commitments by States in past COP negotiations, began its intervention by firmly asserting that the adverse effects of climate change are indisputable. Ecuador stressed that climate change treaties should not be regarded as the sole source of obligations, highlighting that States cannot disregard their human rights responsibilities when implementing climate commitments. Consequently, States that have significantly harmed the climate system—including harm caused by private corporations under their jurisdiction—must be held accountable, even in cases where multiple States share responsibility. Ecuador’s legal counsel further argued that such harmful practices must cease, and the resulting damage must be remedied. Ecuador also underscored the importance of interpreting existing legal norms through the lens of the principles of CBDR-RC, intergenerational equity, and international cooperation.

Ecuador's counsel further elaborated that, as confirmed by its jurisprudence, the Court is obliged to apply equity as a general principle of international law.

In the context of climate change, Ecuador argued that this principle is reflected in the concepts of CBDR-RC and intergenerational equity. Ecuador highlighted the disproportionate burden imposed by major polluting countries on States that have contributed the least to climate degradation. To correct this imbalance, the CBDR-RC principle aims to correct such disparities by imposing a due diligence obligation on States to take all necessary measures to reduce GHG emissions in proportion to their historical contributions. Furthermore, Ecuador underlined that intergenerational equity is also relevant in assessing this due diligence obligation, as the interests of future generations must be taken into account, particularly when authorising polluting activities that could undermine the well-being of those generations.

Ecuador aligns with other Global South States in emphasising accountability as a cornerstone for addressing both legal questions presented to the Court. It urges the Court to consider States' obligations beyond the framework of climate treaties, even when applying such instruments. By advancing this argument, Ecuador not only challenges a narrow interpretation of the climate regime but also enriches the content of key principles such as CBDR-RC, intergenerational equity and the regulation of private actors within a State's jurisdiction. Ecuador provides an understanding of how these principles should guide efforts in climate mitigation and GHG reductions, promoting a more equitable and inclusive approach. Ecuador finalised its intervention as strongly as it started, urging the Court to take climate cooperation seriously, concerned about the COP results.

Spain

Spain positioned itself as one of the most vulnerable countries to climate change, as exemplified by the recent climate-induced floods that resulted in the loss of more than 220 lives. The first part of the oral argument laid out that States' obligations must "be interpreted following a human rights-based approach," focusing specifically on the right to a clean, healthy, and sustainable environment and the concept of human dignity. Spain's counsel stated, "preserving the environment consists of safeguarding the dignity and prosperity of present and future generations, making it a question that goes beyond the interest of individual States." Their counsel suggested that the right to a clean, healthy, and sustainable environment can crucially contribute to the Court's response to the question asked, as it increases the coherence of the system of human rights in a threefold manner: imposing positive obligations on States, fostering progress that must necessarily be much more inclusive and sustainable, and protecting the environment as a collective right. Spain stressed that the UN General Assembly Resolution 76/300 that recognised the right to a healthy environment should be taken into account as one of the key elements when interpreting instruments of conventional and customary law and highlighted that the right had been recognised in different ways by 161 States. Finally, their counsel included principles of environmental rule of law and environmental democracy, as well as the need to guarantee public participation in decision-making, access to information, and the ability to defend one's rights in court.

The second part of Spain's submission described the obligations of States based on the principle of systemic integration, and particularly highlighted obligations of cooperation in this regard. Highlighting that climate change is a common concern for humankind, they specifically stated that only the compilation of treaties, declarations, and principles of different legal regimes can adequately address the multiple and serious problems of climate change in full complexity. Their counsel then diverted to discussing the necessity of cooperation between States in the light of the climate treaties and provided dispute settlement mechanisms, as well as States' autonomy and discretionary powers to establish their own commitments and implement domestic measures in light of their national circumstances and respective capabilities.

The Spanish submission was, to date, the most helpful submission presented by a European State, championing a rights-based approach to climate obligations. However, it was also plagued by missed opportunities, inconsistencies, and an unfortunate array of arguments concerning cooperation and States' margin of appreciation in deciding what actions to take to combat climate change. For instance, while Spain's argument for the right to a healthy environment suggests that it is a norm under customary international law, it refrained from expressly stating that such a conclusion should flow from the argument they presented in relation to the UNGA resolution and State practice. The submission could further be interpreted to suggest that by applying a systemic integration approach to interpretation, the right should influence other norms of international law, but they formulated this argument in a shy way thus not coming to a concrete conclusion and leaving much room for interpretation and uncertainty. Finally, the second half of Spain's submission counters its previous stance by emphasising cooperative and voluntary obligations under the climate treaties and arguing that States can determine their own climate measures based on their national circumstances and respective capabilities. Thus, while Spain has submitted a strong stance on human rights in the climate change context, it simultaneously tried to minimise the obligations of States to protect said right, thereby turning its back on its statement made earlier that preserving the environment was a question that went "beyond the interests of individual States."

 United States

The United States emphasised the centrality of the UN Climate Change regime as the primary framework for addressing States' international legal obligations on climate change. Their counsel noted that this treaty-based system was designed for collective global action and should guide the Court's advice, underscoring that any additional legal obligations identified by the Court should align with the obligations under this regime. The U.S. firmly stated that failing to achieve NDCs under the Paris Agreement does not constitute a breach of the agreement. Furthermore, it rejected the notion that the principle of CBDR-RC is a general principle of international law or an overarching principle of the Paris Agreement.

On human rights, the United States recognised the relevance of certain obligations, such as freedom of expression, in the context of climate change. However, the U.S. Counsel argued that international human rights law does not require States to mitigate greenhouse gas emissions. The U.S. further maintained that international law currently does not enshrine the right to a healthy environment, framing it as aspirational rather than legally enforceable.

Regarding reparations, the United States asserted that establishing liability for climate harms requires demonstrating a direct causal link between specific emissions and harm, a standard it argued cannot be met under current international law. It dismissed the notion that the Intergovernmental Panel on Climate Change (IPCC) findings could bridge this accountability gap, suggesting that the IPCC does not determine the responsibility of specific States for emissions or their effects. Consequently, the U.S. argued against the legal basis to establish reparation claims.

The United States delivered one of the most systematic challenges to the application of fundamental legal norms to the climate crisis. Its assertion that the most relevant legal obligations are contained in the Paris Agreement and that any other international norms must be interpreted exclusively through the lens of the UN climate agreements is particularly outrageous, given the president-elect's stated intention to withdraw the U.S. from these very agreements. This contradiction undermines the credibility of the U.S. position, as it simultaneously elevates the Paris Agreement as central to international climate law while signaling a willingness to abandon it.

In arguing that conduct and knowledge prior to the establishment of the UN climate regime is legally irrelevant, the U.S. effectively seeks to sweep history under the rug and erode the distinction between those countries that have contributed the most to the crisis, with knowledge of the consequences, and the rest of the world. The U.S. dismissal of the principle of CBDR-RC as a legal norm is untenable, particularly given its reliance on the Paris Agreement, which explicitly incorporates CBDR-RC. By rejecting its application as a matter of law, the U.S. contradicts the very framework it claims should guide international obligations.

 Russia

Russia argued that States' obligations stem exclusively from the UNFCCC, the Kyoto Protocol, and the Paris Agreement, and rejected the 1.5°C temperature limit as legally binding. Additionally, Russia argued that international responsibility can only be invoked from the moment the relevant climate treaties came into force for each State, noting furthermore that, in any case, humanity only became aware of the negative consequences of greenhouse gas emissions in the 1990s. Russia further affirmed that it is impossible to attribute the causes of climate-related harm to a particular State or to specific internationally wrongful acts. Russia further denied the principle of intergenerational equity, noting that future generations cannot act as subjects of law and that it was impossible to establish harm to individuals not yet born.

Russia also argued that States' obligations under UNCLOS to protect, prevent, and control pollution of the marine environment do not apply to climate change and that greenhouse gas emissions are not pollutants, broadly rejecting the conclusions on this matter by the International Tribunal on the Law of the Sea (ITLOS). In its view, ITLOS created new obligations through treaty interpretation that are not codified in UNCLOS. Russia highlighted that failure to take adaptation measures is in itself a violation of the climate treaties, but it is not a violation of human rights treaties or customary norms in the field of human rights. Additionally, Russia contended that the right to a healthy environment had not crystallised as customary international law and thus lacks international legal protection.

Russia argued that obligations to address climate change arise solely from the UNFCCC treaty framework, rejecting broader legal principles such as intergenerational equity, historical responsibility, and the application of UNCLOS, while emphasising voluntary cooperation and adaptation measures over binding mitigation requirements. It aligned itself with unhelpful arguments presented by other high-emitters like the U.S., China, and Saudi Arabia. Russia's stance that responsibility can only be claimed post-1990 ignores scientific knowledge about climate impacts dating back to the mid-20th century.

 Fiji

Fiji highlighted the very real impacts of climate change for the State and its people, stating that climate change represents a "crisis of survival, and a crisis of equity" and that, due to its impacts, Fiji's economy is in a constant state of recovery. In this way, Fiji underscored that entire villages have been relocated, uprooting communities from their ancestral lands in breach of their rights to culture, food, water, and survival.

Fiji dismissed arguments that claim that the climate treaties are the only relevant sources of law, and that if States fulfil their duties under such treaties they automatically comply with all other applicable obligations. Fiji stressed that the Court is not being asked to create new law; rather it is compelled to ensure compliance with existing obligations. Fiji also fundamentally disagreed with arguments presented by some States regarding the inapplicability of the duty to prevent transboundary harm to GHG emissions. On this point, it highlighted that this principle predates specific climate treaties, and its recognition in the preamble of the UNFCCC signals that the polluting conduct of States was already regulated by international law before this treaty was adopted. Fiji also argued for the protection of human rights from climate change related impacts, and stressed that this has already been recognised by the European Court of Human Rights and UN Human Rights treaty bodies. This protection extends beyond State borders, as well as to future generations.

Fiji concluded that a State causing significant harm to the environment must be held accountable, which requires the application of the full spectrum of legal consequences under international law. Fiji stressed that cessation of the wrongful conduct requires an immediate reduction of GHG emissions and dismantling systemic structures that drive such emissions. Reparations should consider particularly vulnerable States as well as individuals of the present and future generations negatively affected by climate change. Breaches of the right to self-determination require that all States recognise the established territory and maritime spaces of Small Island States and their continued sovereignty and statehood despite the effects of climate change.

With a compelling call for the application of existing law to the protection of communities disproportionately affected by climate change, Fiji provided a strong closure for the session. Fiji offered a strong legal foundation for holding States accountable under existing international law for climate-related harm, emphasising that obligations to prevent transboundary harm and to protect human rights predate climate treaties and cannot be displaced by them. By rejecting claims that compliance with climate treaties alone satisfies broader legal duties, Fiji underscored States' existing obligations under other sources of international law, which importantly also include the provision of reparations for affected communities. Building upon the submission made earlier in the day by El Salvador, Fiji made a strong case for the need to uphold self-determination and sovereignty, even in the face of rising seas.

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, Katie Davis, Rojina Shrestha, and Zainab Khan Roza.**