

### Implications for continued fossil fuel exploration, exploitation, export and consumption

At the heart of the Advisory Opinion lies the finding that limiting global average temperature rise to 1.5° C above pre-industrial levels is the agreed primary temperature goal of the parties to the Paris Agreement, consistent with the best available science.<sup>1</sup> This is significant because Art 2(1)(a) of the Paris Agreement incorporates two temperature goals and the Court has focused clearly on 1.5°C,<sup>2</sup> taking into account also the commitment in Art 4(1) to the aim of reaching global peaking of greenhouse gas emissions as soon as possible so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century.<sup>3</sup> By clarifying the role of the 1.5° goal, the Court has set the tone for worldwide efforts to combat climate change, emphasising that this target is scientifically necessary as well as legally pivotal.

The Court built here directly on established science, as well as decisions taken at meetings of the parties to the Paris Agreement, viewing these as subsequent agreements in relation to its interpretation.<sup>4</sup> The Court emphasised the Paris Agreement's temperature goal as a means for achieving the overall objective set in Article 2 of the United Nations Framework Convention on Climate Change (UNFCCC) of averting dangerous concentration of greenhouse gases (GHGs) in the atmosphere.<sup>5</sup> The irony is that Earth just experienced its warmest year – and its first year above the threshold of 1.5C, according to the World Meteorological Organisation's State of the Global Climate report for 2024.<sup>6</sup> Consistent with the attention devoted to the 1.5° goal, the Court focussed centrally on the mitigation of climate change, defined as involving human intervention to reduce GHG emissions or enhance carbon sinks, such as forests.<sup>7</sup>

Perhaps the greatest surprise was the extent to which the Court explained clearly how its various key findings apply in respect of fossil fuels.<sup>8</sup> Licensing of exploration, production, subsidising and consuming fossil fuels all constitute conduct that could be in breach of international law.<sup>9</sup> This impliedly also includes the export of fossil fuels. Judges Bhandari and Cleveland considered the Court should have taken an even more emphatic approach to “the reality that irreversible harm to the environment is inevitable if the current pace of fossil fuel production, licensing and subsidisation

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<sup>1</sup> *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025 [2025] ICJ Reports, [224] and [270] citing the Glasgow Climate Pact, available at [https://unfccc.int/sites/default/files/resource/Overarching\\_decision\\_1-CMA-3\\_1.pdf](https://unfccc.int/sites/default/files/resource/Overarching_decision_1-CMA-3_1.pdf), para 6.

<sup>2</sup> Art 2(1)(a): “(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;”.

<sup>3</sup> Art 4(1): “In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.”

<sup>4</sup> *Obligations of States* (n 1) [225].

<sup>5</sup> *Obligations of States* [223, 225], referring to Article 2.1 Paris Agreement.

<sup>6</sup> World Meteorological Organisation, State of the Global Climate, 2024, available at <https://wmo.int/publication-series/state-of-global-climate-2024>.

<sup>7</sup> *Obligations of States* (n 1) [230] referring to [85].

<sup>8</sup> Cymie Payne, “Unpacking the ICJ's Recent Opinion on Climate Change”, Environmental Law Institute, 25 July 2025, available at: <https://www.eli.org/vibrant-environment-blog/unpacking-icjs-recent-opinion-climate-change>

<sup>9</sup> *Obligations of States* (n 1) [94], [427]. Joint Declaration of Judges Bhandari and Cleveland [2, 4]. See further under *Room to Sue? State Responsibility, Causation and Remedies*.

continues unchecked”.<sup>10</sup> As the two judges put it “global production of fossil fuels is on a collision course with the scientific consensus put forward for combatting climate change”.<sup>11</sup> Emissions from existing fossil fuel infrastructure will already take us over 1.5° and no new fossil fuel extraction projects can be developed if we are to stay below this temperature.<sup>12</sup> Despite this, States intend producing more than double the amount of fossil fuels in 2030 consistent with 1.5°C.<sup>13</sup>

Mitigation of climate change through emissions reduction is so central in the Advisory Opinion that the Paris Agreement's other core objective of adaptation is defined in relationship with mitigation and as complementing mitigation obligations.<sup>14</sup> Further, the main mitigation obligations are determined to be obligations *erga omnes partes* (obligations among all parties) under the UNFCCC and the Paris Agreement.<sup>15</sup> They are also determined to be obligations *erga omnes* (obligations among all) that are of concern to all States of the world under general international law.<sup>16</sup> This means that all States have a legal interest in their performance and any State may invoke breaches of customary international law climate change mitigation obligations.<sup>17</sup>

Arguably, the real key to global mitigation efforts lies in States parties' Paris Agreement obligations to prepare, communicate and maintain Nationally Determined Contributions (NDCs) to international mitigation efforts every five years.<sup>18</sup> These are procedural obligations of result, meaning that parties must in fact actually do so.<sup>19</sup> The content of NDCs is also relevant to compliance, but, contrastingly, the Court considered that requirements as to content involve obligations of conduct, or best efforts obligations, to be executed to a standard of due diligence.<sup>20</sup> In this case the standard is “stringent” due diligence.<sup>21</sup> The Court helpfully clarifies the status of Article 4(3)'s provision that NDCs will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition.<sup>22</sup> The Court tells us these statements are “prescriptive”, meaning that these are requirements of NDCs, which must be right. We are also advised that the requirement for progression means that a State's NDC “must become more demanding over time”;<sup>23</sup>

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<sup>10</sup> Joint Declaration of Judges Bhandari and Cleveland [1]-[10].

<sup>11</sup> Joint Declaration of Judges Bhandari and Cleveland [7].

<sup>12</sup> Joint Declaration of Judges Bhandari and Cleveland [8], citing International Energy Agency, Net Zero by 2050. A Roadmap for the Global Energy Sector (Summary for Policymakers), 2021, p. 21

<sup>13</sup> Joint Declaration of Judges Bhandari and Cleveland [8].

<sup>14</sup> *Obligations of States* (n 1), [255, 259] citing Article 7 (4) Paris Agreement. For discussion, Declaration of Judge Tladi [34]-[37]. Also Priya Urs “Open the Floodgates: Standing for the Enforcement of Obligations Erga Omnes in the ICJ's Advisory Opinion on Climate Change”, 11 August 2025, National University of Singapore, available at <https://cil.nus.edu.sg/blogs/open-the-floodgates-standing-for-the-enforcement-of-obligations-erga-omnes-in-the-icjs-advisory-opinion-on-climate-change/>.

<sup>15</sup> *Obligations of States* (n 1) [440-442].

<sup>16</sup> [440-442].

<sup>17</sup> [439-443]. See also Declaration of Judge Tladi [34]. The Court does not consider the legal consequences that may follow from the breach of obligations *erga omnes* and *erga omnes partes*, cf Separate Opinion of Sebutinde [8]. This will include an entitlement by all States with a legal interest to take countermeasures to help about the performance of obligations. Christian J Tams, *Enforcing Obligations Erga Omnes in International Law* (Cambridge University Press 2005).

<sup>18</sup> *Obligations of States* (n 1) [235], under Arts 4(2) and 4(9) of the Paris Agreement. Parties must also account for and register their NDCs in accordance with Arts 4(13) and 4(12).

<sup>19</sup> [235-236].

<sup>20</sup> [229, 245-248].

<sup>21</sup> [246, 254].

<sup>22</sup> Art 4(3): “Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.”

<sup>23</sup> *Obligations of States* (n 1) [241].

and that the requirement for highest possible ambition requires that the content of an NDC must be "be *capable of making an adequate contribution* to the achievement of the temperature goal".<sup>24</sup>

The Paris Agreement specifies additionally that NDCs must be informed by the outcomes of five-yearly Global Stocktakes, including the first Global Stocktake concluded by the parties in 2023.<sup>25</sup> The 2023 Global Stocktake recognised that "despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals".<sup>26</sup> The significant contribution from the Court is to add here that States' NDCs when taken together must be *capable of achieving* the temperature goal of limiting global warming to 1.5° C.<sup>27</sup> This obligation applies for all parties to the Paris Agreement although the Court added that the due diligence which it believed to be required in setting NDCs varies in light of national circumstances.<sup>28</sup> As well as setting an NDC, States have a critically important obligation to pursue domestic measures with the aim of achieving the objectives of such contributions.<sup>29</sup> This also was an obligation of conduct, in this case requiring stringent due diligence.<sup>30</sup> The Court held that this requires States to be proactive and pursue measures that are *reasonably capable of achieving* their NDCs.<sup>31</sup>

These findings are fascinating, and important. We can expect to see arguments mounted on the basis of the various important administrative law style tests articulated by the Court here in domestic and international climate advocacy and litigation, as such tests can help lend accountability in the scrutiny of government action in domestic processes. It has always made sense that there must be a relationship of coherence between domestic measures and their objectives,<sup>32</sup> along the lines seen in other areas of international law, and it is good to see the Court describe the implied nature of the relationship in these terms, as well as devoting attention to the content of NDCs, and their required collective effect.

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<sup>24</sup> [242]. See also [208].

<sup>25</sup> *Obligations of States* (n 1) [242, 270, 457(3)(A)(e)], Article 14 (9).

<sup>26</sup> [243] citing Decision -/CMA.5, Outcome of the First Global Stocktake, 13 December 2023, UN doc. FCCC/PA/CMA/2023/16/Add.1, p. 3, para. 2.

<sup>27</sup> [245, 249, 457(3)(A)(f)].

<sup>28</sup> [248].

<sup>29</sup> Article 4 (2), second sentence: "Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions".

<sup>30</sup> [251-252].

<sup>31</sup> *Obligations of States* (n 1) [253, 457 (3)(A)(g)].

<sup>32</sup> Caroline E. Foster, (2021) *Global Regulatory Standards in Environmental and Health Disputes: Regulatory Coherence, Due Regard and Due Diligence* (Oxford University Press, 2021) 24-27.