

A Human Right to a Clean, Healthy and Sustainable Environment

Among the contributions we hear that the Advisory Opinion has made is to have recognised a human right to a clean, healthy and sustainable environment. The topic is not a straightforward one. Regional human rights courts, applying their respective human rights instruments, have taken different views about reading in such a right.¹ By the time that the International Court of Justice reaches the end of its analysis, the Court has, indeed, judicially recognised "the human right to a clean, healthy and sustainable environment" as "inherent in the enjoyment of other human rights".² Significantly, though, this does not feature in the summary of the Court's views at the end of the human rights section, and neither is it selected to feature in the *dispositif* at the end of the Advisory Opinion.

There are important nuances here. To begin with, the Court is certainly very clear that the protection of the environment is a precondition for the enjoyment of human rights.³ We are also told that, specifically, degradation of the climate system and other parts of the environment may impair the enjoyment of a range of established human rights protected under international law.⁴ When we examine more closely how the Court carried forward its reasoning from here, we find that it reached its eventual conclusion by implying as a first step what might even possibly even be considered a natural right to a clean, healthy and sustainable environment, describing this in the first place only as a "right" and not a "human right".⁵ Then, as a second step, the Court reasoned that it is difficult to see how the human rights obligations already written into the law can be fulfilled without ensuring the protection of the human right to healthy environment "as a human right".⁶ The Court finally appears then to deduce that a "human right" to a healthy environment is inherent in the enjoyment of other human rights.⁷ Indeed Judge Aurescu's remarks confirm that the Court did not explicitly find the right to be a norm of customary international law, although he himself believes that to be the case.⁸

Perhaps this conclusion was thought ineluctable based on the premises. At the same time, the Court's view is bolstered by its reference to regional human rights instruments recognising a human right to a healthy environment, its reported recognition in the constitutions or domestic legislation of over 100 States, and the United Nations General Assembly Resolution 76/300 adopted in 2022 with 161 votes in favour, no votes against and eight abstentions.⁹ However the Court does not seem to be saying that there is a basis for recognising the right as a matter of customary international law, or treaty interpretation.¹⁰

¹ Inter-American Court of Human Rights, *Advisory Opinion on Human Rights and the Environment* (OC-23/17) of 15 November 2017; cf European Court of Human Rights, *Verein Klimasenioren Schweiz and Others v. Switzerland* (Application no. 53600/20) [448].

² *Obligations of States in respect of Climate Change*, Advisory Opinion of 23 July 2025 [2025] ICJ Reports [393]. Discussing the procedural and substantive content of the right, see also Separate Opinion of Judge Charlesworth [9].

³ [373], [389], [393].

⁴ [375], [386].

⁵ [393] second sentence.

⁶ [393] third sentence.

⁷ [393] fourth sentence.

⁸ Separate Opinion of Judge Aurescu [27]-[46].

⁹ [390-392].

¹⁰ Cf Declaration of Judge Tladi [32]. It is important to note that, as Judge Tladi observes, a number of States, including the United Kingdom, the United States, New Zealand, Norway, India and Belarus rejected the existence of a customary international law right at the time of the UNGA Resolution. Although the Judge Tladi nonetheless himself finds there to be a right in customary international law, it is not clear the Court shares his

The Court's engagement with the right to life, the right to health, the right to an adequate standard of living, and the right to privacy, family and home conveys an important and clear message that the conduct leading to climate change is affecting these rights. The Court applies a range of UN human rights instruments as directed in the UN General Assembly's question to the Court, and decisions of the Human Rights Committee feature in support of the Court's findings including *Teitiota v. New Zealand* and *Daniel Billy and others v. Australia*.¹¹ The Court observes specifically that the rights of women and children and the rights of indigenous peoples as well as migrant workers may be impaired, including in the context of severe weather events and heightened water scarcity,¹² and also encourages States to ensure their consideration and participation in design of mitigation and adaptation measures so as to help ensure non-discrimination and not undermine relevant rights.¹³ Helpfully for future climate advocacy and litigation the Court specifies that States must give due account to the protection of human rights in their climate standards and legislation and in the regulation of private activities.¹⁴

view. See also Separate Opinion of Judge Bhandari [3] finding the Court insufficiently clear but considering the customary international law to recognise the right.

¹¹ [378] citing Human Rights Committee, *Teitiota v. New Zealand*, 24 October 2019, UN doc. CCPR/C/127/D/2728/2016; [381] citing *Daniel Billy and others v. Australia (Torres Strait Islanders Petition)*, 21 July 2022, UN doc. CCPR/C/135/D/3624/2019.

¹² [382, 384].

¹³ [382, 383]. See also Separate Opinion of Judge Charlesworth.

¹⁴ [403].