

# International Climate-Change Related Lawsuits and Advisory Opinions

By Su Ly, Staff Editor Volume 39



Since 2020, the United States saw an influx of climate-change related [lawsuits](#) against the big fossil fuel producers for their “decades-long coverup about climate change,” related to their production, sale, and lobbying efforts. The U.S. lawsuits against fossil fuel producers mirrors the ongoing push within the international community to define responsibilities and [obligations](#) for the biggest polluters. On the international scale, three advisory opinions were requested from three different courts and tribunals:

1. International Tribunal for the Law of the Sea (“ITLOS”);
2. Inter-American Court of Human Rights (“IACtHR”); and
3. The International Court of Justice (“ICJ”).

Although not legally binding, [advisory opinions](#) offer a chance for a Court or Tribunal to opine on a certain issue of international law. The ICJ allows for written and oral submissions regarding views of how the ICJ should rule, with many countries submitting their views on the matter. Regarding the ICJ’s advisory opinions, they “carry great [legal weight](#) and moral authority,” often used as an instrument of preventive diplomacy to help keep the peace and strengthen peaceful relations between States. In the ICJ’s *Obligations of States in respect of Climate Change* Advisory Opinion, the Court was asked to opine on the following the [questions](#):

1. “What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gasses (GHG) for States and for present and future generations?”

2. What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
  - a. States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
  - b. Peoples and individuals of the present and future generations affected by the adverse effects of climate change?”

**The Path Forward—Acting in Good Faith.** Several States submitted their [views](#) on the matter, including specially affected states in the Pacific and Caribbean. The ICJ’s ruling on this matter is yet to be determined, with only one of the three Tribunals having ruled on the matter—the International Tribunal for the Law of the Sea. ITLOS was asked to opine on specific obligations, similarly to the ICJ’s questions, but decided to create obligations for protecting and preserving the marine environment in relation to climate change impacts. ITLOS asserted that states party to the United Nations Convention on the Law of the Sea (“UNCLOS”) are [obligated](#) to, *inter alia*,

1. “take all necessary measures to prevent, reduce and control marine pollution from anthropogenic GHG emissions and to endeavor to harmonize their policies in this connection”; and
2. “take all measures necessary to ensure that anthropogenic GHG emissions under their jurisdiction or control do not cause damage by pollution to other States and their environment.”

Although the ITLOS advisory opinion offers no enforcement mechanism regarding these measures, its persuasive authority is in line with the [warnings](#) about a global climate crisis as noted by the Intergovernmental Panel on Climate Change. Regarding the ICJ and IACtHR’s upcoming advisory opinions, it is likely that they will create similar [obligations](#) to the ITLOS opinion. There is some distinction, however, between the three opinions. The ITLOS opinion is specific to maritime pollution. And the IACtHR’s opinion is limited to prevention obligations under the *Paris Agreement*, which encourages states to prevent reaching a global warming temperature of 1.5°C. On the other hand, the ICJ’s opinion is focused on the duty of protection and may create obligations for states to avoid transboundary harm since climate change has cross-border implications. These three opinions offer a shift away from individual state action and towards a globalized solution to addressing the oncoming climate catastrophe. It should be noted that the advisory opinions are merely advisory,

without any binding legal effect or enforcement measures, thus requiring States to act in good faith to minimize their risks, establishing effective monitoring mechanisms, seeking prior authorizations for potentially harmful activities, notifying and sharing information, consulting with other states to exchange relevant information, and preparing contingency plans for emergencies.