

The Biological Diversity, Desertification, and Ozone Treaties

Directly applicable law further includes not only the climate change treaties and customary international law, the law of the sea and international human rights law, but also the Convention on Biological Diversity (CBD), the United Nations Convention to Combat Desertification (UNCCD), and the ozone regime.¹ The Court's attention to these treaties was a refreshing and important part of the Advisory Opinion. The state of global conservation, as well as climate change's impacts upon it, receives too little attention in major international legal fora and interstate politics beyond specialised treaty regimes.

The Court found that the CBD, UNCCD and the ozone treaties all mutually inform the climate change treaties and customary international law, and the parties must take these environmental treaties into account when implementing the climate change treaties and customary international law, as well as *vice versa*.² The CBD merits particular attention, given the extraordinary threats posed for biodiversity globally at present and the high-level of species extinction accompanying human activities, to which attention has been drawn elsewhere.³ The Court finds that the biosphere is one of the components of the climate system.⁴ The Kunming-Montréal Global Diversity Framework adopted by the Conference of the Parties to the CBD in 2022 specifically encourages parties to the CBD to minimise the impact of climate change and ocean acidification on biodiversity.⁵

The Court then highlights a number of obligations within the CBD which relate closely back to those it has already identified in respect of climate change, potentially significantly heightening international legal awareness of relevant hard law obligations. Article 3 of the CBD reflects the customary international law duty to prevent significant harm to the environment by providing that States parties have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond national jurisdiction.⁶ Article 5 of the CBD establishes the obligation of States parties to cooperate for the conservation and sustainable use of biodiversity in areas beyond national jurisdiction and on other matters of mutual interest. Again this parallels customary international law, and in addition duties to cooperate are also identified by the Court as principles within the climate treaty framework.⁷ Article 7(c) of the CBD requires parties to identify and monitor activities that have likely to have significant adverse impact on biodiversity. This flows into Article 8(l), which requires them, where such significant adverse effects have been identified under Article 7, to regulate or manage as far as possible relevant processes and categories of activities including those which contribute to anthropogenic GHG emissions.⁸

States also contribute to the protection of the climate system and other parts of the environment by complying with the Desertification Convention.⁹ Intergovernmental scientific bodies have highlighted the links between desertification, land degradation, drought and climate change.¹⁰ The physical connection is clear. Accordingly, the Desertification Convention requires State parties to

¹ See under *Reading international law harmoniously within and between regimes*.

² *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025 [2025] ICJ Reports [335] referring also to [309-315].

³ <https://www.ipbes.net/>

⁴ [325].

⁵ [328].

⁶ [327].

⁷ [327].

⁸ [329].

⁹ [334].

¹⁰ [331].

promote cooperation on environmental protection, land and water resources conservation as relating to desertification and drought.¹¹ The Court emphasises that they must take account of climate change.¹² Further, developed country parties must support affected developing country parties in combating desertification and mitigating drought, including by providing financial resources.¹³ Additionally, the Desertification Convention specifically requires parties to encourage coordination of activities taken under that convention, the UNFCCC and the CBD.¹⁴ As to the Vienna Convention on the Protection of the Ozone Layer and its Montréal Protocol, the Court finds, too, that the ozone layer is part of the atmosphere and that these obligations contribute to ensuring protection of the climate system as a whole.¹⁵

¹¹ Article 4 (2)(d) United Nations Convention to Combat Desertification.

¹² *Obligations of States* (n 2) [333].

¹³ Article 8 United Nations Convention to Combat Desertification, [333]

¹⁴ *Obligations of States* (n 2) [333].

¹⁵ [319-324].