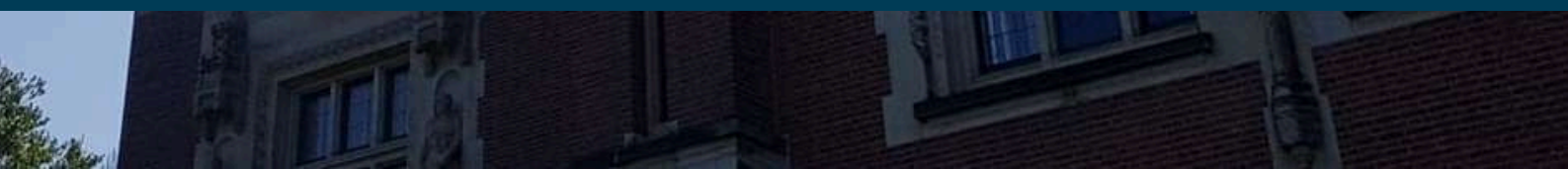
HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEFS COMPENDIUM

December 2nd, 2024 - December 13th, 2024



Intervention Reports

December 2nd, 2024

Opening
Vanuatu and Melanesian Spearhead Group
South Africa
Albania
Germany
Antigua & Barbuda
Saudi Arabia
Australia
Bahamas
Bangladesh
Barbados

December 3rd, 2024

Belize
Bolivia
Brazil
Burkina Faso
Cameroon
Philippines
Canada
Chile
China
Colombia
Commonwealth of Dominica
South Korea

December 4th, 2024

Costa Rica
Côte d'Ivoire
Denmark, Finland, Iceland, Norway, and Sweden (jointly)
Egypt
El Salvador
United Arab Emirates
Ecuador
Spain
United States
Russia
Fiji

December 5th, 2024

France
Sierra Leone
Ghana
Grenada
Guatemala
Cook Islands
Marshall Islands
Solomon Islands
India
Iran
Indonesia

December 6th, 2024

Jamaica
Papua New Guinea
Kenya
Kiribati
Kuwait
Latvia
Liechtenstein
Malawi
Maldives
African Union

Intervention Reports

December 9th, 2024

Mexico
Micronesia
Myanmar
Namibia
Japan
Nauru
Nepal
New Zealand
Palestine
Pakistan

December 10th, 2024

Palau
Panama
The Netherlands
Peru
Democratic Republic of Congo
Portugal
Dominican Republic
Romania
United Kingdom
Saint Lucia

December 11th, 2024

Saint Vincent and the Grenadines
Samoa
Senegal
Seychelles
The Gambia
Singapore
Slovenia
Sri Lanka
Sudan
Switzerland
Serbia

December 12th, 2024

Thailand
Timore Leste
Tonga
Tuvalu
Union of Comoros
Uruguay
Viet Nam
Zambia
Pacific Islands Forum Fisheries Agency
Alliance of Small Island States

December 13th, 2024

COSIS
Pacific Community
Pacific Islands Forum
OACPS
World Health Organization
European Union
International Union for Conservation of Nature

HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 2nd, 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 joint submission by **Vanuatu** and **Melanesian Spearhead Group** opened the hearings with powerful arguments on climate justice, the right to self-determination, and the role of international law in protecting the rights of all peoples. It also affirmed the importance of accountability for past wrongs.
- **Australia, Saudi Arabia**, and **Germany** led the charge in arguing that States' obligations in relation to climate change were predominantly - if not only - found in the Paris Agreement and urging the Court to refrain from determining additional duties from other branches of law. **Antigua** and **Barbuda** countered this argument by denouncing polluting States seeking to hide behind the current climate regime and the Paris Agreement as a shield to escape accountability.
- One of the most striking features of the day was the gap between the legal arguments laid out by **Germany** and the climate leadership professed by the country. For example, it argued that the right to a clean, healthy, and sustainable environment is not legally binding under international law, despite having worked in the past for its recognition by the United Nations. The government was unexpectedly regressive in opposing the meaningful application of human rights law.

South Africa, **Albania**, **Bahamas**, **Bangladesh** and **Barbados** 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 conduct of Germany is beyond shameful, as it deliberately rejected the very notion of legal responsibility for its historical contribution to the climate crisis. Today, Germany missed the mark in a once-in-a-generation opportunity to address the existential threat that the world is facing, climate change, and to safeguard the continued existence of humankind. In particular, the dismissive position toward the recognition of the rights of future generations is incredibly regretful. Hypocritically, Germany emphasized its respect for international law while consecutively making statements against the legitimacy of international law.

HENRIEKE BÜNGER, (23), GERMANY,
DEPUTY EUROPEAN FRONT CONVENOR, WORLD'S YOUTH FOR CLIMATE JUSTICE

Scattered in the relocation are the children of the land and sea. Their future is uncertain, reliant upon the decision-making of a handful of large-emitting States that are responsible for climate change. These States have not only enabled but proactively encouraged the production and consumption of fossil fuels and continue to do so today and every day. For my people, and for the world's youth and future generations, the consequences are existential.

CYNTHIA HOUNIUHI, (29), SOLOMON ISLANDS,
PRESIDENT, PACIFIC ISLANDS STUDENTS FIGHTING CLIMATE CHANGE

Outside the Court

On December 02, as the ICJ proceedings officially started, activists of all ages from across the world gathered in front of the Court for a youth-led solidarity demonstration. They demanded that the World's Highest Court upholds climate justice and recognizes that our human rights must prevail over the economic interests of a minority of States.

In solidarity with their submission and their fundamental role in the Global Campaign, demonstrators gathered outside the Peace Palace and watched as Vanuatu and the Melanesian Spearhead Group initiated the hearings, setting the stage for the discussions to come over the next 2 weeks.

AO LET'S GO!!

Lennard van der Valk. Supported by Interactive Media Foundation gGmbH

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 3 December, we will report back on the oral submissions delivered by the following States: Belize, Bolivia, Brazil, Burkina Faso, Cameroon, Philippines, Canada, Chile, China, Colombia, Commonwealth of Dominica, and South Korea.
If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

Report on each Intervention

Opening of the oral proceedings

In opening the oral proceedings, the President of the Court, Nawaf Salam, spoke of the request to the Court for an advisory opinion to clarify State obligations in relation to climate change. The Registrar read out the text of the questions presented to the Court with regard to multiple sources of international law, which can be summarised as: a) What are the obligations of States under international law in relation to climate change? b) What are the legal consequences when States breach, or do not meet, these obligations? [The details of the request and full text of the questions can be found at this link.] The President provided further procedural details regarding time-limits and formal participation in the proceedings. More information on these procedural matters can be found on the ICJ climate advisory opinion webpage.

He also announced that written submissions by States and international organizations will be made available to the public via the ICJ website after the opening of the oral proceedings. The written statements and comments of States and organizations not taking part in the proceedings will be made public the first day of the oral hearings, while the written statements and comments of the States and organizations participating in the hearings will be made available at the end of the day in which they present their oral statements. He also explained the modalities by which the members of the Court may pose questions to the participants in the proceedings. Such questions will be asked at the close of the hearings on the afternoon of Friday 13 December 2024, after the last delegation has completed its presentation. The written text of such questions will be transmitted by the Registrar and must be responded to in writing by Friday 20 December 2024 at 6 pm (CET). These replies will be transmitted to all other participants who may submit written comments they wish to make on such replies by Monday 30 December 2024. For any questions posed to all participants, written replies should be provided by Friday 20 December 2024. No additional written comments are envisaged on such replies.

Vanuatu and Melanesian Spearhead Group

In their joint intervention before the ICJ, legal counsel from Vanuatu and the Melanesian Spearhead Group (MSG) highlighted the existential stakes of the proceedings for their islands, and for all of humanity. Their counsel underscored that the climate crisis, which poses such a grave threat to their peoples and islands, has been fueled by the conduct of major polluters. Delegation members underscored that the injustice of the climate crisis is inseparable from our shared colonial histories, and movingly made the link between the climate crisis, the right to self-determination of Pacific Islanders, and intergenerational equity, expressing the importance for the judges to hear the testimonies of those at the frontlines of the climate crisis. Vanuatu and MSG insisted that this is not just about future commitments, but addressing current violations and ensuring justice for those whose rights have already been breached and continue to be breached today. Pointing to the systemic failure of international climate negotiations, Vanuatu and MSG called upon the Court to provide authoritative guidance, stressing the importance to ground climate action not in political convenience but in international law. Their counsel emphasized that no State is above the law and can remain unaccountable.

Vanuatu and MSG underscored that there are existing legal obligations of States in relation to the climate crisis that go beyond the UN Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, and urged the Court to consider the full spectrum of international law. Their legal counsel made persuasive arguments on the right to self-determination and the right of people to determine their own fate, emphasising that climate change is depriving entire peoples of their ability to survive and thrive in their ancestral lands. It was recalled that the ICJ itself has characterised self-determination as both an essential principle of contemporary international law and as a fundamental human right with a broad scope of application, and noted that the conduct responsible for climate change has already infringed on the right to self-determination for the nations and peoples of Melanesia where climate related disasters caused by fossil-fuelled vandalism of major polluters have led to a near constant state of emergency.

Yet despite knowledge of climate harms resulting from the production and use of fossil fuels at least since the early 1960s, major polluters have continued to subsidise fossil fuel production. What emerged most clearly from their pleadings was that the conduct of polluters responsible for climate change and its catastrophic consequences is unlawful under multiple sources of international law, including, but not limited to, obligations to act with due diligence, to prevent significant harm to the environment, and to respect fundamental human rights. This triggers legal consequences under the law of State responsibility to cease such conduct, provide guarantees of non-repetition, and provide full reparation, including compensation, restitution, and satisfaction. The final word came from a Pacific youth delegate who reinforced the legal principle of intergenerational equity, calling on the Court to help course-correct and renew hope in humanity's ability to address the greatest challenge of our time.

Vanuatu and the MSG powerfully called on the Court today to ensure international law serves its purpose—to protect the rights of all peoples and reaffirm the importance of accountability for past wrongs. Delegation members made clear that in the face of devastating climate harm, States cannot stay within the realm of empty pledges - there are existing legal obligations to act ambitiously on the climate crisis, and these extend far beyond the UNFCCC and the Paris Agreement. Building on extensive evidence and the entire corpus of relevant international law, the Vanuatu and MSG intervention compellingly argued that the conduct responsible for climate change, and its catastrophic consequences driving humanity to the brink of extinction, is unlawful. This then triggers legal consequences including cessation of climate-destructive conduct, guarantees of non-repetition, and the provision of full reparation. Vanuatu and MSG considered measures to ensure cessation of harmful conduct and guarantees of non-repetition would include stopping fossil fuel subsidies, adopting measures for deep and rapid emission reductions, and non-reliance on false solutions that risk aggravating harm, such as geoengineering. Further, it was made clear that reparation is not just about compensation, but also embracing structural measures, for instance, ecosystem restoration; tributes to victims; and recognition of the territories and maritime spaces of Small Island Developing States and their continued statehood and sovereignty despite the effects of climate change.

South Africa

South Africa's legal team opened their oral submissions by recalling examples of severe climate impacts affecting the country and stressing that these impacts are compounded by social and economic challenges. They underscored South Africa's commitment to address these issues and promote the right to a healthy environment in a manner that promotes economic and social development.

Their counsel emphasised the existence of a distinct legal regime on climate change, developed through careful negotiation and highlighted key instruments, including the UNFCCC, the Kyoto Protocol, and the Paris Agreement, underscoring that they embody principles of equity and Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC). Historical responsibility was emphasised, with the counsel recalling the cumulative emissions of industrialised nations as a basis for differentiated obligations. These obligations are also shaped by States' respective capacities, a principle reinforced by the *Pulp Mills* case, where the ICJ clarified that a State's duty to prevent harm is contingent on its means. Their counsel pointed to Annex 1 (industrialised countries and economies in transition) under the UNFCCC to illustrate the differentiated responsibilities embedded in the agreements. The South African delegation also emphasised the obligations provided in the climate agreements for developed States to provide the technological assistance needed by developing countries to tackle climate change and its impacts.

South Africa's counsel also emphasised that sustainable development principles and the pursuit of Sustainable Development Goals (SDGs) should guide the implementation of climate instruments. The significant adaptation costs faced by developing countries were identified as a pressing concern that should be considered when assigning responsibilities. The reference to human rights contained in the preamble of the Paris Agreement was discussed, with South Africa inviting the Court to consider the right to development as informing the scope of State obligations. On accountability, their counsel highlighted the existence of compliance committees under the Kyoto Protocol and Paris Agreement, presenting these mechanisms as evidence of specialised bodies entrusted with the responsibility to monitor and enforce climate-related obligations.

South Africa's intervention strongly defended the principle of CBDR-RC, invoking a range of legal norms to support its position. The representatives appeared primarily concerned with ensuring that the Court refrain from attributing responsibilities to developing countries that exceed those explicitly outlined in the Paris Agreement. They relied on the existence of compliance mechanisms under the Kyoto Protocol and the Paris Agreement to argue against the use of alternative accountability measures for climate harms outside the climate regime. However, this approach appeared to lack persuasive force as a pathway towards enhanced accountability in the pursuit of climate justice because these mechanisms have extremely limited mandates and have been largely ineffectual to date.

 Albania

Albania's submissions stressed that climate change is a truly global crisis, and that no State will be spared from its far-reaching impacts. They urged the Court to be bold, direct, and clear in its interpretation of what the law requires to meaningfully address the threats we face from climate change. Underscoring the inequitable and disproportionate adverse effects on climate change, Albania highlighted the particular vulnerabilities of developing and middle-income nations - such as Albania and other Balkan States - who bear the greatest burden of climate change despite having contributed the least to it. Arguing that the law imposes differentiated responsibility on States, the counsel for Albania argued that developed, industrialised States bear the primary responsibility to take meaningful action to address the climate change crisis that they have and are continuing to contribute to, including by providing real and tangible support for developing and middle-income countries.

In reference to obligations under the Kyoto Protocol, the Paris Agreement, and the UNFCCC, counsel emphasised two overarching obligations of developed, industrialised States: i) to take material steps in significantly reducing emissions, and ii) to provide financial resources, facilitate technology transfer, and build capacity to enable developing and middle-income countries to implement mitigation and adaptation measures. Albania argued that States have obligations to protect fundamental human rights from the adverse effects of climate change - obligations that are separate and distinct from climate change agreements. Such obligations include, in particular: i) to prevent significant harm to the climate system and other parts of the environment that would foreseeably violate human rights; ii) to ensure that the measures taken in response to climate change do not themselves violate human rights; and iii) to provide redress for human rights violations, including those resulting from significant harm to the climate system and other parts of the environment. These obligations also operate outside the territory of a State as long as the conduct of a particular State can result in a direct and foreseeable impact on an individual's human rights.

Albania's submissions correctly highlighted some of the inequities inherent in the climate change crisis and the already existing obligations of those who contributed the most to this crisis to reduce emissions and provide financial and other support and remedies to those harmed by it. In relation to human rights, Albania made a strong submission arguing that international human rights law includes obligations in relation to climate change and, particularly, highlighted the need for gender perspectives and an intersectional approach, outlining how the range of implications from climate change can impair the enjoyment of human rights in overlapping and layered ways, amplifying the exposure to harm of women, children, Indigenous Peoples, persons with disabilities, and those living in extreme poverty. Albania offered a particularly strong exposé of the importance for the Court to tackle gender equality in its Advisory Opinion by citing examples provided in the written submissions of other States and by referring to the work of relevant UN human rights bodies.

Germany

The overarching argument of the oral submission made by Germany was that there are only very limited specific, legally binding obligations in international law that are applicable to climate change. To that end, Germany's counsel posited that the Paris Agreement formed the core of State obligations in the climate change context and forwarded several arguments limiting the obligations that exist under other sources of international law, such as customary international law and international human rights law. Germany's submissions highlighted that there is a difference between obligations that are legally binding, on the one hand, and political commitments made by States that are voluntary in nature and, thus, do not establish legally binding obligations. To that end, according to Germany's submissions, the majority of the articles set out in the Paris Agreement merely constitute "voluntary political commitments."

Among other arguments, Germany's counsel stressed that the principle of CBDR-RC does not constitute an independent obligation under international law and only exists as a principle established by the UNFCCC and the Paris Agreement.Finally, the counsel also highlighted that the Paris Agreement does not contain a legal obligation to provide compensation for climate change related loss and damage; any financial commitments made by parties are only on a purely voluntary basis. In relation to customary law, Germany argued that only sometime after the publication of the IPCC's first report in 1990 could norms of customary international law in relation to climate change have emerged.

The implication is that before 1990, States did not have any obligations under customary law and cannot be held accountable for their earlier emissions.

In relation to international human rights law, Germany asserted that as far as climate change is concerned, the Paris Agreement is the relevant treaty. Therefore, States that comply with the Paris Agreement automatically fulfil any and all of their human rights obligations. Additionally, counsel emphasized that under international human rights law, a State cannot be held responsible for harm caused to individuals outside its territory, even if the harm is the result of emissions emanating from said State. Germany rejected the idea that human rights treaties provide for rights or obligations in respect of future generations, as human rights treaties do not protect "abstract persons from abstract risks". Finally, Germany rejected the proposition that under international law, there is an independent and self-standing right to a clean, healthy, and sustainable environment.

Germany's submissions were strongly focused on limiting the State obligations that exist under international law in respect of climate change as well as any legal consequences that could arise for States for having caused significant harm to the climate system and other parts of the environment. In relation to human rights, in particular, the argument forwarded by Germany is essentially suggesting that while human rights treaties do apply, the obligations States have under human rights law are confined to obligations under the Paris Agreement – and few obligations in that treaty are legally binding. Additionally, Germany's arguments restrict the applicability of human rights treaties to their own territory and to the current generation.

As argued by other States, States have extensive obligations under different sources of international law, such as customary law, human rights law, and the law of the sea. These obligations are separate and distinct from, though complementary to, their obligations under the UN climate change agreements. This is especially true for States' obligations under international human rights law. Therefore, complying with the UNFCCC and Paris Agreement does not necessarily satisfy a State's obligations under international human rights law. States have significantly more extensive obligations under human rights law than under the Paris Agreement – obligations that exist vis-a-vis individuals and Peoples as opposed to States. These obligations also apply to individuals outside the territory of the State, including in relation to anthropogenic emissions of greenhouse gases, and take into account the rights of future generations. The arguments advanced by Germany would critically undermine the protection of human rights of individuals, Peoples, and future generations in the context of the climate change crisis, which poses an existential threat to all human beings. The German counsel relied on a selective use of cases in favor of its argument, preventing the judges from benefiting from a more comprehensive range of relevant case law.

 Antigua & Barbuda

Prime Minister Gaston Browne of Antigua and Barbuda recounted the grave environmental, social, and economic consequences of climate change on Small Island Developing States. Antigua and Barbuda lost land to sea level rise, suffered declines in fisheries, and was devastated by Hurricane Irma in 2017. Prime Minister Browne mentioned that despite the climate treaties, global greenhouse gas emissions have continued to rise because of the failure of major polluting States to take adequate actions. The Prime Minister urged the Court to clarify the obligations and responsibilities of those who have contributed disproportionately to the climate crisis before; in his words, "the clock on survival runs out."

Counsel for Antigua and Barbuda cited the recent report of the Intergovernmental Panel on Climate Change, which described “a rapidly closing window of opportunity to secure a livable and sustainable future for all.” He warned that many high emitters try to use climate treaties as a shield to escape responsibility, and emphasised that other international rules (e.g. customary international law, human rights law) are not only relevant but vitally important to determining State obligations and whether their conduct is lawful. For example, the principle of prevention imposes due diligence requirements on historical major emitters to use all means at their disposal to achieve rapid, deep, and sustained cuts to emissions. These emission reductions must be consistent with the remaining global carbon budget, which identifies the volume of emissions in the coming years consistent with achieving the temperature goals of the Paris Agreement. Antigua and Barbuda highlighted that States responsible for harm to the climate system must cease their wrongful acts and pay reparations, including compensation for loss and damages.

Antigua and Barbuda provided a powerful account of climate injustice by recounting the devastating impacts of climate change, their negligible contribution to the crisis, and the massive costs associated with rebuilding and adaptation. They challenged arguments of States that seek to avoid responsibility for inadequate action to address climate change. For example, Antigua and Barbuda forcefully rejected the idea that compliance with the Paris Agreement (e.g. filing an Nationally Determined Contribution) automatically fulfils other State obligations under international law. States must also comply with customary international law and international human rights law, obligations that cannot be negated by climate treaties. Antigua and Barbuda also confirmed that sufficient causal links can be established between breaches of international obligations and the injuries suffered as a result of climate change, clarifying responsibility for paying reparations.

 Saudi Arabia

Saudi Arabia acknowledged the urgency of addressing climate change, noting their own vulnerability to extreme heat and desertification. However, their counsel observed that efforts to reduce emissions must be balanced with other goals including energy security, food production, and economic development. The main point made throughout their oral submission was that the UNFCCC, the Kyoto Protocol, and the Paris Agreement form a specialized treaty regime, characterized by a global consensus, that precludes the application of principles and obligations established through other fields of international law, such as international human rights law. In other words, the climate treaty regime is the only relevant source in determining the obligations of States and the consequences of failures to fulfil those obligations. Therefore, the no-harm principle and human rights, including the right to a healthy environment, are irrelevant to the advisory process.

Saudi Arabia identified two bedrock principles of the climate treaty regime: common but differentiated responsibilities and respective capabilities (highlighting the heightened, historic responsibility of States that industrialised earlier); and the central importance of economic development and poverty alleviation. Saudi Arabia warned that the Court’s Opinion must not impose new or additional obligations, or it will risk undermining the integrity of the climate treaty regime.

Saudi Arabia took a strikingly narrow approach to the framing of issues before the Court by asserting that the Advisory Opinion should focus exclusively on the three climate treaties, to the total exclusion of all other sources of international law.

Yet global, regional, and domestic courts have consistently determined that these other fields of international law are relevant, and do establish additional obligations upon States that complement obligations under the climate treaty regime. Examples include the International Tribunal on the Law of the Sea, the European Court of Human Rights, and the highest courts of Belgium, Brazil, Colombia, Germany, India, the Netherlands, and South Korea. Saudi Arabia suggested that the climate negotiations at the annual Conference of the Parties would be undermined if the ICJ relied on other sources of international law in answering the questions asked by the General Assembly resolution. In fact, a strong Advisory Opinion that relies on the entire corpus of relevant international law would strengthen the climate negotiations by providing clarity on legal duties and thus a firmer basis for multilateral solutions.

 Australia

Australia's legal counsel emphasised that the UNFCCC and the Paris Agreement are the central legal frameworks governing State obligations to address climate change under international law. However, parties are not yet on track to fulfil core objectives of this framework, so urgent individual and collective action is needed. At the same time, Australia acknowledged the relevance and applicability of other sources of international law to address the request, including the UN Convention on the Law of the Sea, environmental treaties, international human rights law, and the customary duty to cooperate. Therefore, the Court ought to harmoniously interpret obligations from other sources in line with the specialised climate regime that constitutes the primary source of obligations.

Regarding the relevance of customary international law, Australia asserted that the prevention of transboundary harm is not applicable to climate change. Australia contended that this rule has only been developed and applied in cases of direct transboundary harm, with spatial and temporal proximity, and from an identifiable source, which contrasts with the cumulative causes and widespread harm, detached from emission origins, that characterises greenhouse gas emissions. If, however, the Court disagrees, Australia made an alternative argument that compliance with the duty to prevent would be met by complying with the specific obligations under climate treaties. Australia also broadly supported the advisory opinion of the International Tribunal on the Law of the Sea and its conclusions, but highlighted that it would be difficult to clearly determine that the emissions of one specific State caused harm to the environment of another State.

Australia highlighted that the Court should not adopt a general causation standard for determining the applicable legal consequences for harm to the climate system. Reparation for climate change harm would require a clear causal link between emissions and injury; without this nexus, reparation is not justified. Additionally, the burden of proof should remain with the State seeking reparation. Finally, Australia stressed that the law of State responsibility does not support collective responsibility for climate harm; each State's conduct is a separate wrongful act, and while customary international law on responsibility remains relevant, it cannot fully address the complex issues of State responsibility in this context, especially whether and how reparations for composite acts would operate.

Although it expressed solidarity for its Pacific neighbours and acknowledged the applicability of other sources of law to the climate problem, Australia effectively argues that international responsibility is inapplicable when it comes to harm to the climate system. Contrary to Australia's arguments, the duty to prevent transboundary environmental harm is not limited to bilateral cases, but refers broadly to respecting the environment of other States.

Responsibility for breaching this duty is also not limited to cases where causality is simple; possible complexities in specific attribution of harm do not render the duty inapplicable. In any case, advances in attribution science have significantly enhanced our ability to link specific harms to cumulative greenhouse gas emissions. Indeed, the complexities of climate change do not absolve States of their duty to prevent transboundary harm, their responsibility for its breach and the legal consequences applicable under customary international law.

 Bahamas

In their intervention before the ICJ, the attorney general and the legal counsel from the Bahamas highlighted the country's particular vulnerability to climate change, in particular due to extreme weather events such as hurricanes. The attorney general poignantly highlighted the real-life impacts of the climate crisis on Bahamians, such as displaced people, missing loved ones, and livelihood loss, all because developed countries ignored the warning signs of the climate crisis. He expressed concerns about the impacts of climate change on the archipelago of the Bahamas, such as ocean acidification, loss of mangroves and biodiversity, mass coral bleaching, and the rising sea level, which poses an unprecedented challenge to the very survival of the people. The Bahamas urged the Court to remember that this is not about numbers or projections, but what is at stake are lives, cultures, and histories that risk being erased. The attorney general concluded with a call to action, powerfully stating that the polluting countries must pay for the years of neglect and called for the clear need for developed States to provide financial support.

The Bahamas also highlighted the binding nature of States' individual mitigation obligations, which are based on customary law, including the prevention principle, and called for States to act with due diligence and in line with the best available science. The Bahamas highlighted the need for a nuanced approach to the CBDR-RC principle - calling on the Court to avoid seeing it as a free pass for high-emitting developing countries while also applying a proportional allocation of mitigation duty based on each State's greenhouse gas emissions contribution. It was highlighted that the Paris Agreement must be performed in good faith, meaning that Nationally Determined Contributions should reflect the highest possible ambition towards achieving the global temperature goal and that private actors must be regulated. The Bahamas called upon the Court to apply all the bodies of international law that apply to the climate crisis, including human rights treaties and the United Nations Convention on the Law of the Sea (UNCLOS), as they reinforce and complement each other.

In their intervention before the ICJ, the Republic of the Bahamas issued a powerful plea for accountability, underscoring the catastrophic human toll of climate change on their nation, from hurricanes and storm surges to rising sea levels that threaten to erase entire communities, cultures, and histories. The Attorney General emphasised that these impacts are not abstract but directly result from years of neglect by polluting countries. The Bahamas demanded that these nations be held liable for their contributions to the crisis and provide reparations for the displacement, loss of livelihoods, and ecological devastation they have caused. Highlighting the binding nature of individual mitigation obligations under customary international law, particularly the prevention principle, the Bahamas called for good faith implementation of the Paris Agreement, with ambitious Nationally Determined Contributions and regulation of private actors. They urged the Court to apply all sources of international law—including human rights treaties and UNCLOS— to ensure liability. Weaving powerful stories of loss with compelling science and legal arguments, the Bahamas' intervention was a strong call for reparation and liability for the climate crisis.

Bangladesh

Bangladesh began its oral submission by expressing solidarity with Small Island Developing States and other climate-vulnerable States. It highlighted that Bangladesh is the seventh most climate-vulnerable country in the world. Climate change has impacted human rights to livelihood and culture and has put millions of people at risk of climate displacement. The delegation brought the Court's attention to the massive financial impacts of climate disasters, exceeding $3 billion per year. Bangladesh stated that they contribute "barely half a percent" to global greenhouse gas emissions, yet suffer some of the worst impacts. Therefore, the people of Bangladesh require climate justice now. The delegation also highlighted that in the face of severe climate disasters, it is becoming impossible to uphold human rights and balance sustainable development obligations. Their counsel emphasized that this year's COP yet again failed to deliver on its promises, which has been leading to increased inequity.

Their counsel emphasized the need to harmonize the multiple regimes of international law because its different branches all lead to a single overarching obligation: all States must take all necessary measures to deeply and rapidly reduce greenhouse gas emissions to avoid breaching the 1.5 degrees Celsius threshold, with the greatest burden to be taken on by high emitting States. This obligation arises from interrelated and mutually reinforcing legal regimes including the customary duty to prevent transboundary environmental harm, climate change treaties, and human rights law, and must be applied keeping in mind common but differentiated responsibilities. Bangladesh also drew on the International Tribunal of the Law of the Sea (ITLOS) Advisory Opinion, which established a stringent standard of due diligence applied in preventing harm to the marine environment. It was also stressed that the UNFCCC and the Paris Agreement are not the last words on State obligations, especially since the obligations are for the most part only procedural to ensure successive contributions to climate mitigation and adaptation. The UN climate regime, while vital for mitigation, does not fully define largely procedural State obligations. The Paris Agreement cannot override pre-existing duties, particularly when addressing global existential threats. Claims of inconsistency between the Paris Agreement and general international law were dismissed, as ITLOS and others reaffirmed the compatibility of these norms. Urgent, substantive action was called for to meet the imperative of environmental protection.

Bangladesh underscored that adaptation measures serve both primary and secondary obligations. Adaptation-related obligations are primary obligations and are not mitigation alternatives, but are rather required in parallel. The same measures may be required for both obligations, such as supporting ecosystem resilience. Adaptation-related obligations are also secondary obligations because States responsible for unmitigated emissions must assist injured States by providing necessary resources to remedy harm, guided by other sources of law and the best available science. Under this framework, Bangladesh submitted that developed States are obligated to mobilise and increase adaptation funds, fulfill existing finance commitments, and cooperate in sharing scientific and other critical information with developing and climate-vulnerable States. Furthermore, States must protect and restore climate-resilient ecosystems, adhere to stringent due diligence obligations—such as conducting environmental impact assessments for activities that could cause harm through greenhouse gas emissions—and take appropriate steps, including funding, to protect and uphold fundamental human rights.

Overall, Bangladesh took a stand similar to other climate-vulnerable countries that presented arguments on the first day. The delegation for Bangladesh stressed the importance of the human rights nexus to climate change and warned that the devastating impacts of the crisis will progressively worsen. The oral submission pointed out the need to clarify States' legal obligations due to the slow progress of the climate negotiations. Their counsel rightly pointed out the applicable law that the Court needs to consider beyond the UN climate treaty regime, and focused on the clarity the Court would give on these secondary and primary obligations of human rights while keeping in mind the principles of differentiated responsibility and equity.

 Barbados

Barbados highlighted the urgency of the climate crisis to Small Island States, which it argued is a matter of life and death for their people. Barbados pointed out that its economy is also at risk as a result of global warming and ocean acidification, which directly impacts tourism, fishing, and agriculture. For instance, earlier this year, hurricane Beryl destroyed 90% of the country's fishing fleet. The ability of the State to access insurance is being limited by climate change and this poses challenges to attracting the investment that is needed to develop the country. Barbados also mentioned its disappointment with COP29 and the amount committed by States so far to address climate change at a global level. Moreover, Barbados focussed its submission on four legal points: (i) applicable international law; (ii) the obligation to provide reparations and the doctrine of strict liability; (iii) causation; and (iv) foreseeability.

On applicable international law, Barbados submitted that all of international law applies to climate change, and not only the UNFCCC, the Paris Agreement, and the Kyoto Protocol. Regarding the obligation to provide reparations for climate harm, Barbados maintained that this obligation was one of strict liability, as since at least 1965 it has been established that hazardous activities (of which climate change is an example) give rise to strict liability. It added that the obligation to prevent transboundary harm is not an obligation of conduct, as defended by certain States, but rather an obligation of result, and that it is the harm alone that gives rise to the obligation of reparation. With respect to causation, Barbados rebutted the argument made by some States that the causes and impacts of climate change are too complex and far-reaching to be attributable to one single State, considering that the cause of climate change is direct, foreseeable and it is not remote. Barbados added that each major emitting State cannot evade its individual obligation to provide redress for climate-related harm simply because all major emitting States acted together to cause climate change, as under international law the obligation of redressing harm caused collectively falls on each State independently. On foreseeability, Barbados submitted that even before the first IPCC report was published in 1990, States already knew that climate change was happening - for example, as early as 1962, the United States National Academy of Sciences had informed then President John F. Kennedy that the extensive use of fossil fuels would disrupt the weather and ecological balances. Barbados closed by stating that major emitting States knew since the 1970s that climate change would shorten the lifespan of their own future citizens, but chose to do it anyway due to economic interests.

Barbados made a legally sound, powerful submission to the Court. It addressed some of the main fallacies put forth by major emitting States, actively engaging with their written submissions. Particularly noteworthy was its review of historical documents that confirmed that the United States (as a proxy for other major emitting countries) knew about the dire consequences of climate change since the 1960s, but still chose not to take adequate measures to address its impacts.

Barbados' rebuttal of the attempt by some States to limit the scope of obligations to specific climate treaties, rather than all of international law, should also be noted, as it clearly pointed out why the climate treaties cannot displace other rules of general international law - but rather, operate alongside it. Throughout its pleading, Barbados highlighted the severe economic and human rights impacts it is already experiencing due to climate change.

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 advise 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 of today's Daily Briefing are: Theresa Amor-Jürgenssen, Joie Chowdhury, and Sébastien Duyck.

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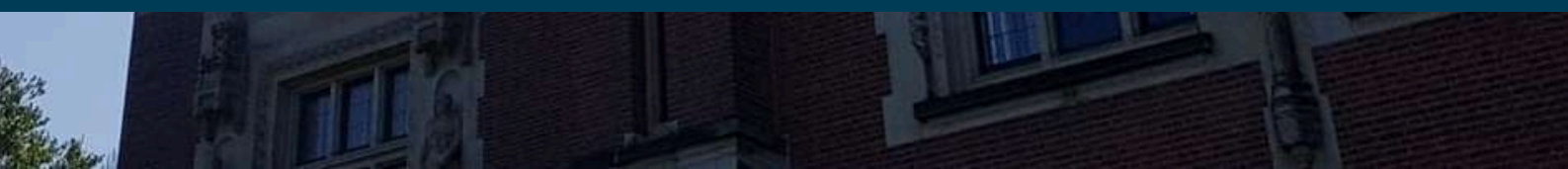
HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

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.
If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

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.**

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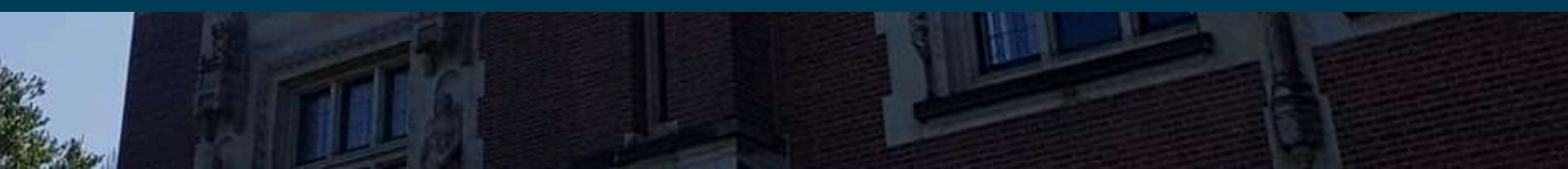
HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

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 centred 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

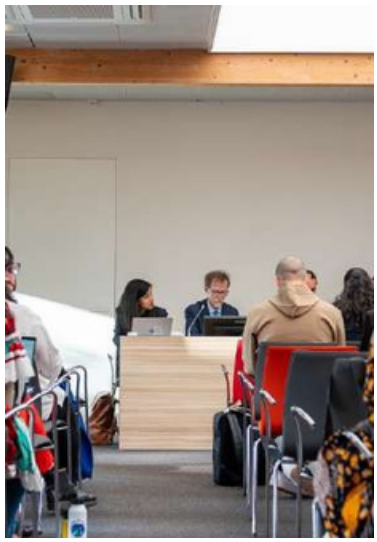
Today's intervention by the U.S. at the International Court of Justice is a betrayal to the world's youth and our futures. By failing to take accountability for historical emissions and downplaying its legal obligations to act on climate change, the U.S. undermines the foundation for global collective 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.

If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

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 Arab 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.

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

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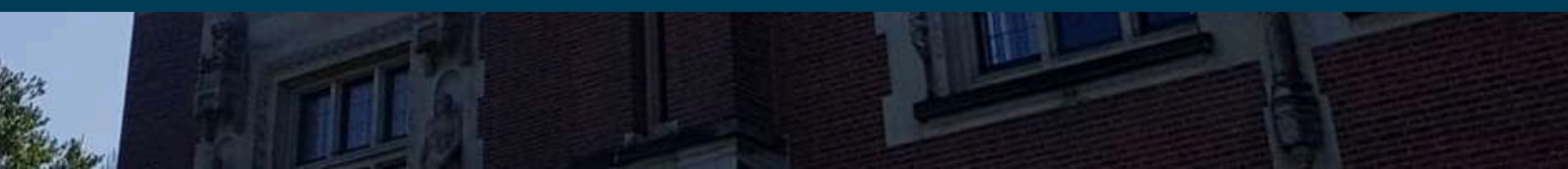
Our deepest gratitude to all those who helped with **taking notes** during the hearings: **Adibur Rahman, Katie Davis, Rojina Shrestha, and Zainab Khan Roza.**

HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 5th, 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...

- Today was a BIG day for climate justice. **Ghana**, **Grenada,** and **Sierra Leone** fortified the critical need for debt cancellation as a form of reparation, arguing that States face a crippling financial cycle of borrowing to rebuild after extreme weather events, leaving them trapped in debt and unable to recover fully or prepare for worsening climate impacts.
- The right to self-determination was central to today's interventions, with **Sierra Leone**, the **Cook Islands**, the **Marshall Islands**, and the **Solomon Islands** highlighting how climate change threatens the statehood of Small Island States already burdened by colonial legacies. Outside the courtroom, Indigenous Peoples' representatives echoed these concerns, sharing testimonies on climate impacts on their rights — voices excluded from the Court due to its restrictive procedures.
- The majority of States appearing before the Court today stressed the importance of intergenerational equity as essential to achieving climate justice. **France**, **Ghana**, **Guatemala**, **India**, the **Marshall Islands**, and **Grenada** all emphasised it as a principle of law with the latter two stressing the importance for the Court to address human rights States' obligations owed to future generations. These interventions provided a strong rebuttal to other States that had sought to dismiss such obligations without offering compelling legal arguments.

Other countries that argued in front of the Court: **Iran** and **Indonesia**.

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

Ghana's oral submission stood out as a call for climate accountability. Ghana reminded the Court that States today are the custodians of present and future generations. It criticised the U.S. submission, rejecting claims that responsibility can not be found in any existing treaties and emphasised the need to address historic injustices.

NOEMI ZENK-AGYEI (24), GHANA AND GERMANY,
CAMPAIGNER, WORLD'S YOUTH FOR CLIMATE JUSTICE AND CO-FOUNDER OF UNION FOR THE NEW GENERATION OF AFRICAN AND EUROPEAN YOUTH (UNGAE)

Outside the Court

At the People's Assembly, testimonies from Greenland, Inupiaq People, Cabo Verde, Aruba, and West Papua shed light on the interconnectedness of climate change and colonialism. Michael Bro of Greenland emphasised, "The climate crisis we face is not just an environmental issue—it is a colonial issue. The climate crisis and the denial of our Inuit national identity are deeply intercon-

-nected. We are not asking for special treatment; we are asking for the respect and recognition that is our Human Rights as Indigenous Peoples."

Pacific Islands Students Fighting Climate Change

World's Youth for Climate Justice

A Traditional Hui (Indigenous event) also discussed how Indigenous knowledge and laws could strengthen global legal frameworks and ensure equity in addressing the climate crisis.

In Vanuatu, UN Special Rapporteur Elisa Morgera called on the ICJ to recommend remedies like restitution, rehabilitation, and guarantees of non-repetition, implemented through inclusive processes involving affected communities.

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, Friday, 5 December, we will report back on the oral submissions delivered by the following States: Jamaica, Papua New Guinea, Kenya, Kiribati, Kuwait, Latvia, Liechtenstein, Malawi, Maldives, and the African Union.
If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

Report on each Intervention

France

France stressed the role of the Court in clarifying the obligations of States, while submitting that the primary source of climate obligations are found in the three climate treaties. It added that the decisions of the UNFCCC Conferences of Parties should be used to interpret the obligations of States under the climate treaties, and mentioned the consensus decision at COP28 that States should transition away from fossil fuels in an equitable and just manner. On the obligations of States, France focussed its intervention on Article 4(2) of the Paris Agreement, on the obligation of States to take measures domestically in order to meet the emissions reductions set out in their Nationally Determined Contributions (NDCs). It argued that it is an obligation of conduct, but that does not mean that it can be used to justify "inaction or inertia," instead providing for flexibility to changing circumstances. France also stressed the importance of the principle of constant progression in determining the NDCs, requesting the Court to address that in its opinion. France submitted that the high risk of significant harm caused by greenhouse gas (GHG) emissions means that the principle of prevention should be applied alongside an enhanced due diligence by States. It also pointed out that the obligation of Article 4(2) must be compatible with both the positive and negative human rights obligations of States and intergenerational equity.

On legal consequences, France submitted that the law of state responsibility framework is not sufficient to address harms caused by climate change - and, indeed, that the Paris Agreement had its own mechanisms to address loss and damage that were outside of the state responsibility framework. It also argued that the finding of responsibility of one or more States is beyond the scope of the advisory opinion, but that guidance from the Court would be welcome on two matters. Firstly, the specific date from which States have an obligation to prevent significant transboundary harm caused by GHG emissions - which requires, in turn, the identification of a shift in international law from a duty to prevent transboundary harm from neighbouring States to a duty that is more global in nature, and the identification of the moment when States became aware that GHG emissions were harmful. France submitted that the 1992 Rio Declaration would be a key date in the formation of a global *opinio juris* on this obligation. Secondly, the criteria for establishing causation between the actions or omissions of a State and the harm suffered by another as a result of climate change, which, France argues, would also need to be determined on a complex case-by-case basis.

France's submission had both positive and negative arguments. While it should be commended for taking into account historical emissions in respect of the legal consequences, France's attempt to present what it called "solidarity" mechanisms of the Paris Agreement as a complement to the well-established framework of state responsibility must be called out - the non-compliance mechanisms of Paris and the loss and damage fund were never intended as a substitute to state responsibility for unlawful acts. Similarly, in relation to the obligations of States, despite having primarily focussed on one obligation under the Paris Agreement, France's recognition that human rights law is relevant to the advisory opinion and that customary international law is also relevant nuances what would otherwise be an extremely restrictive submission - with its submission that the principle of prevention in the climate context requires a heightened due diligence (in a similar vein to what ITLOS found in its recent advisory opinion) being surprisingly progressive for a high emitting State.

Sierra Leone

Sierra Leone gave a compelling presentation on the need for a comprehensive approach that integrates various legal regimes, including environmental, human rights, and the law of the sea, to clarify the totality of legal obligations of States to act on climate change, in particular, the obligation to adopt all necessary measures to limit the increase in global average temperature to 1.5 degrees Celsius. Sierra Leone emphasised under question A that States have an independent obligation of prevention under customary international law, which is not context-specific and does not allow for discretion. Sierra Leone's legal counsel argued that due diligence, as informed by the IPCC reports, entails proactive measures, including environmental impact assessments, and extends beyond the commitments of climate treaties. It also underscored the relevance of human rights law, advocating for its application to protect individuals from harm caused by climate change and highlighting, in particular, the right to life. Sierra Leone also asserted the necessity of the common but differentiated responsibilities (CBDR) principle, urging developed countries to lead in combating climate change and highlighting that they have a binding legal obligation to provide financial and technical assistance to developing States.

Sierra Leone offered a powerful rebuke to the arguments of certain States that binding climate obligations interfere with their right to development, rather than maintaining that sovereignty over natural resources must align with environmental responsibilities. On question B, Sierra Leone came out strongly on the need for the Court to determine that greenhouse gas emissions cause material and non-material damage and that States responsible for such damage are obligated to provide full reparation. On this point, Sierra Leone invited the Court to detail the consequences of breaching climate obligations, including reparation for climate-related harm and highlighting that the debt burdens of developing countries, particularly in Africa, hinder their ability to address the climate crisis, often forcing them to allow environmentally harmful activities to secure funds, and called for breaking this unsustainable cycle.

Sierra Leone provided a compelling legal argument on the need for a harmonious interpretation of all sources of law and the best available science to answer the Court's question, debunking the arguments of high-emitting States like the United States that the due diligence obligation is context-specific. Sierra Leone also came out strongly against the argument that obligations to act on climate change hinder States' right to self-development, instead arguing that sovereignty over natural resources must align with environmental responsibilities. Similar to what was argued later in the day by the Solomon Islands, Marshall Islands, and Grenada, Sierra Leone called on the Court to find that States that cause material damage due to climate change are obligated to provide full reparation. Sierra Leone urged the Court to affirm States' margin of appreciation to regulate in the public interest, including oversight of private actors, enabling climate action without fear of spurious investor claims. Echoing Albania and Cameroon, Sierra Leone emphasised balancing climate obligations with investor protections and clarifying the interplay between international investment law and climate obligations to support a just transition. In light of recent frivolous claims brought forth by the fossil fuel industry seeking compensation in the form of taxpayer money, the Court would send a particularly timely and relevant signal if it was to address the primacy of the public interest over the profits of investors.

Ghana

Ghana made persuasive arguments on the applicability of obligations under customary law and treaties, the interdependence of climate action and protection of human rights, and the

importance of accountability mechanisms. It also underscored the relevance of principles such as common but differentiated responsibilities and respective capabilities (CBDR-RC) and the duty of prevention under customary international law, which operate alongside climate treaties. Ghana further highlighted the link between climate change and human rights obligations, particularly regarding the right to a healthy environment.

On the applicable law, Ghana highlighted that States have pre-existing obligations on climate change that extend beyond climate treaties, including the prevention of environmental harm and the protection of human rights. Regarding prevention of harm, Ghana noted that at least since 1979, with the adoption of the Long-Range Transboundary Air Pollution Convention, States have been aware of pollution caused by GHG emissions. Ghana also argued that the obligation to limit global warming below 1.5°C is not being fulfilled by some States, and thus, "if the conduct is not achieving the result, then countries are obliged to change their conduct." States also have positive obligations to protect human rights from climate change, including the right to life and the right to a healthy environment, which constitutes binding international law and is a precondition for the enjoyment of other human rights. Ghana strongly argued that the UN's recent recognition of this right constitutes important evidence of its binding nature, alongside its codification in regional frameworks such as the African Charter on Human and Peoples' Rights.
In support of Vanuatu's submission, Ghana countered the arguments of the Nordic States and argued that State responsibility is not excluded by climate treaties. On the contrary, Ghana stressed that science can determine the share of global warming caused by a State through its emissions and the harm caused to the climate system. Therefore, Ghana argued that responsible States owe reparations to injured States. Cessation and non-repetition require that States cease and desist from laws, policies, and practices that support GHG emissions and, in particular, fossil fuel production.

Ghana's legal arguments centred on the interplay of customary international law, human rights, and State responsibility. It stressed that obligations to prevent environmental harm and protect human rights, including the right to a healthy environment, exist independently of and operate in tandem with the climate treaties. Ghana also called on its global partners to honour their commitment to ensuring accessible financing for sustainable development in Africa without unsustainable debt. Ghana underscored Earth trusteeship by stating that "States hold a sacred trust of civilisation to protect the environment, so that beneficiaries of international law and other species may be able to survive and prosper for generations to come."

 Grenada

Grenada presented compelling video testimony illustrating the devastating impacts of Hurricane Beryl, emphasising the widespread destruction it caused across the island. Its counsel highlighted the loss of infrastructure compounded by rising sea levels and the spiritual harm caused by extreme events, such as submerged graves. The delegation emphasised how climate change disproportionately affects the most vulnerable, especially women and children, infringing upon their human rights and causing significant mental and physical health impacts. Grounding its arguments in the urgency of the climate crisis, Grenada's representative underscored that countries contributing minimally to global emissions, like itself, bear an outsize burden of its consequences. Grenada's counsel discussed the obligation of States to act as trustees of the climate system for future generations - including by relying on previous judgements and advisory opinions of the Court.

The counsel argued that the public trust doctrine, which is a core legal principle in the legal traditions of countries across all continents, could provide a valuable legal basis for such a finding. Grenada invoked the principles of Earth trusteeship and intergenerational equity as rooted in ancient traditions and codified in modern legal instruments, with references to the Earth Charter and the Maastricht Principles. States were called upon to collectively fulfill their obligation as trustees, with Grenada clarifying that the climate system is not a dumping ground– States have a shared global responsibility to protect it. Grenada urges global action to break the debt-climate crisis cycle by demanding reparations, debt relief, and enhanced support for vulnerable nations.

Grenada decisively challenged Germany's rejection of the idea that human rights obligations extend to future generations. It disagreed that the notion of future generations is too abstract to warrant protection, emphasising that no legal basis supports such a restrictive interpretation of human rights law. Instead, Grenada drew on established legal norms and precedents to affirm that intergenerational equity is both a legitimate and necessary principle. This stance aligns closely with the UN General Assembly's explicit request for the Court to examine the link between insufficient emission reductions and the harm inflicted on future generations. Grenada's recognition of the role of young people in this discourse was particularly powerful. By highlighting the contributions of groups such as Pacific Islands Students Fighting Climate Change and World's Youth for Climate Justice, Grenada underscored the urgency of their demand for the Court to issue an opinion that accelerates the transition away from fossil fuels.

Guatemala

Guatemala underscored from the outset of its presentation the broad consensus that prompted the ICJ to take up this process. Its legal counsel highlighted that the climate impacts affecting Guatemala are not only disproportionate on a global scale but are also particularly severe for Indigenous Peoples who depend on natural resources for their livelihoods. Guatemala argued that the climate treaties do not exclude or override other legal frameworks, such as international human rights law and the principles of State responsibility, which should be interpreted and applied by the Court in answering both questions before it.

Guatemala's legal counsel argued that the questions posed are "clear and unambiguous" reflecting the consensus of the UN General Assembly, and thus must not be reformulated. Guatemala noted that the protection of the climate system and other parts of the environment includes the protection of their constitutive elements, including the cryosphere. Accordingly, the Court should also pay attention to the effects of harm to the climate system on living and nonliving parts of nature and future generations. Guatemala explained that the Court should interpret the relevant provisions of the climate treaties harmoniously with concurrent international obligations in order to prevent fragmentation of international law. Specifically, when referring to the prevention of transboundary environmental harm, Guatemala highlighted that causation only relates to the occurrence of damage but not international responsibility in of itself. In this regard, Guatemala argued that causation is not a precondition for establishing a breach of the duty to prevent, but may be relevant for determining applicable reparations for which the Court must keep in mind the scientific consensus on climate change and the principle of CBDR-RC.

Guatemala presented to the Court an ecosystem and intergenerational approach to broaden the understanding of applicable law and the interpretation of the climate treaties. It reiterated that the

climate treaties regime is not intended to exclude other obligations, such as the protection of the right to a healthy environment, the duty to cooperate, and preventive obligations. Guatemala concluded by countering polluters' arguments that a special causal nexus is needed to determine a breach of the duty to prevent harm, urging the Court to provide the necessary legal guidance for vulnerable countries.

 Cook Islands

The Cook Islands, addressing the Court for the first time ever, highlighted the urgent need for climate justice for vulnerable and resilient Small island States. Emphasising the unique vulnerabilities of Pacific Island nations, they attributed their climate challenges to the **c**umulative, historical, and ongoing anthropogenic emissions of a small number of States. Such emissions breach a range of international obligations on human rights and anti-discrimination. The breach of these obligations lead to a disproportionate impact on Indigenous Peoples and marginalised populations, particularly through racial and gender discrimination. This entails the need for structural remedies, including decolonial and intersectional legal reforms at domestic, regional, and international levels, to address these harms and prevent their recurrence.
The Cook Islands stressed various forms of colonial legacies and their impacts on climate change and elaborated on how they shape the unlawful conduct of States as explained by Vanuatu and the Melanesian Spearhead Group. They presented video testimony of Cook Islands women who are custodians of their cultural heritage and Indigenous ways of livelihood like traditional knowledge and cultural handicrafts. The Cook Islands emphasised their current vulnerabilities to systemic colonial practices, such as the suppression of Indigenous knowledge, language, and environmental stewardship linked to colonial policies that disrupted traditional practices, undermined environmental resilience, and exacerbated their susceptibility to climate change. They stated that these kinds of unlawful conduct violate human rights which apply beyond national territory. The Cook Islands also emphasised that these colonial dynamics, which disproportionately harm Indigenous populations, constitute racial discrimination. Thus, the ongoing perpetuation of these systems by former colonial States, in itself leads to breaches under existing international law. The Cook Islands further stressed a need for a decolonial approach to climate justice that recognises the structural inequalities embedded in international legal, financial, and political systems and institutions.

Finally, the Cook Islands advocated for reparations and a reformative approach to international law, divorcing from the current systemic inequalities and discrimination. They urged the Court to guide States toward decolonising international law, and ensuring that it addresses structural racial and gender injustices while empowering Indigenous Peoples. Responding to question two, they argued that reparations must extend beyond compensation to include apologies and commitments to cease and desist practices that perpetuate discrimination causing climate harm. They also argued that structural remedies in this context are beyond victim-specific remedies to avoid the recurrence of violations. They went on to submit that international legal, financial, and political systems are deeply implicated in causing the climate crisis by stating, “Major emitters have been able to rely on these systems in the institutions and the fora they contain like the annual COPs, to expand fossil fuel industries and evade responsibility for significant harm the emitters have caused.” They further went on to state that these systems “maintain the broader system of domination that drive the climate crisis today including imperialism, colonialism, facial capitalism, hetero-patriarchy, and ableism.” They suggested structural reforms to redistribute power and resources equitably and intersectionality. The Cook Islands concluded by inviting the Court to seize this opportunity to clarify international

obligations in a way that facilitates climate justice, self-determination, and the creation of an equitable global order.

The main theme coming out of the Cook Islands submission was that the perpetuation of colonial legacies is a breach of international obligations in itself and that it also determines the disproportionate impacts of climate change on marginalised communities and Indigenous Peoples. These violent patterns include racial and gender discrimination, rooted in colonial legacies that suppressed traditional knowledge, disrupted environmental resilience, and exacerbated vulnerability to climate change. Advocating for a decolonial approach, they emphasised the need for structural legal reforms at all levels to dismantle systemic inequalities embedded in international systems, extending beyond financial compensation. The Cook Islands concluded by urging the Court to provide a transformative advisory opinion clarifying international obligations to ensure climate justice, self-determination, and equitable global order.

 Marshall Islands

The representative for the Marshall Islands emphasised the parallels between the nation's pollution by nuclear testing and the existential threat posed by climate change, both inflicted by the actions of other States for their own enrichment. Rising sea levels are effectively stealing the Marshall Islands' land, threatening its self-determination and violating fundamental human rights of its people. Recalling the Paris Agreement as a vital acknowledgment of the climate threat, the representative expressed deep concern over major emitters' failures to meet their obligations, particularly through expansion of fossil fuel production. The representative urged the Court to affirm the binding nature of States' legal obligations to protect vulnerable nations and underscored the urgency of addressing the human cost of inaction. The Marshall Islands noted that States have a duty under customary international law to prevent environmental harm, act *with due diligence, and ensure their actions do not cause transboundary damage that violates human rights. The Marshall Islands also stressed that these human rights obligations include a duty to protect from the foreseeable acts of private actors who are within their effective control and to provide effective remedy.*

The Marshall Islands highlighted the importance of intergenerational equity, recalling its recognition by the Court in the nuclear weapons case. Their counsel proposed that States' failures to prevent transboundary harm trigger an obligation to halt harmful policies, including through adjustments to insufficiently ambitious nationally determined contributions and the end of fossil fuel subsidies and fossil fuel expansion. The Marshall Islands also insisted on the legal duty for States responsible for climate harms to provide compensation for damages already incurred, such as for internally displaced persons.

The Marshall Islands' testimony underscored how climate change gravely threatens the right to self-determination—a cornerstone of international law—particularly for Small Island States. This threat is compounded by the lingering legacy of colonialism, exemplified in the Marshall Islands by its history of nuclear testing. In their oral submission, the Marshall Islands' Attorney General joined other representatives of climate-vulnerable nations in urging the Court to act. These Attorney Generals, bound by their constitutional duty to uphold the law and protect their people's rights, have lamented their inability to adequately discharge this duty in the context of climate threats originating beyond their jurisdiction. Such testimonies highlight the untenable position of States denying that their human rights obligations extend beyond their territory. They also emphasise the

urgent need for judicial recognition of these duties. The Court's judges are uniquely positioned to address these claims, offering a pathway to justice for nations disproportionately bearing the consequences of global climate inaction.

 Solomon Islands

The Solomon Islands commended Pacific Island nations and students for their leadership in advocating for this opinion and expressed gratitude to Vanuatu for its passion and commitment to the cause. It highlighted the country's extreme vulnerability as a developing nation reliant on agriculture and at risk from rising sea levels, with five islands already lost and others facing severe erosion. These impacts displace communities, erode cultural heritage, and disrupt identities tied to land and traditions. The Solomon Islands emphasised that relocation and displacement due to climate change, while often discussed, is an incredibly complex process requiring clear legal pathways and international assistance. Its counsel rejected any arguments on the exclusive application of climate change treaties and strongly urged the Court to consider all relevant legal obligations under international law, including international environmental law, human rights law, and refugee law, in its analysis of State obligations. It also supported the dynamic application of CBDR-RC, emphasising the disproportionate burden on vulnerable nations with negligible emissions.

The Solomon Islands called for the international protection of people displaced by climate change under international refugee law, including the 1951 Refugee Convention, and invited the Court to consider broad grounds for determining refugee status such as the Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration. It also stressed the importance of mitigation and adaptation measures to minimise displacement. On the question of State responsibility, the Solomon Islands submitted that when States fail to discharge their mitigation and adaptation obligations, and the adverse effects of climate change lead to displacement, migration, and relocation, they will be internationally responsible for reparations in the form of restitution and/or compensation. Under this framework, States must provide technical and financial support to developing States facing both internal and cross-border displacement, migration, and relocation caused by climate change.

The Solomon Islands presented a compelling legal argument, emphasising the integration of international environmental, human rights, and refugee law to address the complexities of climate-induced human mobility. Invoking the principle of common but differentiated responsibilities and respective capabilities and sharing the lived impacts of climate change in its communities, the Solomon Islands made a call for legal clarity on State responsibility for failing to meet mitigation and adaptation obligations that result in displacement. By urging the Court to extend refugee protection to people displaced by climate impacts across borders, the Solomon Islands advanced a bold human rights argument in benefit of more than 1 billion people to be displaced by 2050 per the IPCC.

 India

India opened the session by characterising climate change as perhaps the most complex challenge in all of history with linkages to practically all our aspects of life on Earth, underscoring several dimensions to this challenge such as historical responsibility, unjust enrichment through over exploitation of natural resources, intergenerational equity, fairness, and justice. Its counsel sharply called out the hypocrisy of the developed world, which historically has contributed the

most and is best equipped with the technological and economic means to address this challenge. Yet, they continue using up the shrinking carbon space while pushing for more constraints on less developed countries struggling to bring millions of people out of extreme poverty. India's intervention focused on the centrality of the climate regime as the applicable law in relation to climate change, strongly foregrounding equity.

While India's legal counsel referenced the duty to prevent transboundary harm under international law, he also reinforced the centrality of the UNFCCC and its instruments, the Kyoto Protocol and the Paris Agreement, in defining the obligations of States in relation to climate change, urging the Court to avoid devising new obligations beyond existing climate treaties. Within the realm of the climate regime, India's counsel reinforced the importance of the principles of CBDR-RC and equity, arguing for the need for equitable access to the global carbon budget. Moreover, India pointed to climate finance as a main, critical enabler for developing countries to take effective climate action. Their counsel expressed disappointment with the finance outcome at the most recent climate negotiations and asserted the importance of grants-based finance. India emphasised that any fair or meaningful assessment of State obligations cannot be conducted without assessing the climate finance support provided. In terms of legal consequences for climate harm, India indicated that the law of State responsibility was the proper framework to consider. Given potential attribution issues in the context of climate change, India proposed that it may be necessary to look at attribution in a different way–considering the aggregate national contribution of States to the problem and matching that with the quantified commitments different States have undertaken in international law, for example, under the Kyoto Protocol. To close, India noted how reparation and compensation remains an important demand of a large number of developing countries, especially Small Island States, and highlighted its own expectation that the developed countries should contribute a major amount to the Loss and Damage Fund now established under the UNFCCC.

India in its submission today made clear that the primary responsibility for addressing the climate crisis lies with developed countries. Its counsel sharply highlighted how developed countries have disproportionately appropriated the global commons in the form of the total carbon budget, linking this with the larger issue of sustainable development firmly embedded in India's constitutional jurisprudence. The responsibility of the world's largest cumulative emitters is undeniable, but, as India itself has recognized, there are common responsibilities of all States. Given India's significant current emissions, its heavy focus on historical emitters appears self-serving in the broader climate context. In the words of the climate advisory opinion of the International Tribunal for the Law of the Sea, "it is not only for developed States to take action, even if they should 'continue taking the lead'. All States must make mitigation efforts." While equitable approaches to climate mitigation are a must, continued growth focused, fossil fuelled development is also not the answer as it exacerbates climate change which continues to impact development pathways. While India expressed an innovative approach to reparations and compensation, its constricted views on the scope of reparations seem to be a missed opportunity to close the current accountability gap in relation to redress for climate harm.

 Iran

Iran positioned itself along with others that have argued that the only relevant climate obligations are found in the climate treaty regime. To that end, its counsel reiterated Iran's stance before the International Tribunal on the Law of the Sea (ITLOS), arguing again that the questions posed to the Court should have been limited to treaty commitments only. In its interpretation of the

obligations that exist under the climate treaties, Iran highlighted the principles of CBDR-RC, equity, and international cooperation as foundational to the international climate change regime, underlining the differentiated responsibilities of developed and developing States and repeatedly framing cooperation as the only practical solution to climate change. Finally, Iran denounced the use of unilateral coercive measures and carbon border adjustment mechanisms as unlawful.

Highlighting the greater responsibility of developed States for the accumulation of greenhouse gas emissions over the past century and the different financial and technological capacities and capabilities of States, Iran emphasised the predominance of the CBDR-RC principle as the cornerstone of the climate treaty regime. Accordingly, the type, stringency, and effectiveness of climate mitigation measures that States ought to implement vary between States based on their level of economic development and historic emissions. Furthermore, Iran highlighted the principle of equity as critical in interpreting States' obligations, acknowledging the lesser historical contributions of developing countries to climate change and their limited capabilities to respond. Moreover, its counsel argued that cooperation is an essential principle underlying other commitments and obligations under the climate treaty regime and that it constitutes the most viable response to the questions posed to the Court. In light of the principles of CBDR-RC and cooperation, developed States ought to provide financial support, technology transfer, and capacity building to developing States.

Iran's submission placed important highlights on the principle of equity, including a reference to intergenerational equity, as well as the relevance of CBDR-RC. Nevertheless, overall the submission was clearly aimed at limiting climate obligations and cannot be considered to be advanced arguments in favour of climate justice. The suggestion that obligations are limited to only the climate treaties and the implication that only developed States have climate obligations are, as demonstrated by what many other States already presented, not grounded in long-established international law on the prevention of environmental harm and State responsibility. Moreover, the extreme emphasis on cooperation as a "the only viable" response to the question is an outrageous argument presented by a State that seems to both want to point the finger at historical polluters and, at the same time, make sure that they themselves will completely escape any responsibility.

Indonesia

Indonesia's oral submission limited climate obligations to the provisions of the Paris Agreement and the principles of cooperation and CBDR-RC. It emphasised the obligation of States to take major efforts to combat climate change through their NDCs. While Indonesia acknowledged the growing tendency of international bodies to link human rights law with climate issues, it argued that there are no particular obligations under human rights law for States to ensure the protection of the climate system. In addition, Indonesia's legal counsel emphasised the obligation of States to cooperate under the CBDR-RC principle, asserting that developed countries must take the lead in providing climate finance, technology transfer, and capacity-building support.

Indonesia firmly maintained that the Paris Agreement is the primary instrument for protecting the climate system, and focused its oral submission on the interpretation of its provisions. For example, it highlighted Article 2, which sets temperature targets, and Article 4, which requires countries to prepare NDCs that reflect their highest ambition to achieve those targets. In addition, Indonesia argued that there is no international or domestic recognition of environmental or climate-related violations as human rights violations. It cited the absence of a specific treat addressing the issue and noted that Indonesia's environmental cases had not established such a

link either. If the Court denied its argument, Indonesia stressed that such human rights obligations would extend beyond a State's territory.

Indonesia has relied on the principles of CBDR-RC and cooperation outlined in the Rio Declaration, which predate the current climate regime, to interpret what it considers to be the only applicable climate rules. While this approach broadens the interpretation of these principles, it simultaneously limits the scope of applicable law to obligations constrained by the Paris Agreement. This position reflects a significant inconsistency: Indonesia recognises the right to a healthy environment in its Constitution, but excludes human rights obligations from its approach to climate-related issues. By separating human rights from climate obligations, Indonesia seeks to undermine the broader framework of international law that increasingly recognises the intersection of climate change and human rights. This restrictive interpretation risks limiting the legal tools available to fully address climate challenges.

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

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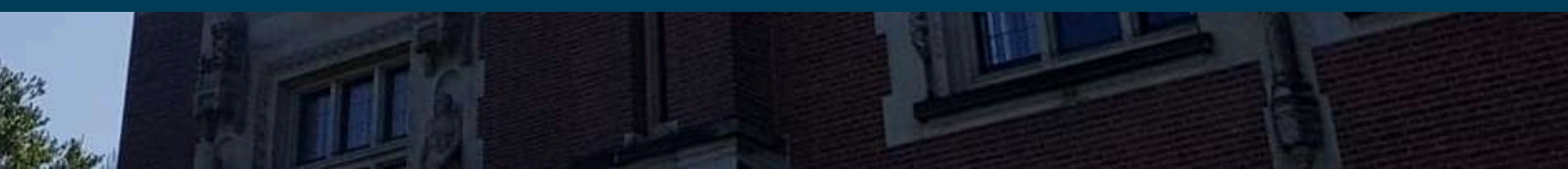
HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 6th, 2024



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

In a Nutshell

Today...

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

Scroll down for all interventions!

Today's Reactions

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

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

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

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

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

Outside the Court

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

Pacific Islands Students Fighting Climate Change

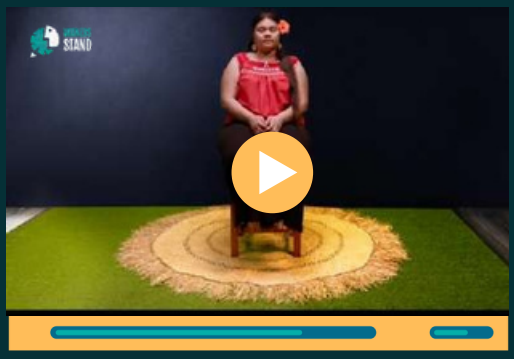
Activists shared poems of resilience, challenges, and triumphs in their battle for a just future.

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

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

Witness stand

The Witness Stand was established to make sure that the ongoing **ICJ advisory opinion proceedings on climate change are more inclusive and representative of those most affected**. Using this, anyone can send their message to the World's Highest Court as it rules on climate change for the first time.



Watch the other testimonies

Next week

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

If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

Report on each Intervention

Jamaica

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

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

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

 Papua New Guinea

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

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

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

 Kenya

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

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

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

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

 Kiribati

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

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

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

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

Kuwait

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

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

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

Latvia

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

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

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

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

 Liechtenstein

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

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

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

Malawi

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

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

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

Maldives

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

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

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

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

African Union

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

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

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

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

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

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

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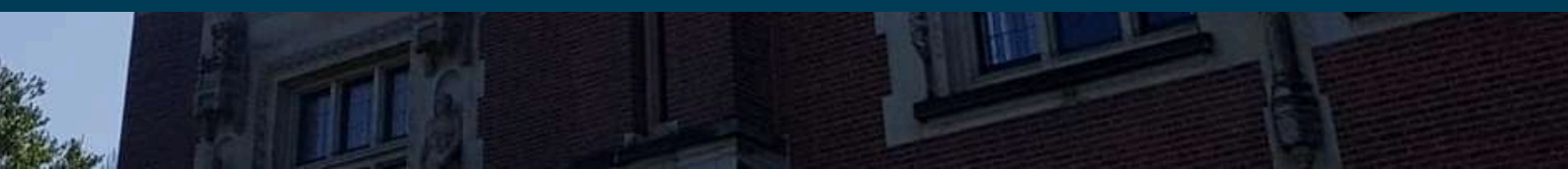
HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

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.

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

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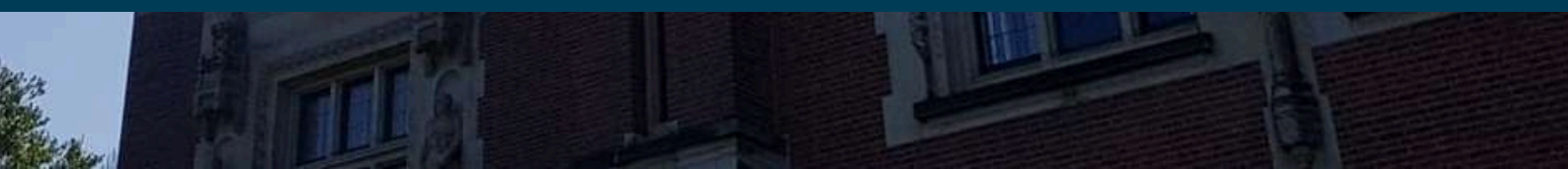
HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 10th, 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 Kingdom**, while itself stuck in its colonial past, urged the Court to ignore historical emissions when it comes to climate accountability by rejecting the longstanding customary obligation to prevent transboundary harm. It shamelessly cloaked its denial of its own responsibility in a hollow commitment to those least responsible for climate change, warping the principles of climate justice beyond recognition. This implicit dismissal of the relevance of human rights obligations was particularly disparaging, coming on Human Rights Day.
- **Romania**, like the **UK**, denied the relevance of historical conduct in remedying climate harms. **Peru**, the **DRC**, and **Saint Lucia** sharply countered that cumulative greenhouse gas (GHG) emissions are central to a fair allocation of responsibility and reparations.
- Industrialised States relied heavily on climate treaties in their quest to escape accountability, while **Panama**, **Peru**, **Palau**, the **DRC**, the **Dominican Republic**, and **Saint Lucia** underscored that climate treaties do not displace other applicable obligations under relevant duties, like prevention of environmental harm.
- On a positive note, **the Netherlands** and **Portugal** emphasised the imperative to phase out fossil fuels and protect the right to a healthy environment, respectively.

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

The Dominican Republic highlighted that the climate crisis affects us all, but not in the same way. They underlined the disproportionate impacts of climate change on Small Island States and its inherent relationship with our oceans. Faced with the pressing challenge of sea level rise, our only defense is the rule of law to safeguard our statehood and redress human rights violations caused by the inaction of great polluters. A compelling opinion from the ICJ can help do just that.

EUSEBIO CASTRO SALCEDO (24), THE DOMINICAN REPUBLIC

On International Human Rights Day, the United Kingdom, in an attempt to escape any liability for its colonial past and history as a major emitter, laid out contemptuous arguments in front of the International Court of Justice. The UK effectively asked the Court to ignore both science and history. It claimed that the Paris Agreement is the end of States legal obligations on climate change. The UK claims to be a climate leader, but these arguments oppose that.

DOMINIQUE PALMER (25), UNITED KINGDOM, CLIMATE JUSTICE ACTIVIST

Outside the Court

Today, civil society continued to push for inclusive dialogue and maintaining pressure to ensure a progressive advisory opinion. At the International Gender Champions (IGC) The Hague Hub panel discussion on the international community's role in addressing the global challenges of climate change in light of the oral hearings, WYCJ's Africa Front Convenor Brenda Reson Sapuro spoke on what the ICJ AO could mean for youth and feminist action and policies worldwide.

World's Youth for Climate Justice

Among other things, Brenda spoke of the many challenges women face, including in her home, Kenya, to access leadership and decision-making processes: "*Just because I had to fight for my space in the room, does not mean the next girl after me should have to fight for hers. Even if I sit there with fear, I will sit there.*"

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, 11 December, we will report back on the oral submissions delivered by the following States: Saint Vincent and the Grenadines, Samoa, Senegal, Seychelles, The Gambia, Singapore, Slovenia, Sudan, Sri Lanka, Switzerland, and Serbia.

If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

Report on Each Intervention

Palau

Palau opened the session with a strong statement emphasising the existential threat that climate change poses to its nation's independence and its right to self-determination, calling on the Court to recognise that States have a legal responsibility to take all necessary measures to prevent greenhouse gas (GHG) emissions from causing significant harm to other States. Palau underscored its vulnerability as a small island and grounded its arguments through a display of the lived realities of Palauan peoples, highlighting the catastrophic impacts caused by sea-level rise, extreme weather events, and unstable lands. Thus, Paulau compared the effects of climate change to the 300 years of colonialism it endured, arguing that no "State is truly independent if it must suffer significant injury without consequence from the activities allowed by other States." Palau showcased the insidious nature of the problem at hand that could erase "the identity of being Palau."

Its counsel emphasised that the proceedings' focus is the conduct of States that have been identified as the scientifically proven cause of climate change. These actions breach States' obligations under international law and, therefore, trigger consequences under the general law of State responsibility. Drawing on established jurisprudence, such as the *Trail Smelter* case and the *Corfu Channel* case, Palau stressed the fact that States have a legal obligation to prevent activities within their territory from causing harm to others. Palau argued that prevention of transboundary harm applies to climate change, and rebutted the claims of a minority of States arguing that the diffuse sources of GHG emissions make causation too complex to prove. Palau also refuted arguments claiming the UN Framework Convention on Climate Change (UNFCCC) displaces other concurring obligations of States under international law. As Palau acknowledged, such arguments have already been dismissed by the International Tribunal for the Law of the Sea (ITLOS) and nothing in the UNFCCC suggests it replaces other relevant obligations.

Palau made a strong case for its nation's right to self-determination and sovereignty, explaining how climate change may compromise a State's independence. It urged the Court to affirm that established principles of transboundary harm and State responsibility apply to climate change, as they coexist with obligations under the UNFCCC. Although it recognised that "if one uses or allows their property to be used in a manner to cause harm to another, that harm must be stopped and reparations paid in full," Palau missed an opportunity to deepen its arguments on the legal consequences for harm caused by major emitters. Palau closed its statement by sharing the story of Meddu Ribtal (The Breadfruit Tree), a legend illustrating the dangers of overexploitation and environmental destruction and the wisdom of the Paluan peoples.

Panama

Panamá presented the Court with a stark account of the climate change impacts on the livelihoods of its people, including the increased impacts of both droughts and severe floods on the Panama Canal. Panamá further stressed that breach of these obligations gives rise to legal consequences under the general law for State responsibility, including reparations for harm in the form of restitution, compensation, and satisfaction, as well as the payment of interest on any amount due.

Regarding the duty to prevent transboundary environmental harm, Panamá highlighted that this is a general principle of international law, and based on the Court's own jurisprudence, States must carry out an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context. On the applicability of human rights law, its counsel underscored that respecting, protecting, and fulfilling human rights cannot be accomplished without "due respect to our global environment by all States under international law." In this regard, Panamá argued that States are under a general binding duty to "preserve the living conditions for all of humanity on our planet," which the Court ought to recognise as an apex duty of international law (*jus cogens*).

Panamá presented an important argument on the peremptory nature of the protection of the environment that sustains all life on the planet–an argument that has been previously advanced by the Inter-American Court of Human Rights in its La Oroya judgement. In practice, protecting the environment in such a way would amount to very severe legal consequences for any State that causes significant harm to the environment, which would give rise to wide claims for reparations, both for human rights violations and in an interstate context. While this is a very interesting concept, further explanation of the legal basis and a proposed definition for what exact conduct is forbidden by this norm would have been useful. For instance, in its La Oroya judgement, the Inter-American Court referred to"unlawful or arbitrary conduct that causes serious, extensive, lasting and irreversible damage to the environment in a scenario of climate crisis that threatens the survival of species."

The Netherlands

The Kingdom of the Netherlands strongly focused on the impacts of climate change, including rising seas threatening both mainland and Caribbean Netherlands. Its counsel stated that although human rights law does not contain specific provisions on climate change, States must take reasonable mitigation and adaptation measures to protect human rights. It continued by stating that adaptation in the Dutch Caribbean part of the Kingdom can take the form of restoration measures, spatial planning, and climate-resilient infrastructure. These measures are interlinked and interdependent. The Netherlands further stressed the importance of mitigation policy, which it conceives as a legal obligation under international law. Therefore, its counsel urged States to take action today, including through implementing progressively ambitious NDCs that aim to achieve net zero emissions by 2050, including by phasing out fossil fuels.

The Netherlands underscored the critical need for international cooperation to support developing countries most vulnerable to climate change through climate finance, capacity building, and technology transfer as set out in the climate legal regime. Its counsel argued that while States enjoy a margin of discretion in setting their specific policies, adaptation measures are not optional, but rather an obligation that must be carried out in line with the common but differentiated responsibilities and respective capabilities (CBDR-RC) principle. Adaptation measures require proactive planning informed by economic structures, regional climate projections, and societal factors, ensuring they enhance resilience, align with sustainable development goals, and avoid adverse impacts on vulnerable populations such as women, children, Indigenous Peoples, and those in extreme poverty. The Netherlands further called for increasing climate finance to at least $1.3 trillion annually by 2035, emphasising sufficient funds exist to bridge the global investment gap. Its counsel addressed the inevitability of loss and damage, and argued that the Warsaw International Mechanism for Loss and Damage may address such impacts. The Kingdom concluded by underscoring the duty to cooperate globally and collectively to implement these obligations.

The Netherlands strongly emphasised the interrelationship between mitigation and adaptation obligations, as regulated under the UNFCCC and the Paris Agreement. Additionally, it provided a strong emphasis on how these duties also serve to protect human rights. Significantly, the Netherlands is the first industrialised country to call for phasing out fossil fuels as part of its duty to reduce GHG emissions. At the same time, even when the Netherlands underlines other applicable sources of law, like the UN Convention on the Law of the Sea (UNCLOS) and the European Convention on Human Rights, like other polluters, they argued that the fulfillment of their obligations under specific climate treaties releases them of their mitigation obligations under these other treaties. While it called for phasing out of fossil fuels, as a developed country, the Netherlands still needs to adopt legislation to that end. Despite the disproportionate impacts of climate change on the Dutch Caribbean, inadequate legislative and financial support from the mainland has left the region in a state of disarray. By enabling the participation of Dutch youth from the World's Youth for Climate Justice before the ICJ in this hearing, the Netherlands ended on a strong note, demonstrating the central role of youth in climate decision-making.

Peru

Perú presented a comprehensive and urgent case to the Court, emphasising the disproportionate impact of climate change on developing States like itself despite its minimal contributions to global GHG emissions (less than 0.5% historically). Highlighting its extreme vulnerability to climate-induced disasters—such as glacial retreats, floods, and droughts—Perú argued that its limited resources hinder its ability to implement necessary mitigation and adaptation measures. It underscored the importance of international cooperation and financial support, from both public and private sources, linking these duties to principles of intergenerational equity and CBDR-RC. Perú called on the Court to consider the varying historical contributions of States to global GHG emissions. Its counsel also integrated a human rights approach, linking the impacts of climate change to the rights to life, health, and a sustainable environment, and urged the Court to recognise these rights in its decision.

Perú articulated four key legal principles applicable to climate change, including intergenerational equity, CBDR-RC, the precautionary principle, and the duty to prevent transboundary harm. It argued that these principles, derived from international treaties like the UNFCCC and the Paris Agreement, customary international law, and general principles, must guide States' obligations to reduce GHG emissions, implement adaptation measures, and provide climate finance. Its counsel underscored the critical role of climate finance in achieving mitigation and adaptation goals, which should be implemented through financial aid, grants, and concessional funding that do not exacerbate existing debt burdens. Perú also called attention to the legal consequences of breaches, stressing the need for reparations, such as financial compensation and technology transfer, and highlighted existing mechanisms like the Loss and Damage Fund as partial steps toward fulfilling these responsibilities. The Court, it argued, should adopt an evolutionary interpretation of international climate obligations to clarify and expand the scope of States' duties under current law.

Perú's intervention balanced technical legal reasoning with broader political implications, advocating for a global approach to climate justice that recognises historical responsibility and the specific vulnerabilities of developing States. It emphasised that achieving global climate goals requires equitable and substantially increased contributions from developed States, reflecting their higher emissions and greater capacities.

Perú highlighted the need for justice of the international community, by emphasising the need for effective reparation of damage caused to third States, but, by mentioning mechanisms based on voluntary financial commitments, such as the Loss and Damage Fund, as sufficient reparation for harm, Perú missed a critical opportunity to reject similar arguments posed by major polluters.

 Democratic Republic of Congo

The Democratic Republic of Congo (DRC) argued that States are bound by a comprehensive array of international obligations, emphasising that the prevention of transboundary harm principle applies to climate change. It refuted the argument that the Paris Agreement supersedes obligations under other sources of law. Citing the principle of systemic integration under the Vienna Convention on the Law of Treaties and the recent advisory opinion by ITLOS, the DRC argued that treaties must be applied in an interconnected manner. It further stated that the due diligence obligation requires States to take all feasible measures, informed by the best available science including IPCC reports, to prevent harm. Its counsel emphasised that failure to act or to align measures with limiting warming to 1.5°C constitutes a breach of international law.
DRC's counsel argued that greenhouse gas emissions create a direct causal link to climate harm, emphasising the foreseeability of such harm despite its indiscriminate nature. It rejected claims that emissions are too remote to attribute responsibility, likening their impact to indiscriminate acts in international humanitarian law, where negligence strengthens, rather than breaks, causality. The DRC highlighted the concept of indivisible harm, asserting that major emitters can be held fully responsible for all harm caused by climate change. It argued that when harm cannot be attributed to specific States, all responsible emitters share joint and collective negligence, particularly for breaching their due diligence obligations under international law. This approach ensures effective redress for vulnerable States and prevents free-riding by major emitters. Specifically, the DRC argued that a State could hardly be considered as acting with due diligence if its measures do not correspond to the most ambitious efforts possible to limit warming to 1.5 degrees. According to the DRC, this obligation has become more stringent as scientific evidence on the causes and impacts of climate change has increased.

Under the principle of CBDR-RC, the DRC underlined three key arguments: (1) developed States bear a heavier burden due to their historical emissions and technological capacity, as recognised in the UNFCCC and Paris Agreement; (2) developed States have a duty to provide financial and technical assistance to vulnerable States to enable climate action and preserve critical carbon sinks; and (3) this principle does not absolve any State of its individual responsibility, requiring all States to take measures proportionate to their capacities. However, the DRC also acknowledged the evolving contributions of emerging economies and urged the Court to reflect this in its opinion.

The DRC advanced climate justice by reinforcing the systemic integration of international obligations, ensuring that climate treaties like the Paris Agreement complement,rather than override customary duties like prevention of transboundary environmental harm and the protection of human rights. By establishing the foreseeability and indivisibility of harm, the DRC strengthened claims that major emitters bear joint responsibility for reparation, ensuring that vulnerable States are not deprived of remedies due to the collective nature of harm. Their interpretation of CBDR supports equity, placing a heavier burden on developed nations while acknowledging the growing responsibilities of emerging economies, a balance critical for a globally just climate framework.

Portugal

Portugal highlighted in its opening remarks the particular vulnerabilities the country faces regarding climate change, including higher temperatures, sea level rise, coastal erosion, floods, heat waves, water scarcity, drought, and forest fires. According to Portugal, climate change is a challenge that can only be effectively fought through international action and cooperation. Thus, Portugal chose to focus exclusively on the principle of international cooperation in the context of States' obligations with respect to climate change under a variety of sources of international law and soft law instruments, including general international law, the UN climate regime, human rights law, and international disaster law. Portugal strongly encouraged the Court to recognise the relevance of the human right to a clean, healthy, and sustainable environment when interpreting States' obligations in respect of climate change. In clarifying State obligations under the principle of international cooperation, Portugal divided its answer in three parts: (1) the obligation to cooperate in the context of climate change; (2) the obligation to cooperate in the context of a human right to a clean, healthy, and sustainable environment; and (3) the obligation to cooperate to protect persons affected by climate change.

First, its counsel highlighted that the Paris Agreement mandates that parties limit the global temperature rise to well below 2°C, with efforts to restrict it to 1.5°C, which, according to Portugal, is a necessary collective goal, depending on joint efforts and international cooperation. This cooperation must be carried out in good faith, considering evolving science, risks, and urgent needs. Portugal's counsel emphasised that the main purpose of the temperature limit under Paris is not one of attribution of responsibility or liability; rather, international cooperation serves as the necessary means to achieve the goal and is a goal in itself. Second, Portugal asserted that the human right to a clean, healthy, and sustainable environment is essential for climate protection and requires full implementation of international climate agreements. In this regard, Portugal highlighted that cooperation, as a distinct duty under international human rights law, requires States to "establish, maintain and enforce an effective international legal framework to prevent, reduce, and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights." Third, Portugal also described various cooperation duties under international disaster law, especially in relation to migration displacement, as a consequence or in anticipation of the adverse effects of climate change.

Portugal focused on the duty to cooperate in the context of climate change by connecting it, amongst others, to human rights law and international disaster law. Portugal has also rightly stated that it would be important for the Court to clarify what exactly this obligation entails, and that the Court should consider the right to a clean, healthy, and sustainable environment when interpreting this obligation. At the same time, Portugal's narrow focus on cooperation as the sole means to protect those affected by climate change and its concurrent rejection of responsibility and liability raises questions about its position on the legal consequences for breaching this and other applicable duties under international law. Concerning the right to a healthy environment, Portugal emphasised its support for the ongoing process at the Council of Europe to enshrine this right in a protocol to the European Convention on Human Rights, joining long-standing codification in Africa and the Americas.

Dominican Republic

The Dominican Republic put the right to survival of Small Island Developing States (SIDS) at the core of its presentation, appealing for the Court to place at the forefront of its considerations the effects of sea level rise faced by SIDS and the specific vulnerabilities affecting the Caribbean region. In its presentation, the Dominican Republic devoted significant time to highlighting the scientific evidence confirming the linkages between sea level rise, climate change, and the existential threat these phenomena pose to SIDS. It underscored the critical role of the ocean, not only as the largest carbon sink but also as the largest heat sink. The presentation emphasised the limited capacity of the ocean, highlighting that the ocean has absorbed 90% of the energy released into the atmosphere through GHG emissions since 1971. The Dominican Republic further underscored scientific evidence demonstrating that the excess energy trapped in the atmosphere due to greenhouse gas emissions is equivalent to the detonation of 400,000 Hiroshima atomic bombs per day. It reaffirmed that this massive accumulation of heat has indisputably resulted in ocean warming, which directly drives sea level rise, with science confirming that this warming is occurring at an accelerated rate in the Caribbean region.

The Dominican Republic emphasised that the damages caused by climate change present a clear threat to the statehood of SIDS, highlighting how the actions of those responsible for climate change have violated SIDS' fundamental right to survival. This right, recognised by the ICJ in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, is being undermined during peacetime. In this context, the Dominican Republic underscored that the Court should reaffirm the obligation of States to respect and preserve this fundamental right. It consequently emphasised how, contrary to arguments of some States, the failure of States to fulfill their obligation to mitigate climate change not only constitutes a breach of the United Nations climate regime, but also violates the fundamental right of every State to survive. The Dominican Republic further asserted that in the face of such non-compliance, States must halt the wrongful conduct and provide full reparation. Its counsel also emphasised that its losses—and consequently the obligation to provide reparation—arise not only from sea level rise but also from ocean acidification, deoxygenation, and stratification. These processes have caused significant damage to SIDS, including coral bleaching and the proliferation of sargassum, which severely impact their populations and hinder their economic development.

The Dominican Republic underscored, in alignment with the concerns raised by many SIDS in recent days, the existential threat these States face, as demonstrated through scientific evidence and the fundamental rules of public international law. A particularly significant point presented to the Court is the grave situation threatening the Caribbean region, where the IPCC has confirmed that, under an extreme yet foreseeable scenario, up to 49.2% of Caribbean islands could be entirely submerged. In making this argument, the Dominican Republic reminded the Court of the importance of harmonising its conclusions with the recent Advisory Opinion of ITLOS, which recognised that greenhouse gas emissions pollute the marine environment. The Dominican Republic's presentation was strong and positive; however, it could have been further strengthened by establishing a clear link to human rights violations, elaborating on the obligations of States in the event of submergence of SIDS due to sea level rise, and emphasising the cornerstone right to self-determination. Additionally, the Dominican Republic's arguments could have highlighted the legal status of future generations as subjects of law, a status recognised under Article 67 of its Constitution. These elements would have provided a more holistic legal framework to address the existential challenges faced by SIDS.

Romania

Romania presented a detailed argument before the Court, emphasising the existential threat posed by climate change and the importance of urgent, collective mitigation efforts. In its counsel's words, "[t]he issue before us is not only one of environmental protection with implications on the existence of human life itself but also one of justice, equity, and shared responsibilities." Romania highlighted its own reductions of GHG emissions since 1989 and its commitment to achieving climate neutrality by 2050. Its counsel underscored the shared responsibility of all States to address climate change while emphasising the need for a comprehensive framework of obligations that applies to all States, irrespective of size, economic power, or historical contributions. Romania also called on the Court to clarify States' duties under international law, particularly regarding mitigation, adaptation, and cooperation, and addressed issues like human rights, maritime zones, and statehood in the context of climate change.

Romania's legal arguments revolved around the application of customary international law principles, including due diligence, prevention, and the no-harm rule, which coexists with and does not displace treaty-based obligations under the UNFCCC and Paris Agreement. Romania argued that States have both collective and individual obligations to reduce emissions and adapt to climate change, emphasising that these obligations must be informed by the principles of equity and CBDR-RC. However, Romania underscored that historical responsibility should not play a role in establishing legal obligations, framing obligations as universal but flexible based on States' capabilities. On human rights, Romania referenced the European Court of Human Rights jurisprudence, emphasising the link between international climate commitments, such as the Paris Agreement, and the positive obligations of States under the European Convention. Specifically, Romania highlighted the Court's findings that States must implement regulations and measures to progressively reduce GHG emissions, aiming for net neutrality within three decades, while incorporating intermediate goals and binding frameworks. It also addressed the impacts of sea-level rise, emphasising legal stability in preserving maritime baselines and statehood.

Romania presented persuasive arguments on the applicability of customary international law and human rights law to the climate problem. However, its explicit rejection of historical responsibility undermines critical principles of equity and CBDR-RC. Although all States have common, minimum obligations, historical responsibility is a critical element that, together with the capacities of a State, modulates the due diligence required to prevent transboundary environmental harm and informs the legal consequences of breaching international obligations. While it rightly acknowledged the differentiated capabilities of States, its framing risks burdening less-developed nations disproportionately and enabling high-emitting States to evade accountability for their historical contributions to the climate crisis. Romania's stance reflects a narrow interpretation of climate justice that could exacerbate existing inequalities and fail to address the needs of the most vulnerable.

United Kingdom

The UK sought to position the climate change treaties as the exclusive source for legal obligations of States in the context of climate change. Its counsel argued that these agreements were the most constructive, the most concrete, and thus the most legally effective way to address the climate crisis and had been carefully negotiated and agreed on by consensus. The UK asserted that only the Paris Agreement contains binding and meaningful obligations for States to mitigate GHG emissions, predominantly the obligation to prepare, communicate, and maintain

successive Nationally Determined Contributions (NDCs), which require progression, the highest possible ambition, and reflection of the principle of CBDR-RC. According to its counsel, the only legal consequences States could face for failing to uphold their obligations in relation to GHG emissions are to be found in the Paris Agreement.

The UK attempted to counter arguments that had been submitted by other States in relation to the prevention principle under customary international law. Its counsel argued that this principle has so far only been applied to limited and confined circumstances and, thus, does not apply to anthropogenic GHG emissions. The UK proclaimed that the principle cannot be expanded to apply to GHG emissions, as customary rules depend on the practice of States and whether they regard themselves as legally bound. Since the majority of States do not consider themselves bound, the UK argues that this is not a rule of custom. However, even if the customary principle of prevention was considered to apply to anthropogenic GHG emissions, the UK asserted that the contents of said obligations would only require of States what is required of them under the Paris Agreement. Therefore, if they fulfill their obligations under that Agreement they would automatically also fulfil all their obligations under customary law.

In an attempt to escape any liability for its colonial past and history as a major emitter, the UK's intervention depicted all State obligations in relation to climate change as set out only by the climate treaties, especially the Paris Agreement, following similar arguments made by the US, Saudi Arabia, and Russia. As demonstrated by many other States in the hearings, this contention is not only a blatant misinterpretation of long-standing principles of international law, but if accepted would lead to a glaring denial of justice, especially in relation to historical and transboundary harm and the obligation to provide reparations for such harm. Indeed, the UK's arguments on the prevention principle lack any sound legal foundation, as has already been countered by many other statements, such as Belize's. Overall, the UK's basic argument is that the climate treaties displaced all other fields of international law from contributing to State obligations. This interpretation obviously weakens State obligations to address the climate crisis, yet the UNFCCC and Paris Agreement were intended to strengthen the response of the global community to this existential threat, and were celebrated by world leaders as new commitments, not backsliding on pre-existing obligations.

 Saint Lucia

As a highly vulnerable Small Island Developing State, Saint Lucia made a compelling presentation about the devastating impacts of the climate crisis on its people and its ecosystems, highlighting that some of the nation's islands will be submerged, resulting in irreversible loss of coral reefs, biodiversity, and our means of livelihoods, and causing human displacement. It pointed out that severe water shortages and droughts will threaten agricultural production and undermine food security. Its legal counsel stressed that these predictions of armageddon are not abstract risks, but they are happening.

Saint Lucia provided a clear and detailed rebuttal to the legal arguments made by large emitters that human rights law and customary international law are irrelevant in determining State obligations. Saint Lucia urged the Court to confirm the conclusions of the ITLOS regarding the applicability of international law beyond the climate treaties, such as the fundamental obligations of prevention and due diligence related to transboundary harms. Saint Lucia highlighted the importance of the Articles of State Responsibility for Internationally Wrongful Acts in addressing State obligations, as applied by both the ITLOS and the European Court of Human Rights.

Saint Lucia noted that one of the legal consequences for a breach of international obligations is cessation, i.e. stopping the wrongful act. Thus, Saint Lucia said that major emitters must take immediate steps to drastically reduce emissions of greenhouse gases from their territory, as well as discontinuing fossil fuel subsidies. Finally, Saint Lucia highlighted obligations related to restitution, compensation, and satisfaction, noting the Loss and Damage Fund is complementary to, and not a substitute for, any compensation obligation arising from internationally wrongful acts.

Like all of the Small Island Developing States, Saint Lucia emphasised that the devastating impacts of the climate crisis are already being felt, particularly by their most vulnerable people. Large emitters must not succeed in twisting international law to evade accountability for their actions. Saint Lucia's intervention was striking in the way it outlined well-established principles of international law that, if confirmed as applicable in the context of climate change by the ICJ, would clarify the legal obligations of large emitters and catalyse far more ambitious climate action and far more equitable climate finance. To date, no compelling argument for excluding these well established principles of international law has been made by any large emitter, despite their desperate efforts to argue that only the specific climate change treaties are applicable as a specialised regime or lex specialis.

The **lead editors** of today's Daily Briefing are **José Daniel Rodríguez Orúe, Aditi Shetye, Sébastien Duyck,** and **Theresa Amor-Jürgenssen**.

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Our deepest gratitude to all those who helped with **taking notes** during the hearings: A**driana Silverio, Amy Kraitchman, Dulki Seethawaka, Rigxel Yangchen, Samira Ben Ali, Syed Tanvir Azam Taif**, and **Zainab Khan Roza**

HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 11th, 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...

- …marked a powerful defense of the human right to a clean, healthy, and sustainable environment, championed by **Senegal, Seychelles, Samoa, The Gambia, Slovenia**, and **Sri Lanka**. **Seychelles** and **The Gambia** highlighted that these rights and corresponding obligations extend beyond borders, providing a basis to hold polluting States accountable globally.
- **Seychelles, Samoa, The Gambia**, and **Saint Vincent and the Grenadines** stressed that climate science is key to justice, providing clear evidence to link emissions to harm and support full reparations under international law.
- Week 2, Question 2! **Saint Vincent and the Grenadines, Samoa, Seychelles,** and **The Gambia** asserted the right to reparations with **Seychelles** backing the African Union on debt cancellation. On debt, Portugal, yesterday, showcased debt-to-climate investment. Meanwhile, **Saint Vincent and the Grenadines** elucidated the link between global financial imperialism, climate harm, and reparations as **Switzerland, Serbia,** and **Slovenia** problematically sought to avoid the Court's inquiry on legal responsibility.
- **Switzerland**'s submissions were a veiled attack on the European Court of Human Rights's Klimaseniorinnen judgement, advancing their own interests rather than those of climate justice.

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

We are witnessing the devastating impacts of climate change every day. In 2024, Category 4 Hurricane Beryl impacted Saint Vincent and the Grenadines, causing great destruction and death. We are in a race for survival. Today, Saint Vincent and the Grenadines spoke for its people and emphasised how climate change undermines fundamental rights enshrined in international law, including the right to self-determination and the permanent sovereignty of peoples over their natural resources. While multilateralism is required, those contributing most to this crisis must be held accountable.

JESHUA BARDOO, SAINT VINCENT AND THE GRENADINES, FOUNDER, PRESIDENT, AND EXECUTIVE OFFICER OF EQUAL RIGHTS, ACCESS AND OPPORTUNITIES SVG INC.

Switzerland prides itself on its human rights tradition, however on the eve of assuming the presidency of the UN Human Rights Council, its intervention did not even mention the landmark decision in the KlimaSeniorinnen case which clearly highlights the country's climate responsibility. Switzerland needs to go beyond merely acknowledging the complementarity of the climate regime with other international laws, and recognise States' long-standing international obligations to prevent transboundary environmental harm and human rights violations, including in the context of climate change.

OLIVIANNE WOHLHAUSER (28) SWITZERLAND, CAMPAIGNER, WORLD'S YOUTH FOR CLIMATE JUSTICE

Outside the Court

Today, we published the People's Petition, the outcome document of last week's People's Assembly where over 50 people, including youth, Indigenous Peoples, and experts across various fields gathered to share how their lives have been heavily impacted by climate change. The document will be presented to the judges of the ICJ via oral statements on Friday, 13 December.

Samira Ben Ali, WYCJ Outreach and Engagement Coordinator and one of the drafters of the People's Petition said: "People are already having their human rights violated because of the climate crisis, so we need to course correct immediately if we do not want things to become worse. States have obligations when it comes to the impacts that they are causing to the climate system and these obligations come with legal consequences."

Read the full People's Petition here.

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, 11 December, we will report back on the oral submissions delivered by the following States: Thailand, Timor-Leste, Tonga, Tuvalu, Union of Comoros, Uruguay, Viet Nam, Zambia, Pacific Islands Forum Fisheries and Alliance of Small Island States.

If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

Report on Each Intervention

Saint Vincent and the Grenadines

In their opening, Saint Vincent and the Grenadines highlighted that this was their first appearance before the International Court of Justice (ICJ). They showed a video entitled “The Race: Survival versus Death and Debt” to illustrate the extreme devastation climate change is wreaking on their nation, including the impacts of category 4 hurricane Beryl, which left some of their islands unrecognisable and thousands of families homeless. Their delegation recalled the exile of their Garifuna ancestors in the 1700s, resulting in cultural and traditional losses, and described climate change as “colonisation on repeat,” demanding close attention to who bears historical responsibility. Saint Vincent and the Grenadines reinforced the principles of equity, justice, and human rights, and affirmed the right to reparations for climate harm. The delegation expressed solidarity with the other nine sister Caribbean islands that presented oral arguments before the Court, voicing confidence that their collective depiction of the impacts of climate change in the Caribbean region will not fall on deaf ears.

On applicable law, Saint Vincent and the Grenadines argued that climate obligations should not be limited to the UN Framework Convention on Climate Change (UNFCCC) and Paris Agreement, as the relevant conduct long predates these treaties and so, too, do States’ duties under general principles and customary international law, including the no-harm rule. Their counsel highlighted the need to interpret State obligations in light of best available science and emphasised how fundamental rights–like self-determination and permanent sovereignty of peoples over their natural resources–apply in the climate context, especially given sea level rise and climate-induced displacement. St. Vincent and the Grenadines underscored that statehood persists despite the loss of territory, and sovereignty must be meaningfully preserved, to enable the full enjoyment of human rights. Their counsel further stressed the importance of adapting the international legal framework to adequately address climate refugees. Saint Vincent and the Grenadines also mounted a powerful defence of the no-harm rule, urging the Court not to give big polluters a “free pass” to continue climate destruction by holding that the rule does not apply to greenhouse gas (GHG) emissions. The oral arguments were clear–States have an unequivocal obligation to act responsibly in addressing this crisis to protect present and future generations, recognising their historical contributions to the problem and their capacity to mitigate its impacts. Saint Vincent and the Grenadines reinforced the importance of providing reparations and urgently needed financial support, including fulfillment of ambitious pledges for the Loss and Damage Fund, technology transfer, and capacity-building to address adaptation. Their counsel called out the failure of “the fossil fuel giants” most responsible for the climate emergency to provide support to vulnerable nations as a violation of international law.

Saint Vincent and the Grenadines, in their powerful oral intervention, put a spotlight on the role of colonial legacies and pervasive inequities in driving the climate crisis. Linking debt and climate disasters, their counsel described how, despite the increased severity and frequency of climate-related disasters, international financial institutions remain inadequately aligned to address the financial needs of the world’s most-climate vulnerable nations and clearly retain remnants of imperialistic inequities, with borrowing costs markedly and unjustly higher for the Global South. Their delegation also called out the trend of empty pledges at climate negotiations, making clear that climate ambition needs to be rooted in existing legal obligations rather than annual talk shops.

Saint Vincent and the Grenadines' closing legal argument was anchored in our shared humanity, urging the Court to find that the atmosphere is a common concern of humankind and States have an obligation to collectively act as trustees for the atmosphere, with Counsel characterising the principle of trusteeship of the Earth's resources as the first principle of modern environmental law.

 Samoa

In its opening, Samoa explained how the environment is intrinsically connected to the culture and ways of life of its people, and how the increase in cyclones over the past years has impacted the State and the population. For Samoa, climate change is a health, food, security, economic, social, cultural, human rights, and security concern in addition to an environmental concern. It stressed that even at 1.5ºC, the consequences for Small Island Developing States (SIDS) will already be extreme and that climate change is the foreseeable result of actions taken and not taken by those who have long known the consequences of their conduct. It also maintained that human rights are at the core of these proceedings, and that the peremptory norm (*jus cogens)* of the right of self-determination is being violated as a result of climate change, thus calling for the immediate cessation of activities that continue to damage the climate system and worsen the current situation.

On applicable law, Samoa called out States that seek to limit the scope of obligations to the three climate treaties, either by stating that they are lex specialis or that they have a primary role, submitting that the entire corpus of international law (and especially the instruments cited in the UN General Assembly resolution that requested the advisory opinion) is relevant. Samoa even argued that the Paris Agreement and the UNFCCC are not the primary treaties regulating the relevant conduct, which Samoa defined as the individual and cumulative releases of GHG emissions over an extended period of time from activities under the jurisdiction or control of particular States that result in significant harm to the environment. This is because the earliest climate treaty, the UNFCCC, only entered into force in 1994, while harmful emissions have already been taking place many decades prior, and States had knowledge of the risks of GHG emissions since the 1960s, decades before the UNFCCC.

Samoa also submitted that climate change is affecting a myriad of human rights, including the right to self-determination, life, health, food, development, family life, and culture, as well as the rights of future generations. Samoa further argued that polluting States are violating their obligations under the Convention on Biological Diversity, which recognises the vital role of Indigenous cultures in conservation and enshrines the prevention principle. To trigger legal consequences, Samoa submitted that causation is not as big a challenge as some States make it out to be, as the science can now identify with precision the contributions of particular States to the climate crisis. Additionally, the fact that multiple States contributed to the harmful conduct is not a bar to individual State responsibility as international law makes clear. Finally, Samoa highlighted the importance of reparation and especially cessation for the breach of climate- relevant legal obligations.

Samoa's intervention was one of the most sophisticated and astute thus far. Its rebuttal not only of the lex specialis argument, but also of the legal primary of UNFCCC and the Paris Agreement was legally sound and convincingly argued that the customary norms of no harm, prevention, and due diligence should be the ones guiding the Court in clarifying the obligations of States. Similarly, its focus on human rights helped ground the conversation to its roots, when the original question that the Pacific students wanted the Court to answer was on the obligations of States vis-à-vis current

and future generations. Samoa's stressing of cessation as the main remedy for breaches of obligations related to the climate system was also particularly compelling to prevent future harm from taking place.

 Senegal

Senegal focused on two key aspects: the identification of States' legal obligations regarding climate change and the legal consequences for breaches of those obligations. Senegal asserted that States' obligations arise from general international law, environmental treaties, and international human rights law. It emphasised the no-harm rule applies directly to climate change, obliging States to ensure their activities do not harm the climate system. Senegal called on the ICJ to emphasise the precautionary principle as a legal obligation, stressing that it entails an obligation for States to not delay the adoption of measures to prevent serious and irreversible environmental damage in the context of relative scientific uncertainty. Its counsel asserted its legal status based on its inclusion in various treaties such as the UNFCCC and the Cartagena Protocol on Biosafety, as well as its evolution in international jurisprudence. It also submitted that these obligations must be viewed through a transgenerational lens, protecting the rights of present and future generations.

Senegal argued that climate change threatens fundamental human rights, including life, health, housing, food, and water, as protected by the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR). It urged the ICJ to affirm that States' human rights obligations extend to transboundary GHG emissions, referencing the Inter-American Court's interpretation. Senegal cited the European Court of Human Rights's Klimaseniorinnen v. Switzerland decision on States' positive obligations to reduce GHG emissions and the African Commission on Human and Peoples' Rights's SERAC v. Nigeria decision linking environmental harm to human rights violations, including the right to a healthy environment. It called for protecting future generations, emphasising the critical role of climate stability and biodiversity for human survival. Senegal also urged the Court to acknowledge broad legal standing for States to address climate harms, emphasising global solidarity and shared responsibility for climate obligations. It argued that breaches trigger State responsibility under international law and called for cessation of harm, guarantees of non-recurrence, and reparations, especially compensation for vulnerable nations like SIDS and African States. Senegal highlighted the principle of common but differentiated responsibilities, asserting major emitters must bear greater reparative duties.

By urging the Court to clarify and enforce prevention of transboundary environmental harm and protection of human rights, Senegal argued for global climate justice. Senegal's approach to both the precautionary principle and human rights obligations requiring specific, positive measures effectively counters arguments by big polluters who shamelessly argue obligations under climate treaties are enough to protect people and the climate system. Senegal relied heavily on case law of regional human rights mechanisms, and the 2024 International Tribunal for the Law of the Sea (ITLOS) Advisory Opinion, highlighting the need to incorporate regional approaches to protecting the environment and human rights in the context of climate change. Importantly, Senegal's claim on broad standing for climate cases is a bold argument that could provide the international community with a crucial tool against harm to the climate system.

Seychelles

Seychelles centred its intervention on the legal obligations of States under long-standing international law and the climate change treaty regime. Seychelles's counsel highlighted the applicability of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) in the context of the Paris Agreement and the breach of broader obligations under international law. Its counsel rebutted the common arguments of major polluters before the Court. First, Seychelles rejected the exclusive applicability of the climate change treaties, arguing they neither exclude broader legal principles nor provide mechanisms for liability or reparation. Second, its counsel, drawing from the ITLOS advisory opinion, asserted that compliance with climate treaties alone is insufficient to prevent harm to the climate system; States must also meet their obligations under general international law, including the "no harm" rule, due diligence, and the precautionary principle. Seychelles underscored that since the climate obligations are owed to everyone (*erga omnes*), all States have a shared legal interest in ensuring their compliance. Counsel emphasised that States are also obligated to prevent significant harm to the climate system through positive measures, which includes having to actually implement Nationally Determined Contributions (NDCs), not just submit them. Moreover, merely implementing NDCs does not fulfil due diligence obligations, as NDCs are often insufficiently ambitious.

On human rights, Seychelles highlighted that, in the context of climate change, human rights obligations extend beyond a State's territory. In this regard, it invited the Court to consider the approach on this issue by the Inter-American Court of Human Rights (IACtHR) and the Committee on the Rights of the Child, which recognise that the obligation of States to respect human rights extends to the harmful effects of GHGs beyond a State's territory if emitted under their control. On the issue of reparations, Seychelles argued that ARSIWA applies to climate-related harm, emphatically rejecting claims that the Paris Agreement and UNFCCC exclude the need for reparation. Seychelles underscored the critical role of the "best available science," including IPCC reports, in addressing challenges of attribution and causation by linking specific emissions to measurable harm. Its counsel argued that breaches of obligations necessitate "full reparations under international law," which include cessation of harmful acts, guarantees of non-repetition, restitution where possible, and compensation, particularly where restitution is materially impossible. Seychelles aligned with the African Union and supported "innovative reparative mechanisms like debt relief and cancellation," especially for vulnerable Small Island States disproportionately affected by climate change.

Seychelles championed climate justice by asserting that long-standing principles of international law must be addressed alongside climate treaties like the Paris Agreement to ensure comprehensive accountability. On human rights, Seychelles, aligned with other climate-vulnerable countries, asserting that the obligation of States to respect human rights extends beyond a State's territory if harmful GHG emissions are emitted under their control. Rejecting the notion that specialised climate treaties are the only primary source of obligations, Seychelles highlighted the applicability of general legal obligations, such as the no-harm rule, due diligence, and erga omnes responsibilities, while emphasising that compliance with climate treaties alone is insufficient. By advancing the role of the best available science to address causation and attribution, Seychelles strengthened the argument for State responsibility and reparations. Notably, its exploration of innovative reparative mechanisms, including debt relief and cancellation, reflects a forward-thinking approach to achieving equity and justice for Small Island Developing States disproportionately impacted by climate change.

The Gambia

The Gambia emphasised the critical importance of these advisory proceedings as the country suffers from rising sea levels and natural disasters that have devastating effects on the right to food and the economic security of its population. It stressed that the stakes are too high for these proceedings to limit States' obligations to "timid statements that simply echo the bare minimum." Focusing on three main points, The Gambia first discussed arguments on applicable law and the interplay of different norms. It then focused on the prevention principle and ended with the relevance of international human rights law. The Gambia strongly disagreed with the restrictive approach advanced by some limiting State obligations to climate treaties alone. It explained that this approach would lead to the fragmentation of international law and contradict the principle of systemic integration of international human rights and environmental law, well-established in the African legal system, undermining the value of the Advisory Opinion.

In relation to the prevention principle, The Gambia refuted arguments alleging that GHG emissions differ from conventional cases of transboundary harm, asserting that the duty of prevention is owed not just to neighbouring States, but to all States, and constitutes a rule of general application. Echoing the International Law Commission, The Gambia argued that there is no predetermined list of what qualifies as transboundary harm and thus, the harm resulting from GHG emissions must be prevented. The Gambia rejected claims that this duty is fulfilled by a State's compliance with its obligations under the UNFCCC and the Paris Agreement. In this way, its counsel argued that due diligence in preventing environmental harm goes beyond climate treaties and encompasses other measures under international law, such as Environmental Impact Assessments (EIA). Excluding such requirements from the scope of State obligations would undermine the protection of the climate system. Its counsel argued that due diligence must be informed by the latest available science and requires States to do the utmost to minimise GHG emissions, taking into account the common but differentiated responsibilities (CBDR) principle and the temperature limits of the Paris Agreement as thresholds that cannot be crossed.

On human rights, The Gambia also rejected the argument that human rights obligations are automatically fulfilled by complying with climate treaties. On the contrary, its counsel asserted that human rights obligations go beyond those under specific climate change treaties, which do not displace the former. The Banjul Charter more broadly treats individual and collective rights and civil, political, economic, social, and cultural rights as integrated and recognised the right to a generally satisfactory environment. Reiterating relevant regional case law and the Human Rights Committee's decision in Portillo Cáceres v. Paraguay, The Gambia argued that compliance with environmental treaties does not discharge States from their concurrent obligations under human rights law related to environmental harm. On the question of legal consequences, The Gambia argued that States must swiftly bring to an end any breach of the duty of due diligence. Its counsel concluded by urging the Court to recognise, as ITLOS did in its Advisory Opinion, that due diligence requires States to regulate the activities of both public and private actors. Reinforcing this duty, The Gambia argued, would help thaw the regulatory chill resulting from investment arbitration claims threatened or brought by the fossil fuel industry challenging climate action.

The Gambia provided a clear answer to the Court: climate justice demands a harmonious interpretation of all relevant State obligations in the context of climate change. Drawing from regional human rights law and the law of the sea, The Gambia provided a great example of how principles of international law and human rights law inform States' obligations to protect the climate system. The Gambia also added that the temperature limits provided by the best

available science are thresholds that cannot be crossed. It highlighted the need to overcome a critical obstacle to State adoption of ambitious mitigation measures: the fossil fuel industry's use of Investor-State Dispute Settlement. The Court Cclarifying States' duty to regulate would help counteract the threat of investors suing States for climate action.

Singapore

Singapore described the particular difficulties it faces as a result of its specific circumstance as a Small Island Developing State, such as its lack of natural resources and limited availability of clean energy. The intervention focused on the relationship between climate treaties and international law, the obligations to conduct EIAs and to cooperate, and the common but differentiated responsibilities and respective capabilities (CBDR-RC) principle.

Its counsel argued that, while climate treaties are the primary source of relevant obligations, they complement rather than override other applicable obligations under international law, such as customary international law and human rights law. Specifically, Singapore argued that preventing transboundary environmental harm in the context of climate change goes beyond communicating NDCs, and requires domestic mitigation measures. Therefore, Singapore argued that customary international law requires States to conduct EIAs for activities contributing to GHG emissions. This applies to any planned activity within a State's jurisdiction that may cause significant harm, and in assessing whether such activities amount to significant harm, the activities can be assessed cumulatively. To fulfill this obligation, States must align their actions with the Paris Agreement, which set acceptable global temperature limits. Discharging the EIA obligation in harmony with the Paris Agreement means establishing a domestic framework to regulate activities emitting GHGs including, assessing their suitability to achieve a State's NDCs.

Additionally, Singapore's counsel stressed that States have a duty to cooperate under different sources of law, such as the UN Convention on the Law of the Sea (UNCLOS) and human rights law, whereby cooperation must be continuous, meaningful, and in good faith. Such cooperation may either be direct or through participation in the relevant international cooperative processes that address the impacts of climate change, including the UNFCCC and the Paris Agreement. Furthermore, Singapore highlighted that under the CBDR-RC principle historical responsibility must be considered when defining the relevant obligations and consequences for breaching them.

Singapore emphasised the principle of systemic integration, positively affirming that climate treaties do not override other sources of law, including human rights law. It is also commendable that Singapore joined The Gambia in establishing that prevention in the climate context requires EIAs for GHG-emitting activities. At the same time, for Singapore, EIAs should only be measured against a State's NDCs. This could both ensure their compliance but also stymie greater climate ambition beyond each States' discretion. Singapore's intervention fell short by focusing narrowly on cooperation to fulfill human rights, overlooking the State's duty to adopt positive measures to protect human rights from climate impacts. The absence of any mention of reparations further underscores Singapore's balanced but limited approach to addressing climate responsibilities.

Slovenia

Slovenia opened its statement expressing its strong support for the advisory opinion, emphasising that the outcome of these proceedings will constitute a framework for more ambitious and effective climate action. After stressing that the Court should look to all sources of international law in clarifying States' obligations to protect the climate system, Slovenia focused almost exclusively on the right to a clean, healthy, and sustainable environment as a fundamental human right. Its counsel defended the right as a precondition to the enjoyment of other human rights that should inform the systemic interpretation and application of obligations to prevent environmental harm, including climate change. It detailed the obligations States owe to the international community as a whole, to respect and protect the right to a healthy environment, by refraining from causing climate harm and providing assistance to climate-vulnerable nations including through climate finance, technology transfer, and capacity building.

As Slovenia pointed out, a majority of States agree that international human rights law is relevant to the questions before the Court, and the recognition of States' human rights obligations in the preamble to the Paris Agreement refutes the primacy of the climate regime. Slovenia called for a holistic human rights-based approach to protection of the environment and the climate system, detailing why the right to a healthy environment is an inherent element of the existing human rights framework, recognised in regional human rights instruments and other treaties, including the Aarhus Convention and the Escazú Agreement, as well as the domestic laws of the vast majority of States. Its counsel cited UN human rights treaty bodies' recognition of the interlinkages between human rights and environmental protections, explaining the two-fold implications: i) the right must be considered when systemically interpreting State obligations related to climate change; and, ii) due diligence obligations and the duty of vigilance and prevention require States to prevent and control environmental harm that threatens not only the territories of other States, but individuals within their jurisdiction. The dynamic, evolving character of the right to a healthy environment, Slovenia argued, does not relegate it to the ranks of a non- right. Slovenia recognised that efforts to prevent the adverse impacts of climate change should reflect States' common but differentiated responsibilities, yet maintained that "existing obligations with respect to climate change do not distinguish between one polluting State and the others." Slovenia concluded its remarks alleging that the question before the Court does not concern legal responsibility for, or the lawfulness of, past conduct.

Slovenia presented itself as a champion of the right to a clean, healthy, and sustainable environment in the hearings today. It gave a detailed and compelling argument as to why this right is central to the questions before the Court and a core component of the protection of the climate system. Its counsel strongly refuted attempts by some big polluters, including the United States, Saudi Arabia, Canada, Germany, and Russia, to dismiss the right to a healthy environment and undermine its normative weight. However, Slovenia appears to have overlooked a fundamental principle of human rights law—the right to a remedy—thereby failing to present its argument in the coherent and constructive manner that would have been most beneficial to this Court. Its concluding remarks dismissing the second question on legal consequences and denying the basis for attributing responsibility for the climate crisis to individual States tarnished an otherwise powerful intervention in support of a human rights-based approach to climate action and climate justice.

Sri Lanka

Sri Lanka spent considerable time describing the country's disproportionate and extreme vulnerability to climate change and its catastrophic effects. Its counsel urged that no country or people deserve to suffer from preventable man-made tragedy. It rejected claims by the major GHG emitters that the Court should only concern itself with UNFCCC and the Paris Agreement, citing long-established principles of responsibility for wrongful international conduct by States that cause harm to other States, peoples, and future generations. It asked the Court to uphold the obligations of international human rights, the principles of prevention of harm, the transboundary obligation, and the duty of due diligence, and to hold that States are accountable for their actions and omissions.

Sri Lanka asked the Court to affirm States' responsibility to stop any acts in breach of their obligations, which could require, amongst others, phasing out fossil fuels and regulating GHG emissions. Sri Lanka highlighted that geoengineering technology cannot be considered an acceptable mitigating practice. Its counsel also argued that States must make restitution, such as the continued recognition of the preserved sovereignty of a State that is being submerged by sea level rise or the liability of responsible States to extend financial support to affected States to improve their adaptive capacity. States must also make full reparation for injuries.

Sri Lanka argued that under treaty and customary international law, States must protect the climate system to ensure the right to health. Its counsel emphasised that a stable climate system, that provides clean air, safe water, and adequate food, is essential for fulfilling this right, and this obligation is supported by the UN's recognition of the right to a clean, healthy, and sustainable environment. Its counsel also emphasised the principles of intergenerational equity and trusteeship. Sri Lanka submitted that States, as guardians of the natural world we live in, have a fiduciary capacity and obligation to protect the natural world for generations to come.

Sri Lanka's intervention powerfully highlighted its extreme vulnerability to climate change while rejecting attempts to limit the Court's focus to the UNFCCC and the Paris Agreement. Its counsel invoked established principles of State responsibility for harm caused to other States, peoples, and future generations, urging accountability for breaches of obligations, including phasing out fossil fuels and regulating GHG emissions. Sri Lanka emphasised restitution, such as preserving submerged States' sovereignty and providing financial support for adaptation, alongside full reparation for climate injuries. Grounded in international law and intergenerational equity, Sri Lanka affirmed that protecting the climate system is essential to ensuring human rights, including the right to health. They called for States to fulfill their fiduciary duty to safeguard the environment for future generations. As major polluter States have failed to meet their emission reduction targets and follow through on their financial promises, Sri Lanka compellingly argued that the ICJ has become the only recourse to ensure accountability and for justice to truly prevail.

Sudan

Sudan opened its submission by highlighting the impacts of climate change on the Nile region, the Darfur drought crisis, and other climate-impacted regions of the country. Its counsel argued that the advisory opinion must rely on a broad range of international legal instruments, including the UN Charter, UNFCCC, Paris Agreement, ICCPR, ICESCR, and customary international law, including the no-harm rule, due diligence, and precautionary principle. Sudan urged the Court to consider these principles holistically, ensuring that its decision is grounded in the entirety of

public international law. Its counsel explicitly rejected the argument that climate treaties like the Paris Agreement supersede or conflict with general international law. Instead, these treaties complement customary obligations, requiring States to fulfill both treaty-based commitments and broader responsibilities such as protecting the environment and preventing significant transboundary harm.

Sudan highlighted CBDR-RC as a cornerstone of international environmental law, first established in the Rio Declaration and the UNFCCC, and reaffirmed in the Paris Agreement. This principle recognises the shared responsibility of all States to address climate change while emphasising the differentiated obligations of developed and developing countries based on historical emissions, technological capacity, and financial resources. Sudan underscored that developed nations must lead in combating climate change by fulfilling their commitments to provide financial resources, technology transfer, and capacity-building under the Paris Agreement. It argued that any assessment of State obligations and compliance must account for disparities in resources and circumstances. Thus, Sudan called on the Court to affirm CBDR-RC as fundamental to the equitable implementation of obligations under the climate regime and to emphasise the responsibility of developed nations to support vulnerable States in addressing the impacts of climate change.

Sudan's submission strongly emphasised the applicability of all relevant provisions of international law relevant to climate change and as enshrined in the UNGA resolution. Sudan aligned itself with other climate-vulnerable countries and rejected arguments of industrialised and high-emitting States, that the specialised climate regime is the only source of obligations to regulate GHG emissions. Importantly, Sudan highlighted the centrality of CBDR-RC in laying out State obligations and legal consequences for their breach. Although Sudan aligned itself with the African Union and other African countries, it missed the mark on putting forth holistic arguments on reparations and State responsibility.

Switzerland

Switzerland emphasised the constituent elements of the customary obligation of due diligence, which include jurisdictional control over activities, significant transboundary environmental harm, a causal nexus between the activity and harm, and foreseeability of the risk. Its counsel underscored that this obligation focuses on preventing harm in the present and future, rather than addressing past emissions. Switzerland clarified that foreseeability does not require full scientific certainty, citing Principle 15 of the Rio Declaration. Instead, it suffices that risks could be reasonably anticipated. Its counsel highlighted that robust scientific consensus on the link between anthropogenic emissions and environmental harm emerged only around 1990, and thus that the customary obligation of due diligence to prevent significant harm has applied to climate change only from that time. It stressed that higher emissions correlate with greater responsibility, advocating for a stringent standard of due diligence for major emitters. However, its counsel insisted on the impossibility of determining objectively how much each country should reduce its emissions. Its counsel further argued that the customary obligation of due diligence is distinct from treaty obligations under the Paris Agreement and UNFCCC. These frameworks were characterised as complementary and mutually reinforcing, with Switzerland cautioning that compliance with treaty obligations does not necessarily fulfill the broader customary obligation.

Addressing the consequences of breaching the obligation of prevention, Switzerland recalled the principle that cessation and non-repetition are primary obligations for wrongful acts, urging all States to cooperate in reducing emissions globally. However, its counsel lamented the difficulty of applying traditional international law approaches to climate-related violations. Switzerland invited the Court to confirm that, under current international law, no quantifiable and specific obligation of reparation can be attributed to individual States without a political agreement on carbon budget allocation criteria. Its counsel introduced the polluter-pays principle as a potential guide for damage assessment, emphasising that historical emissions alone should not determine responsibility, as this could let nations like Switzerland with minimal historical emissions, but significant current capacity, off the hook. Switzerland stressed that only cooperative global action can effectively address the collective challenge of climate change. Its counsel urged the Court to recognise the impossibility of binding State-specific emission targets, or specific greenhouse gas emissions budgets for individual States, advocating for a balanced and collaborative approach in the absence of agreed criteria.

Switzerland distinguished itself by diminishing the relevance of the UNFCCC, relying instead on customary international legal norms—a move that revealed its tactical motives. While other major polluters sought to shield themselves from accountability by alleging a primacy of the UN climate agreements over other norms of international law, Switzerland pursued the same objective through a different approach: sidestepping the principle of historic responsibility by acknowledging the relevance of the duty to prevent transboundary harm, but maintaining that it did not apply to emissions predating the climate regime. Invoking the polluter-pays principle offered a glimmer of alignment with justice, but it was wielded as a shield to reject claims of responsibility for historical emissions, not as a sword to demand accountability. Switzerland's stance on the role of the Court was equally troubling: it invited the affirmation of legal obligations yet cautioned against translating these principles into actionable standards. Such a position undermines the very value of judicial intervention in the face of climate urgency. Switzerland's primary objective seemed clear—to undermine the European Court of Human Rights' findings in the Klimaseniorinnen case, explicitly urging the Court to reject key principles like the relevance of national carbon budgets. Instead of advancing climate justice, Switzerland appeared to be forum-shopping, seeking leniency rather than accountability.

 Serbia

Serbia emphasised its commitment to addressing climate change, highlighting its status as a landlocked country experiencing temperature increases above the global average and significant material losses from climate-related disasters. Serbia expressed support for the General Assembly's request for an advisory opinion, but called on the Court to reformulate the advisory opinion's question to better reflect the nature of States' obligations under existing climate treaties, especially the Paris Agreement. Serbia's legal arguments centred on the treaty-based obligations established by international climate agreements and the customary principles of international law, including due diligence, prevention, and the principle of CBDR-RC. Serbia urged the Court to provide an opinion grounded in scientific evidence and a thorough factual basis–namely, to identify facts, scientific evidence, and reliable expert opinions on relevant climate issues–to clarify the scope of State obligations under international law concerning climate change.

Serbia highlighted the international communities' acknowledgement that climate change and its adverse effects are concerns of humankind as the legal basis for international cooperation while acknowledging the need for differentiated responsibilities based on national circumstances. Its counsel argued that States' obligations under climate treaties are obligations of conduct, and not result, requiring best-effort actions informed by scientific evidence and evolving capabilities. Such actions include regulating private actors to ensure their compliance with climate obligations and holding them accountable for activities that harm the climate system. Regarding human rights protection from climate change impacts, Serbia argued that international climate treaties do not create judicially enforceable individual rights but acknowledged that many States, including itself, domestically recognise the right to a healthy environment which is nevertheless not recognised under international law. Citing Article 4 of the ICCPR (providing grounds for derogation from Convention obligations), Serbia argued that States may deviate from their human rights obligations during national emergencies, including extreme climate events, provided such measures comply with the Covenant's strict criteria.

Serbia's position was narrowly focused, relying heavily on the existing treaty framework without exploring the broader implications of States' failures to meet their obligations under wider international law, including the right to reparations. Its proposal to reformulate the questions put forth by the General Assembly reflects an overly narrow focus that avoids addressing reparations for harm caused by climate impacts. Moreover, its rejection of judicially enforceable human rights claims related to climate change distorts the current state of human rights law, with specific climate change-related obligations that are already developed by national and regional human rights mechanisms. Most concerningly, Serbia's argument on derogations from human rights protections during climate emergencies risks setting a dangerous precedent. Such measures could undermine fundamental rights, especially for vulnerable populations, under the guise of temporary necessity.

The **lead editors** of today's Daily Briefing are **Aditi Shetye, José Daniel Rodríguez Orúe, Nikki Reisch, Sébastien Duyck,** and **Theresa Amor-Jürgenssen**.

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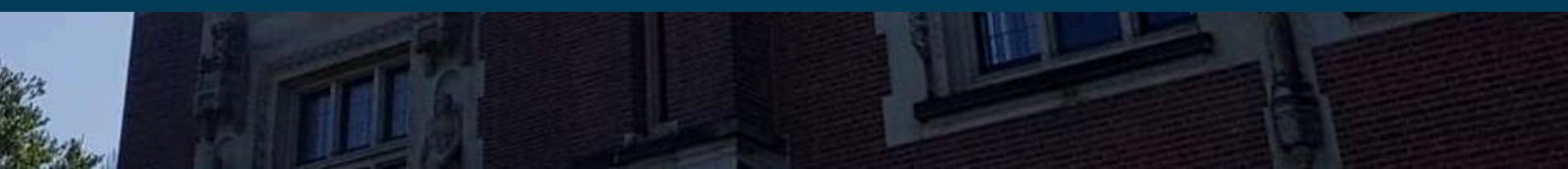
HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 12th, 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...

- **Tonga** and **Tuvalu** emphatically reaffirmed the inalienable rights of their people to survival and self-determination, championing, in solidarity with **Alliance of Small Island States (AOSIS)**, the continuity of statehood, the inviolability of territorial integrity, maritime baselines, and sovereignty as fundamental to self-determination. The **Forum Fisheries Agency (FFA)**, **AOSIS**, **Tonga**, and **Tuvalu** highlighted the existential threats climate change poses to oceans and maritime zones, vital for Pacific livelihoods.
- **Timor-Leste**, **Thailand**, **Comoros**, **Tonga**, and **Viet Nam** stressed the central role of equity in addressing climate change. Emphasising the link between colonialism, poverty, and inequality to the principle of Common But Differentiated Responsibility and Respective Capabilities, they called for fair climate finance and technical assistance to redress historical and ongoing injustices. **Thailand** advocated for a just transition, ensuring no one is left behind when fulfilling State obligations.
- Week 2, Question 2! **Comoros**, **Viet Nam**, **Uruguay**, and **Tuvalu** shared a focus on reparations and accountability, demanding financial and restorative measures for climate damage.
- **Comoros**, **Viet Nam**, **Tuvalu, Uruguay**, and **Zambia** emphasised the role of science in proving harm, establishing causation, and guiding reparations to hold polluters accountable.

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

Tonga's oral submission underscores the urgency of the climate crisis. It was great to see the government standing in solidarity with other small island nations, emphasising our disproportionate vulnerability despite minimal contributions to global emissions. Tonga's call for clarification of States' obligations under international law aligns perfectly with the call to action from civil society. We applaud the government's emphasis on the principle of CBDR responsibilities and the duty to cooperate, which are crucial for achieving climate justice.

SIOSIUA ALO VEIKUNE (25), TONGA, CAMPAIGNER, PACIFIC ISLANDS STUDENTS FIGHTING CLIMATE CHANGE

Outside the Court

The People's Museum for Climate Justice, hosted by Greenpeace at the Zeeheldentheater in The Hague, is a collaborative space co-curated with communities disproportionately affected by the climate crisis. The exhibition, open until tomorrow, 13 December at 7 pm, features personal narratives, art, and interactive displays inspired by the ICJ advisory proceedings. Visitors can explore the resilience and struggles of those confronting climate change.

A digital version of the museum is available here. Earlier this week, the exhibition also featured a private screening of *Yumi – the Whole World*, followed by a Q&A with film director Felix Golenko and Vishal Prasad, Director of Pacific Islands Students Fighting Climate Change (PISFCC).

The People's Booth organised by Interactive Media Foundation at the People's Hub fostered critical reflections on the ICJ hearings' aftermath. Through a collaborative bingo session, participants shared insights and outlined calls to action to maintain momentum.

World Youth For Climate Justice

All the way over in Geneva, WYCJ, Earthjustice, CIEL, and partners hosted an event featuring UN human rights experts like Astrid Puentes and Elisa Morgera alongside activists Vishal Prasad and WYCJ's Nicole Ann Ponce. The session unpacked key arguments from the ICJ hearings and explored lessons for advancing climate justice. The event showcased strong consensus among experts rejecting States' attempts to sidestep legal obligations under the guise of a Paris Agreement "bubble" of unaccountability. Instead, the experts reaffirmed the centrality of legal principles, including the extraterritorial and intergenerational application of human rights.

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, Friday, 13 December, we will report back on the oral submissions delivered by: Commission of Small Island States on Climate Change and International Law, Pacific Community, Pacific Islands Forum, Organisation of African, Caribbean and Pacific States, World Health Organization, European Union, International Union for Conservation of Nature.

If you found this daily debrief useful and informative, please share the Daily Briefing sign-on link more widely.

Report on Each Intervention

Thailand

Thailand explained the impact that climate change is having on its territory and people and invited the Court to, when answering the questions before it, consider the voices of all States, clarify existing international law in a systemic and harmonious manner, and connect theory to practice. Thailand added that the climate treaties should be interpreted in light of pre-existing rules and treaties, including international human rights law, and that States have due diligence obligations to ensure the protection of the climate system through mitigation, adaptation, and cooperation, which are positive obligations of conduct. However, Thailand added that the level of due diligence regarding greenhouse gas (GHG) emissions is stringent and objective, and should be informed by the best available science.

Thailand focussed on three aspects of the obligation of due diligence: equity in each State, equity across States, and equity across generations. On intra-State equity, Thailand urged the Court to consider the concept of 'just transition', which features in the preamble of the Paris Agreement and accordingly should be used in interpreting the obligations in that regime, including due diligence, with a goal to leave no citizen behind. On inter-State equity, Thailand submitted that the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) means that all States should take measures, informed by the due diligence obligation, to address climate change — but to do so, developed States must cooperate with developing States, including through technical and financial assistance. Finally, on intergenerational equity, Thailand pointed out that the Paris Agreement instructs that climate action should take into consideration the interests of future generations, and stressed that this is also in line with the precautionary approach. However, it also submitted that the existence of "rights" of future generations is unclear, despite the rise in litigation asserting these rights, and thus invited the Court to clarify their status under international law.

Thailand's mention of the precautionary approach was noteworthy, as few delegations have chosen to mention this important international environmental law principle. The focus on equity throughout the submission, and its connection with the obligations of due diligence in different realms, was too an interesting framing that could lead the Court to a progressive decision. Regrettably, Thailand did not venture into the question of legal consequences; however, it focused on the obligation of developed States to cooperate through financial and technical assistance, which could provide another basis for the much-needed tools for mitigation and adaptation in the Global South. Thailand's position that the rights of future generations have yet to be clarified formally under international law (lex ferenda) was also too formalistic, especially in light of the wealth of existing studies and initiatives that already seek to clarify this right (notably, the Maastricht Principles on the Human Rights of Future Generations) — although Thailand's request for the Court to address the status of these rights was a silver lining to this line of argumentation.

Timor Leste

Timor-Leste highlighted its acute vulnerability to climate change as the 28th most climate-affected nation, suffering severe environmental, economic, and social impacts despite contributing only 0.003% of global GHG emissions. Timor-Leste detailed the challenges of its

development, with over 48% of its population living in multidimensional poverty, and framed climate justice as inseparable from global poverty and inequality. It linked the climate crisis to historical injustices rooted in colonial exploitation and carbon-intensive practices by industrialised nations, arguing that these States bear overwhelming responsibility for the current crisis. Timor-Leste stressed the importance of the principle of CBDR-RC to ensure equitable climate action, arguing that Least Developed Countries (LDC) and Small Island Developing States (SIDS) must retain access to the remaining carbon budget to support their sustainable development and right to self-determination.

On applicable law, Timor-Leste argued for harmonisation of obligations under climate treaties, customary international law, and other legal frameworks, declaring that climate treaties contain both substantive and procedural rules specifically tailored to address climate change and thus reflect the latest expression of State consent. It also asserted that prevention and other obligations of customary international law and human rights law, and under the U.N. Convention on the Law of the Sea, complement the climate treaty regime but do not impose a more rigorous due diligence standard than that derived from the Paris Agreement. At the same time, it criticised the failures of industrialised countries to meet their climate finance obligations, noting the inadequacy of the $300 billion annual goal and the voluntary nature of the Loss and Damage Fund. Timor-Leste called for mandatory funding for Loss and Damage and debt forgiveness to enable vulnerable States to address climate change without undermining their poverty alleviation and development efforts. In relation to the prevention of transboundary harm, Timor-Leste argued that to prove a breach of this rule, States must show that there is a direct causal link between the conduct of a specific State and specific damage to another State.

Timor-Leste's submission articulated a decolonial demand for climate justice but revealed several contradictions in its legal argumentation. While it emphasised harmonisation between legal regimes, its claim that due diligence obligations under the climate treaties are not strengthened by other applicable duties risks undermining stricter standards found in customary international law and human rights frameworks that may help hold polluters accountable. This approach would also provide States with wide discretion, and, for example, their GHG emissions would not be guided and limited by considerations of what constitutes the equitable use of the remaining carbon budget. Timor-Leste's critique of voluntary loss and damage mechanisms highlighted the inequities in global climate finance but lacked concrete legal arguments to tie these failures to State responsibility under international law. By relying heavily on treaty obligations without sufficiently addressing broader legal principles, including the duty to provide reparations for harm, Timor-Leste risks contradicting its decolonial stance, which demands accountability from industrialised nations for historical and ongoing contributions to the climate crisis.

Tonga

Tonga opened its submissions by framing the climate crisis as an existential threat to the natural environment, livelihoods, and culture of its people. Given the urgent need to take collective action to address the increasing risks and harms of the climate crisis, Tonga stressed that it is the 'systemic integration' of climate change treaties, human rights treaties, and all other relevant rules of international law that inform the legal obligations of States in respect of climate change. Throughout its submissions, Tonga highlighted the united front and leadership of the Pacific Islands in bringing forward the request for the Advisory Opinion, and on several matters of international law.

Tonga's oral submissions focussed on three points. First, Tonga urged the Court to ensure that the principle of CBDR-RC informs the Court's interpretation of State obligations in order to deliver outcomes that are consistent with the principle's equitable nature. This includes taking due account of States' capabilities and national circumstances. Second, and relatedly, Tonga argued that the Court must clarify the scope of the duty to cooperate, which relates to the provision of financial and technical assistance. In this regard, Tonga underscored that there is an explicit interdependency between the fulfillment by developed States of their obligations to provide financial and technical assistance and the ability of developing States to meet their obligations under the climate change treaties. Third, Tonga argued that the ICJ should affirm the presumption of the continuity of statehood and the preservation of State territorial boundaries instead and maritime zones in light of sea level rise. To that end, Tonga pointed out a strong consensus and well-established practice across multiple regions (*opinio juris)*, including the Pacific Islands and Asia.

Tonga delivered arguments sensitive to the experience of SIDS. While Tonga did not directly address the second question on the legal consequences of breach, Tonga's choice to emphasise the need to achieve equitable outcomes, particularly those in relation to climate finance and technical assistance, might be seen as a welcome addition to the arguments by Pacific Island States, which have thus far focused on the colonial histories, need for intergenerational equity, and nature of reparations in light of historic emissions. However, Tonga fell short by not urging the Court to clarify the critical human rights obligations and State responsibility in the context of harmful anthropogenic GHG emissions, a recurring theme emphasised by other climate-vulnerable States.

 Tuvalu

In their opening, Tuvalu highlighted this was its first appearance before the International Court of Justice (ICJ). The catastrophic effects of climate change on Tuvalu were powerfully underlined by their delegation, which noted how, despite producing less than 0.01% of GHG emissions on the current trajectory of emissions, Tuvalu is expected to be the first country to be completely lost to climate-related sea level rise. In moving video testimony, the direct personal experience of families losing homes and livelihoods demonstrated the existential stakes for Tuvaluans, illustrating the catastrophic harms that fundamentally interfere with their basic human rights. Tuvalu's statement focused on two core legal issues: the right of self-determination and the implications of climate change for States' rights of survival and territorial integrity.

Tuvalu focused on States' individual and collective obligations to promote, respect, and protect peoples' fundamental rights to self-determination from the existential threat posed by climate change. It argued that climate change threatens the Tuvaluan people's way of life, cultural identity, and ancestral lands, expressing that "it cannot be that in the face of such unprecedented and irreversible harm, international law is silent." Indeed, it is not; the right to self-determination is a cornerstone of international law, anchored in several treaties and customary international law. The ICJ itself has found that self-determination is a non-derogable, peremptory norm of international law with a broad scope of application extending beyond its historical origins in decolonization. Tuvalu was clear: its fundamental right to self-determination is being violated in the wake of devastating climate impacts. Tuvalu linked this violation to territorial integrity, noting that if Tuvalu cannot survive, its people's free and genuine expression of their status and future becomes impossible. It also highlighted violations caused by the forced departure of peoples from their submerged lands and their dying oceans, urging the Court to address these issues for the sake of their survival. In a connected line of argument, Tuvalu's counsel addressed the

survival of States, linking it to the principles of State continuity, territorial integrity, and sovereignty over natural resources. They called on the Court to require States to: first, act to stop transboundary harm before it is too late for Tuvalu and its people; second, increase financial contributions to least-developed and climate-vulnerable States; and third, preserve statehood by ruling that maritime baselines must remain fixed, despite physical changes to coastlines due to sea-level rise.

Tuvalu's oral intervention was a sobering one that threw into stark relief the absolute urgency, scale, and devastating impacts of the climate crisis. Tuvaluans are doing everything they can to preserve their nation from extinction through land reclamation activities. They are even exploring a "digital Nation initiative" to "recreate" Tuvalu's land, culture, and government in digital form. Meanwhile, throughout the hearings, major polluters have engaged in playing the legal system to prioritize narrow self-interest, doing their utmost to evade and dilute their legal duties — whilst other States face the threat of disappearing altogether. It is time to break this cycle of harm and impunity. The Court has a solemn responsibility to hear Tuvalu's call to keep the right to survival and the right to self-determination at the very center of its critical advisory opinion. The delegation quoted a Tuvaluan climate activist who powerfully said: "Tuvalu will not go quietly into the rising sea."

 Union of Comoros

The Union of the Comoros opened its submissions by highlighting that it is one of the island States most vulnerable to climate change despite its negligible GHG emissions, highlighting the efforts that have been taken to combat sea level rise and salinisation. Its counsel emphasised the interconnectedness of law applicable to climate change by urging the Court to take a systemic interpretation of the entire corpus of international law to find that State obligations in respect of climate change are complementary and not conflicting. They further argued that the Paris Agreement and the U.N. Framework Convention on Climate Change (UNFCCC) establish collective obligations for mitigation, adaptation, and cooperation, with a clear emphasis on differentiated responsibilities — with a particular emphasis on financial and technical assistance to achieve equity and intergenerational justice.

Comoros highlighted that customary international law, including the no-harm rule and the duty of due diligence, requires States to prevent transboundary environmental harm by implementing measures proportionate to their resources, capabilities, and scientific knowledge. It argued that the due diligence obligation has evolved to demand robust and context-specific actions, as evidenced by the International Tribunal for the Law of the Sea's (ITLOS) interpretation of the duty in its recent climate advisory opinion. Comoros also argued that human rights law imposes positive obligations on States to adopt measures addressing climate change due to its adverse effects on human rights, including the right to self-determination. Comoros contended that States are responsible for preventing transboundary harm affecting individuals outside their territory if there is a causal link between their activities and the harm, and if they exercise effective control over those activities. Comoros underscored that climate change threatens the territorial integrity and survival of SIDS, arguing that these threats constitute a breach of States' unalienable right to survival.

Regarding State responsibility and reparations, Comoros argued that the failure to adopt necessary measures to prevent harm from GHG emissions constitutes an internationally wrongful act, one that breaches obligations owed to the international community as a whole *(erga omnes)*.

It stressed that reparations must follow such breaches, including cessation of wrongful acts, compensation for loss and damage, financial support, capacity building, and adaptation assistance. Importantly, Comoros refuted excluding responsibility for pre-UNFCCC emissions by asserting that such emissions represent continuing and composite acts under customary international law, which encompasses obligations predating the UNFCCC framework. Moreover, on causality and the plurality of acts, it underscored that anthropogenic GHG emissions were caused by the cumulative actions of multiple industrialised States. In this sense, Comoros argued that customary international law provides a framework for addressing collective and individual State responsibility. Comoros urged the Court to apply the polluter pays principle, noting that the share of responsibility for harm should be determined based on each State's individual contribution to global emissions. It also urged the Court to confirm that breaches of climate obligations, especially involving multiple injured and responsible States, need both accountability and loss and damage mechanisms.

The Union of the Comoros, despite not submitting a written statement, delivered a powerful plea for climate justice by rejecting arguments from industrialised States and major polluters while advocating for the interconnectedness of climate law, the law of the sea, and general international law. Comoros rightly called for robust accountability mechanisms to address the cumulative harm caused by GHG emissions. Aligning with the Commission on Small Island States for International Law on Climate Change (COSIS), Comoros underscored the existential threats of climate change that breach unalienable rights to survival, territorial integrity, and self-determination. It urged the Court to clarify State responsibility, including in relation to reparations, compensation for loss and damage, and equitable accountability for collective harm. Comoros stood resolute in calling on the Court to deliver an Advisory Opinion that upholds the rights of the most vulnerable and ensures justice for those disproportionately affected by the climate crisis.

 Uruguay

Uruguay's oral statement underscored the scientific consensus confirming that anthropogenic GHG emissions are the dominant cause of climate change; this is no longer a mere future threat, but the reality we face today. The submission highlighted two main arguments: (1) the applicability of the duty of prevention and the duty to cooperate in light of the principle of CBDR-RC, and (2) the existence of clear legal consequences for States that breach these obligations.

Uruguay submitted that States had an indisputable duty to use all means at their disposal to prevent serious or irreversible damage caused by GHG emissions from sources within their jurisdiction or control to the environment of another States. Given the conclusive scientific evidence of the causes of climate change and the harm inflicted on the environment, it argued that the long-standing duty to prevent transboundary harm to the environment clearly extends to harm caused by GHG emissions. Uruguay observed that in light of the precautionary principle, this duty also exists in the absence of full scientific certainty with respect to the potential damage to be prevented. The duty of prevention is not superseded by the climate treaties, it argued, but rather applies jointly with, and illustrates, States' specific obligations under such treaties.

On legal consequences, Uruguay asserted that where significant harm has been caused to the climate system and other parts of the environment, States can be held accountable for their breach of an obligation under the general rules of State responsibility, as already supported by the ICJ's case law. Such obligations involve cessation and reparation duties. It emphasised that this customary obligation applies jointly with specific financial obligations under the UNFCCC, and

that meeting the obligation under the law of State responsibility does not absolve States from having to continue meeting their obligations under the climate treaties. While recognising the challenges in establishing a causal link between specific acts and omissions and harm, Uruguay argued that such complexity does not absolve States of their duties to provide reparations when they fail to uphold their obligations. It further stressed that not all State obligations require material harm or damage in order for that obligation to be considered breached.

Uruguay presented well-reasoned legal arguments in support of climate justice and countered many points raised by a minority of States, particularly in relation to the applicability of the longstanding duty to prevent GHG emissions and the legal consequences that arise when obligations are breached. For instance, in direct contradiction to an argument made earlier by Timor-Leste, Uruguay highlighted an often overlooked reality that there is no general requirement of material harm or damage as a requisite for determining State responsibility for breaching their obligations. Similarly, Uruguay underscored the undeniable scientific evidence regarding the causes and consequences of GHG emissions, countering arguments that allege that climate change is too complex to establish State responsibility for harm to the climate system.

 Viet Nam

In its opening, Vietnam emphasised that it is a low-lying developing State highly vulnerable to the impacts of climate change. Its people face an increasing number of climate change impacts, including deadly tropical cyclones. This includes the devastation wreaked in 2024 by the most powerful and destructive supertyphoon to hit Vietnam in 70 years, which killed more than 300 people, injured nearly 2000 others, and resulted in an estimated 3.3 billion US dollars of damage to the country's economy.

In answering the first question before the Court, Vietnam firmly rejected the argument that the climate treaties were *lex specialis*, urging the Court to follow the principle of systemic integration and harmonisation to find that State obligations in respect of climate change are found across the entire corpus of international law. This includes the principle of CBDR-RC. Vietnam also made specific arguments as to the standard of conduct under the duties to prevent significant harm and to cooperate. On the standard of conduct, Vietnam stressed that the due diligence obligations must be based on the available scientific and technological information, the urgency of the risk at hand, and the severity of the damage suffered — all of which 'science is clear on'. On this point, Vietnam also welcomed the initiative of the Court to meet with scientists before the commencement of the oral hearings. On the duty to cooperate, Vietnam argued that the climate treaties are not exhaustive of State obligations to cooperate, as the duty is also found in customary international law. The relevance of the CBDR-RC principle to the climate context also means that factors such as the transfer of relevant technologies, conservation of carbon sinks, and adaptation needs must be taken into consideration when determining whether that duty has been fulfilled.

In answering the second question before the Court, Vietnam reiterated that instruments of international law beyond climate treaties, such as the International Law Commission's (ILC) Draft Articles on Responsibility of States for Internationally Wrongful Acts, are relevant to determining the legal consequences for breaching state obligations in respect of climate change. Importantly, Vietnam rejected the view that historic emissions were excluded from any liability regime, as the principle to prevent transboundary harm was established before much of the significant emissions in modern history.

Viet Nam affirmed the role of science in establishing a causal link between GHG emissions and the harms suffered to the climate system. Furthermore, it elaborated that while States may be collectively responsible for the ultimate damage, they may still be held individually liable under the doctrine of the Responsibility of States for Internationally Wrongful Acts. States would then be obligated to cease such intentionally wrongful acts and make reparations for the damage caused. Viet Nam further maintained that the principle of CBDR-RC was relevant when ordering cessation or reparations in terms of guiding the extent and nature of the award. The extent of the award must be informed by the historical emissions and financial and technical means of the State. The nature of the award would depend on the respective capabilities of the State and the nature of the loss suffered. Viet Nam clarified that reparations are not limited to monetary compensation and should also involve restorative measures for the national environment, support for mitigation and adaptation efforts, measures to prevent the recurrence of the harm, and other forms of assistance to build climate resilience.

Viet Nam was especially sensitive to the role of science before the Court, particularly the ways in which loss and damage varies across the natural environments of States. This understanding of available scientific information should inform the Court's assessment of the causal links between State actions and environmental harms, and the type of remedy awarded. Viet Nam's arguments on the role of CBDR-RC were also comprehensive, providing many examples of the ways in which States differed in their financial, infrastructural, and scientific capacities. However, while the principle is doubtlessly relevant for interpreting obligations in respect of climate change, caution should be heeded for its application to the legal consequences of breach. CBDR-RC cannot be a scapegoat for developing or less-able countries to escape responsibility for environmental damage. Unfortunately, breaches of human rights and harms caused to future generations were not raised in Viet Nam's oral submission.

Zambia

Zambia emphasised a shared legal and moral duty to preserve a sustainable planet for future generations, focusing on the effects of the climate crisis on its economy. Allocating over 30% of its national budget to debt repayment has severely hampered Zambia's ability to invest in climate adaptation, mitigation, and loss and damage measures — from building resilient infrastructure to developing green energy solutions. Climate-induced droughts and declining river levels have strained critical sectors, including agriculture, tourism, and energy, forcing increased reliance on coal as hydropower diminishes. Zambia's submission made three key arguments. First, it stressed that climate obligations extend beyond the Paris Agreement and the UNFCCC. Second, it underscored developed States' duties to equitably reduce GHG emissions and provide support to developing States for adaptation and mitigation. Finally, Zambia called on the Court to apply its jurisprudence and the ILC's standards on State responsibility to climate change, urging clarity on legal consequences, including reparations.

Zambia asserted that obligations to reduce GHG emissions arise not only from the Paris Agreement but also from customary international law, with the principle of prevention constituting a due diligence obligation recognised under the Paris Agreement. The principle of CBDR-RC must guide the equitable allocation of emissions reductions, which Zambia asked the Court to clarify. Zambia further argued that developed States have a positive obligation to support developing States' mitigation and adaptation under CBDR-RC. Current practices, such as repurposed humanitarian aid or concessional loans, fall short of States' positive obligations to provide

support. As part of reparations, Zambia proposed alternative finance mechanisms, including debt relief, grants, and debt-climate swaps, which it argued are more appropriate than loans. Zambia also argued that State responsibility offers a flexible framework for addressing the complexity of climate change, recognising wrongful acts in aggregate, holding multiple States accountable regardless of shared responsibility, and emphasising that liability does not depend on causation or damage. States must cease wrongful conduct, provide reparations, and fulfill their obligations. Zambia underscored that causation is not a bar to responsibility.

Zambia addressed the Court with a clear claim: climate justice necessitates a comprehensive interpretation of State obligations, extending beyond the Paris Agreement and the UNFCCC. Drawing on customary international law and the ILC's Draft Articles on State responsibility, Zambia highlighted that developed States' obligations include equitable GHG reductions and increased support for adaptation and mitigation in developing countries, as guided by the principle of CBDR-RC. Furthermore, Zambia underscored the applicability of the regime of State responsibility to climate change, citing Article 47 of the ILC's Draft Articles and the Court's jurisprudence on reparations. Zambia urged the Court to clarify legal consequences, including debt relief, as essential to overcoming barriers to achieving climate resilience. Zambia's plea reflects its belief that when Africa loses, the world loses, but when Africa thrives, the world thrives with it.

Pacific Islands Forum Fisheries Agency

The Pacific Islands Forum Fisheries Agency (FFA) explained that climate change is heating the oceans, causing deoxygenation and acidification, with adverse effects on coral reefs, shellfish, and fish populations. Large-scale bleaching events caused by marine heat waves and acidification are harming coral reefs and associated fisheries. The most important Pacific fishery from an economic perspective is that of tuna, which has been sustainably managed in this region, unlike in other parts of the world. Yet climate change is causing tuna populations to shift eastward out of the exclusive economic zones of Pacific Island States and into the high seas, putting the sustainable management and economic benefits of tuna for these States at grave risk.

The FFA explained that with almost half (47%) of Pacific Island households dependent on fisheries for some or all of their income, the climate crisis threatens the livelihoods, food security, and economies of Pacific SIDS. Other adverse impacts include loss of culture, erosion of Indigenous and local knowledge, and negative impacts on traditional diets, food security, and health. Some coastal communities have already been forced to relocate. Unless there are rapid and major declines in GHG emissions, climate impacts on fisheries will continue to worsen in the coming decades. There will also be severe declines in biodiversity, which may further undermine food security, livelihoods, and cultures.

The FFA emphasized the profound economic, social, and cultural dependence of SIDS on healthy oceans. The climate crisis is already having extensive negative impacts on oceans, harming fisheries, livelihoods, food security, health, culture, biodiversity, and national economies. In closing, the FFA called on the international community to take urgent action to reduce GHG emissions to counter the profound economic, social, and cultural threats of ocean pollution.

Alliance of Small Island States (AOSIS)

The Alliance of Small Island States (AOSIS) comprises 39 small island and low-lying coastal States that are acutely vulnerable to the damaging impacts of the climate crisis on people,

communities, cultures, ecosystems, safe water supplies, food security, and livelihoods. The impacts already occurring include rising sea levels, coastal erosion, salinization, and ocean heating. AOSIS noted that adaptation measures, such as desalination facilities, are expensive. It emphasized four points in its submissions: the need to take into account the disproportionate impacts of the climate crisis on SIDS; the duty of cooperation, including financial and technological assistance, as a general principle of international environmental law; the duty of States to recognize the stability of maritime zones; and the principle of continuity of statehood and sovereignty. AOSIS urged the Court to evolve the interpretation and application of international law to confront new realities.

AOSIS made extensive submissions regarding the stability of maritime zones, calling on the Court to confirm the conclusions of several recent international declarations that the rights and entitlements flowing from maritime zones shall continue to apply without reduction, notwithstanding any physical changes caused by climate change-related sea level rise. It also urged the Court to affirm that statehood, once established, endures despite physical changes or even complete inundation of a State's terrestrial area due to climate change-related sea level rise. AOSIS concluded that it would be the pinnacle of inequity and contrary to the principles of justice underpinning all of international law if SIDS were to lose their statehood, sovereignty, and memberships in international organizations because of the acts of other States.

The compelling submissions of AOSISexplained why the profound existential threat posed by the climate crisis to nations' territories, peoples, and cultures should not pose an existential threat to their statehood. Because rising sea levels may cause the partial or complete inundation of some SIDS, particularly low-lying atoll nations, AOSIS made forceful arguments about preserving existing maritime boundaries and maintaining statehood and sovereignty. These submissions, driven by concerns about the very survival of some States, reflect the high stakes and extraordinary significance of the Court's Advisory Opinion on legal obligations and consequences in the context of the climate crisis.

The **lead editors** of today's Daily Briefing are **Aditi Shetye, José Daniel Rodríguez Orúe, Nikki Reisch, Sébastien Duyck,** and **Theresa Amor-Jürgenssen.**

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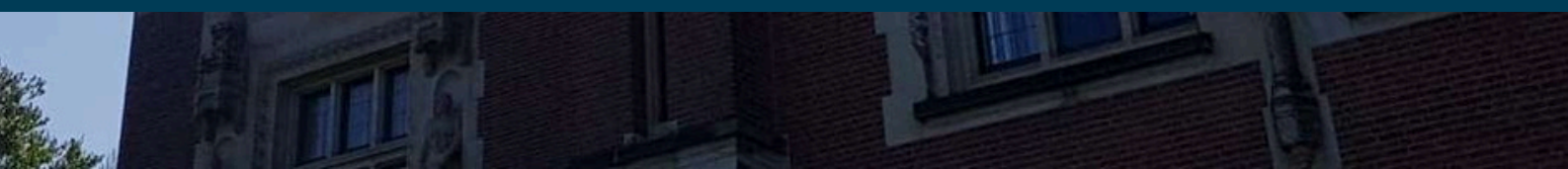
HISTORIC CLIMATE HEARINGS AT THE INTERNATIONAL COURT OF JUSTICE

DAILY DEBRIEF

December 13th, 2024



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

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

In a Nutshell

Today...

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

Today's Reactions

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

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

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

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

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

Outside the Court

World Youth For Climate Justice

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

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

Peoples' Petition

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

Read their testimonies

What's next?

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

The questions are:

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

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

Report on Each Intervention

Commission of Small Island States on Climate Change and International Law

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

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

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

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

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

Pacific Community

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

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

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

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

Pacific Islands Forum

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

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

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

Organisation of African, Caribbean and Pacific States (OACPS)

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

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

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

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

World Health Organization

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

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

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

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

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

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

European Union

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

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

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

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

 International Union for Conservation of Nature

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

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

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

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

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