

Reading International Law Harmoniously

The Advisory Opinion's finding that many relevant bodies of international law apply simultaneously and without contradiction will be of great benefit in addressing climate change. This will greatly reduce the scope for positions such as those put forward by a number of States who argued that the Paris Agreement and/or climate treaties are *lex specialis*, essentially determining all States' climate obligations.¹ The Court opted expressly in favour of an approach that set out to consider how the applicable bodies of international law may be read in light of one another: "it is a generally recognized principle that, when several rules bear on a single issue, they should, to the extent possible, be interpreted so as to give rise to a single set of compatible obligations".² Generally, the Court's harmonious reading of rules from multiple sources and fields of international law, tells us that "inform" one another and are each to be taken into account when applying the others.

On closer analysis, harmony is present in at least three distinct forms. The first is an intra-regime harmony, the second is harmony between customary international law and treaty law, and the third is harmony across different treaty regimes applicable to the problem of climate change. Further, the Court explained that key principles of international environmental law inform the various bodies of applicable law.

As to intra-regime harmony, the Court begins by establishing that the United Nations Framework Convention on Climate Change (UNFCCC) Conferences of the Parties, the Kyoto Protocol and the Paris Agreement complement each other.³ They are not incompatible; and the Kyoto Protocol and Paris Agreement each provide greater specificity to the UNFCCC.⁴ Yet it is Article 2 of the UNFCCC which sets the ultimate objective: "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system...". The Paris Agreement's temperature goal then serves as a means for pursuing this overarching object and purpose.⁵

As to harmony between customary international law and treaty law, the Court put the primary stake in the ground in identifying that States' generally agreed recognition of the customary international law duty to prevent significant harm to the environment applies equally in respect of harm to the climate system.⁶ From here, the Court observed that the existence of the various standards applying in relation to States' nationally determined contributions under the Paris Agreement are informed in part by this customary international law prevention obligation.⁷ The Court considered, too, that the concept of due diligence applies both in relation to the Paris Agreement obligations and under

¹ Phoebe Okowa, "Arguing for Systemic Integration of the UN Climate Regime at the International Court of Justice", 12 March 2025, IISD, available at <https://sdg.iisd.org/commentary/guest-articles/arguing-for-systemic-integration-of-the-un-climate-regime-at-the-icj/>.

² *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025 [2025] ICJ Reports [165] citing Conclusions of the work of the ILC Study Group on the Fragmentation of International Law: Difficulties Arising from Diversification and Expansion of International Law, Yearbook of the International Law Commission, 2006, Vol. II, Part Two, Conclusion 4. See further [162] [171].

³ [120].

⁴ [195]

⁵ [225]. Art 2 UNFCCC: "The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."

⁶ [132-134].

⁷ [241-242].

customary international law. As the Court puts it, each party has to do its utmost to ensure that the Nationally Determined Contributions it puts forward under the Paris Agreement represent its highest possible ambition in order to realise the objectives of the Agreement.⁸

As to **harmony** across different treaty regimes, the Advisory Opinion embraces important obligations from other multilateral environmental agreements, the Convention on Biological Diversity (CBD), the United Nations Convention to Combat Desertification (UNCCD), and the ozone regime, the United Nations Convention on the Law of the **Sea (UNCLOS)** and international human rights instruments, addressing each and demonstrating their relationship to climate change treaties and customary international law. The Court also acknowledges the role played by the International Civil Aviation Organisation (ICAO) in regulating greenhouse gas emitting activities as well as the International Maritime Organization (IMO).⁹ The International Court of Justice's Advisory Opinion is of course in addition to the International Tribunal for the Law of the Sea (ITLOS) Advisory Opinion on Climate Change of 21 May 2024, and endorses ITLOS' findings throughout, with the Court taking the view that it should ascribe great weight to the Tribunal's interpretations of the United Nations Convention on the Law of the Sea (UNCLOS) with the aim of achieving clarity and consistency in international law, as well as legal security.¹⁰

⁸ [246]. See Christina Voigt, "The Paris Agreement: What is the Standard of Conduct for Parties?" 24 March 2016, *Questions of International Law*, available at <https://www.qil-qdi.org/paris-agreement-standard-conduct-parties/>

⁹ [317, 367].

¹⁰ [338]. Eg on Art 192 of UNCLOS [342, 343, 344]; on Art 194(1), [347, 349]. See also [351] on the point that the Paris Agreement does not release States from their distinct obligations under UNCLOS, and, on Art 206, [353]. *Request For An Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion of the International Tribunal for the Law of the Sea, 21 May 2024 [2024] ITLOS Reports.