

What would a favorable ICJ AO look like and what would it mean for the progressive development of international law and broadly for climate action?¹

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Distinguished guests, and esteemed colleagues, it is an honor to stand virtually before you, today, as we gather to acknowledge the tremendous efforts of the Pacific Islands Students Fighting Climate Change and the World's Youth for xClimate Justice. I would, first, like to extend my heartfelt gratitude to these inspiring young leaders, not only for organizing this momentous event, but, especially, for spearheading the historic request for an Advisory Opinion from the International Court of Justice (ICJ) on the obligations of States in respect of climate change. Their unwavering dedication to combating climate change and their relentless pursuit of climate justice serve as a beacon of hope and inspiration for us all.

As a Senior Fellow in Global Climate Change Litigation at the Sabin Center for Climate Change Law, my expertise has been honed through years of dedicated study and meticulous tracking of the evolving climate litigation movement. I have had the privilege of collaborating with esteemed colleagues who have laid the foundation for my work over the past decade. At this extraordinary juncture in history, we find ourselves at the cusp of an unprecedented moment within the climate justice movement. While we have witnessed significant milestones through landmark cases and groundbreaking decisions, the Advisory Opinion request to the ICJ and those to the Inter-American Court of Human Rights (IACtHR) and the International Tribunal for the Law of the Sea (ITLOS) could form truly transformative global responses to the climate emergency we face. The convergence of these powerful legal instruments holds the promise of reshaping our collective trajectory towards a more sustainable and just future.

I am deeply humbled and grateful for the invitation to address this distinguished gathering and to offer my insights on what a favorable ICJ advisory opinion could encompass. Together, let us embark on this crucial discussion and explore the transformative potential of international law in the face of the climate emergency.

Before considering the characteristics of a favorable ICJ's Advisory Opinion and its implications for the progressive development of international law and climate action, I must first consider my own qualifications to address this matter. It is undeniable that I am fortunate to occupy a privileged position, residing in New York, and working within an institution that affords me a strong platform for advocacy. However, my perspective is also enriched by my unique identity as a woman, a mother, and a representative of the Global South. My roots and upbringing have played an integral role in shaping my worldview. They remind me of the need for diverse perspectives in addressing complex issues, such as climate change. While I may no longer be part of the "youth," my identity as a mother imbues me with profound concern for intergenerational justice. We must urgently safeguard a sustainable and habitable planet for future generations.

¹ Speech given to representatives from over 22 countries at the launch of the Youth Climate Justice Handbook in the Hague on 20 June 2023.

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Hence, my inquiry into the ICJ's Advisory Opinion on climate changes encompasses a multifaceted approach. This approach draws upon my scholarly expertise, cultivated through decades of extensive research and analysis on the development of climate change law and, more specifically, climate change litigation. Beyond my academic expertise, my perspective is also informed by the worldviews and concerns I have already highlighted. It is through this lens that I view what a favorable Advisory Opinion would entail. A favorable Advisory Opinion would be not only a progressive step in the evolution of climate change law, but also a response that would resonate with our global community, encompassing inclusivity and addressing the needs and aspirations of the many rather than a select few. The Advisory Opinion should provide a comprehensive and equitable solution, serving as a catalyst for collective action, and laying the groundwork for a sustainable future that benefits every individual and nation.

A favorable Advisory Opinion by the ICJ on climate change would encompass several key elements, which would contribute to the progressive development of international law and climate action. These elements would address the scientific consensus on climate change, provide a rights-based perspective, embrace international environmental law principles, clarify specific obligations of States, and recognize and address vulnerabilities within the climate crisis. I will address these elements in turn.

First, a favorable ICJ's Advisory Opinion would begin by, unequivocally, acknowledging and actively engaging with the scientific consensus on climate change and the urgent need for decisive action. This recognition would entail acknowledging the overwhelming evidence and consensus among scientists on the reality of climate change, its anthropogenic underlying causes, and its severe consequences on human societies and the environment. By emphasizing the scientific foundation of climate change, the Advisory Opinion would emphasize the critical importance of grounding legal responses in sound scientific knowledge. Moreover, it would play a pivotal role in dispelling any lingering doubt on the impacts of climate change on communities worldwide and in countering climate deniers and the spread of misinformation. As the world's preeminent judicial body, the ICJ has the power to establish a definitive stance on climate change and debunk unfounded claims. In turn, this would reinforce the credibility and authority of the court's pronouncements.

Second, the Advisory Opinion would embrace a rights-based perspective on climate change, seamlessly integrating human rights responses into its overarching framework. The ICJ is not a human rights court. However, this inclusive approach is consistent with international law. It would entail recognizing that climate change has direct and indirect consequences which impact the enjoyment of fundamental human rights, including but not limited to the right to life, health, food, water, and a healthy environment. By firmly integrating human rights within the framework, the Advisory Opinion would bring to the forefront the moral and legal obligations of States to safeguard and fulfill these rights in the context of climate change. Notably, the Advisory Opinion would align with the landmark recognition of the right to a healthy environment by the United Nations General Assembly in 2021. The recognition of this right signaled a pivotal moment in the evolution of a rights-based approach to environmental protection and climate change. Moreover, the Advisory Opinion would build upon the foundations set by numerous rights-based climate litigation cases worldwide. It would leverage the jurisprudence which has already recognized the pervasive impact of climate change on human rights. By anchoring its approach in the protection

of human rights, the Advisory Opinion would consolidate a robust and just legal framework that addresses the intersecting challenges of climate change and human well-being.

Third, the Advisory Opinion would, wholeheartedly, embrace the fundamental principles of international environmental law — several of which have already been recognized. These international environmental legal principles would serve as a guiding compass for a comprehensive approach. These principles include among others the precautionary principle, the principle of prevention, the principle of avoiding transboundary harm, the principle of solidarity, the principle of common but differentiated responsibilities and respective capabilities, equity under international environmental law, the obligation to provide remedies for human rights violations arising from climate change, the principles of good faith, and public participation. Of particular significance would be the Advisory Opinion's emphasis on the principle of international cooperation. It would describe the obligations of States to collaborate and cooperate in addressing climate change and highlight the imperative of providing financial commitments to support the endeavors of least developed countries and small island nations which will disproportionately bear the impact of the climate crisis. This principled stance would underscore the collective responsibility of all States in combating climate change, while simultaneously ensuring fairness in the distribution of both burdens and benefits. By centering on these principles, the Advisory Opinion would consolidate international environmental law and reinforce the indispensable role of cooperation and equity in shaping effective climate action at a global scale.

Fourth, and perhaps most importantly, the Advisory Opinion would clarify specific obligations of States in relation to mitigating their greenhouse gas (GHG) emissions, and establishing mechanisms for addressing loss and damage. It would outline the responsibilities of States to reduce their GHG emissions in line with the Paris Agreement and other relevant international agreements. It would decisively declare that States are under a collective obligation to reduce GHG emissions and that each State must commit to its fair share of emissions reductions to keep with the objective of limiting global warming to 1.5°C. This clarity would underscore the notion that every country must commit to its fair share of emissions reductions, recognizing that true progress necessitates a shared burden borne by all.

Fifth, the Advisory Opinion would emphasize the duty of States to develop and implement adaptation measures to address the impacts of climate change. The obligation of adaptation not only implies that each State ensures that it adapts to the effects of the climate crisis in their own jurisdiction, but also that it provides cooperation and solidarity in assisting other States to adapt, especially those most affected. The obligation to adapt extends beyond national boundaries. It requires concerted efforts to support and uplift vulnerable nations facing the most severe consequences of the climate crisis. By emphasizing this cooperative approach, the Advisory Opinion would underscore the importance of international collaboration in tackling the multifaceted challenges posed by climate change.

Sixth, the Advisory Opinion would recognize the need for financial mechanisms to support developing countries grappling with loss and damage caused by climate change. Equitable support systems are needed to aid nations in coping with the far-reaching impacts and challenges arising from climate-related disruptions. By recognizing the necessity of financial resources and mechanisms to address such loss and damage, the Advisory Opinion would reinforce the principle

of justice and ensure that States which will bear the brunt of climate change receive the necessary assistance.

By addressing these critical elements, the Advisory Opinion would play a transformative role in shaping international law and advancing climate action. It would provide clear guidance on emissions reduction, adaptation efforts, and mechanisms for addressing loss and damage. Its impact would extend far beyond legal discourse and, instead, serve as a catalyst for equitable and sustainable global responses to the pressing challenges posed by the climate crisis. In the process, the Advisory Opinion would address vulnerabilities within the climate crisis and acknowledge that the impacts of climate change are not distributed evenly. It would highlight the disproportionate burden borne by certain groups, particularly already vulnerable and marginalized groups. A progressive Advisory Opinion would recognize and engage with the North-South disparities of the climate crisis and specific vulnerable groups within both the Global North and the Global South. The Advisory Opinion would address the particular vulnerabilities faced by Indigenous communities, low-income communities, coastal communities, small-scale farmers, women and girls, Black and Colored communities, and people with disabilities. By understanding and addressing these disparities, the Advisory Opinion would emphasize the importance of equitable and inclusive climate action.

Overall, a favorable Advisory Opinion by the ICJ in line with the elements described above would contribute to the progressive development of international law and climate action. It would achieve such progress by providing clarity on the obligations of States, integrating scientific knowledge and human rights principles, promoting international cooperation, and addressing vulnerabilities within the climate crisis. It would serve as a guiding document for legal practitioners, policymakers, and advocates to shape and enact effective and just climate change policies and legal frameworks at the national and international levels.