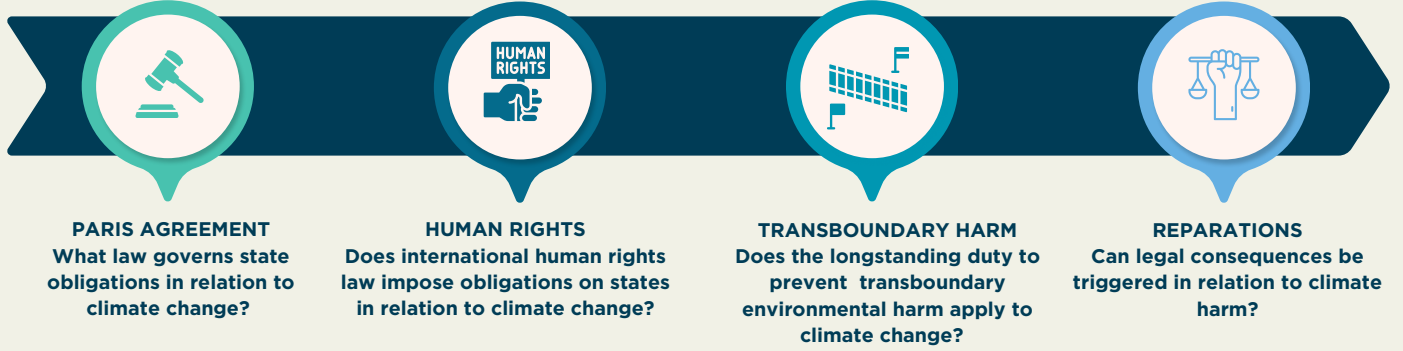


TOP ARGUMENTS

Week 1, December 2-6

BACKGROUND

This summary sheet unpacks some of the key arguments brought by States during the first week of the historic climate justice hearings at the International Court of Justice [December 2-6]. It presents key contrasting positions of major polluters and climate-vulnerable nations, especially concerning issues that have crucial implications for climate justice. The aim is to provide insight into how countries plan to build – or threaten to undermine – a safe and healthy world for present and future generations.



PARIS AGREEMENT

BIG POLLUTERS CLAIM: The only relevant international law defining State obligations on climate change is the UN climate regime [UNFCCC and Paris Agreement], which does not actually require States to do very much.

Some States led retrograde charges suggesting States' climate obligations are narrowly centered on the climate agreements, in particular the Paris Agreement (which, many of these States then conveniently argued, contains primarily voluntary commitments), outright dismissing the applicability of human rights law to climate mitigation and shrugging off the principle of prevention of transboundary harm. They urged the Court to refrain from identifying additional duties from other sources of law.



WHY THEY'RE WRONG: The ICJ can and should look to the entire universe of international law, which is not limited to the climate agreements, but encompasses multiple sources of international environmental and human rights law, the law of the sea, and other customary and treaty-based law. The climate regime did not erase pre-existing law when it was written, it added to it.

A striking number of countries denounced attempts by polluting States to hide behind the current climate regime and use the Paris Agreement as a shield to escape accountability.



HUMAN RIGHTS

BIG POLLUTERS CLAIM: Human rights law doesn't explicitly address climate change mitigation and thus doesn't require States to mitigate GHG emissions or phase out fossil fuels, or give individuals any right to bring climate-related claims. Also: human rights norms do not apply extraterritorially.

A few countries have used these arguments to escape accountability and avoid paying for the economic and non-economic harm they have caused by driving the climate crisis. The United States, Germany, and Russia even stressed that the right to a healthy environment lacks international legal protection despite its universal recognition at the UNGA in 2022. Major polluters arguments would critically undermine the protection of the human rights of individuals, Peoples, and future generations in the context of the climate crisis, which poses an existential threat to all human beings.



WHY THEY'RE WRONG: The idea that a law does not apply to climate change unless it explicitly mentions climate change or greenhouse gases is absurd on its face. There are countless contemporary problems and threats to human rights that are not expressly listed in human rights law, but that does not mean States do not have obligations under human rights law to take measures to protect against them.

As numerous courts, legal and scientific experts have recognized – and as many countries have powerfully argued to the ICJ – climate change is unquestionably a human rights crisis, foreseeably affecting all rights. It necessarily triggers States' obligations to take all measures within their power to prevent and minimize the violation of rights due to climate-destructive conduct within their jurisdiction or control. Crucially, human rights law also requires States to ensure effective remedy when rights are violated.



TRANSBOUNDARY HARM

BIG POLLUTERS CLAIM: The duty to prevent significant transboundary environmental harm does not apply to greenhouse gas emissions or climate change.



WHY THEY'RE WRONG: States have a longstanding obligation under customary international law not to cause or allow conduct within their jurisdiction to cause significant environmental harm to other States. That duty, which has been reaffirmed by the ICJ in past opinions, does not apply only to cross-border environmental damage to immediately neighboring States, but to harm to areas beyond national jurisdiction – including the global commons of the oceans and the atmosphere, as well as harm that reaches other States through those mediums. States must use all means at their disposal and take all necessary measures to prevent significant transboundary environmental harm from GHG emissions and climate change. If their conduct is not achieving that result, then their conduct must change.



REPARATIONS

BIG POLLUTERS CLAIM: The issue of legal consequences does not even arise because it is not possible to prove an individual State's breach of international legal obligations or to link that breach with specific climate harms. Also: climate harms are the result of cumulative emissions by many States so none of them can be held accountable. So the Court need not reach the second question posed in the UNGA resolution at all.

In brief, the world's major polluters, including the United States and Russia, attempted to tear apart the legal bases for climate reparations and sweep historical conduct and knowledge under the rug, in an effort to escape accountability and their duties to repair the harms they have caused.



WHY THEY'RE WRONG: Big polluters' only defense is to deny that they ever breached their legal obligations, because in the face of mounting evidence of devastating climate-related harm, they cannot otherwise avoid legal responsibility to provide remedy and reparation. There is no getting around the fundamental principle of law that where there is a breach of duty and injury ensues, there is a corresponding obligation to cease the wrong and repair the harm. International law is also very explicit about the fact that where several States are responsible for the same harm, each State may be held accountable individually.

Many countries, including Vanuatu, Fiji, and Costa Rica, persuasively set forth the legal basis for climate reparations proportionate with climate harms. Colombia invited the Court to clarify that compensation should be at a level corresponding to the harms suffered.

