

Business Actors

Most greenhouse gas emitting activities are carried out by private actors, with business actors playing a dominant role. However the Advisory Opinion does not position its references to private actors centrally, despite its direct attention to fossil fuel production and consumption. Nevertheless, it is clear that States are obliged under international law to regulate the conduct of private actors in order to fulfil States' obligations.

The Court is quite specific about this in regard to the Paris Agreement.¹ The same is true in respect of States' customary international law due diligence obligation to prevent environmental harm, where the appropriate measures to be taken "must regulate the conduct of public and private operations within the State's jurisdiction or control".² This includes enforcement and monitoring mechanisms to ensure the implementation of domestic law. There is particular mention of controlling private actors in the context of States' human rights obligations.³

Later in the Advisory Opinion the Court also remarks on the types of conduct attributable to the State which could constitute a breach of its international legal obligations: "Thus, a State may be responsible where, for example, it has failed to exercise due diligence by not taking the necessary regulatory and legislative measures to limit the quantity of emissions caused by private actors under its jurisdiction".⁴ Nevertheless, overall there is relatively little attention to the role of private actors.⁵ However, this keeps the spotlight on governments. After all, States are the primary bearers of international legal obligations. This could be viewed as strengthening the Advisory Opinion.

¹ *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025 [2025] ICJ Reports [252]

² [282].

³ [403].

⁴ [428].

⁵ Harro Van Asselt, "The Private Life of the ICJ Advisory Opinion on Climate Change" 15 August 2025, Völkerrechtsblog, available at <https://voelkerrechtsblog.org/the-private-life-of-the-icj-advisory-opinion-on-climate-change/>.