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Recent Advisory Opinions on Climate Change: Implications for the Global South

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ABSTRACT

Climate change is a grave threat that occupies the minds of academics, lawmakers, and the general populace alike. In recent times, international courts and tribunals have rendered several landmark advisory opinions on climate change. These include the advisory opinions rendered by the International Tribunal for the Law of the Sea ("ITLOS"), the Inter-American Court of Human Rights ("IACtHR"), and the International Court of Justice ("ICJ"). In addition, the African Court on Human and Peoples' Rights ("AfCHPR") has received a request for an advisory opinion on climate change regarding the obligations of African States. While these three opinions agree on the existential importance of climate change and the overarching obligations to prevent the harms consequent upon it, each forum has adopted a different legal framework to analyse the issue. ITLOS has emphasised the defining of anthropogenic Greenhouse Gas ("GHG") emissions as tantamount to "marine pollution" under the United Nations Convention on the Law of the Sea ("UNCLOS"). The IACtHR has taken a human rights approach, recognising a distinct "human right to a healthy climate" over and above the traditional right to a healthy environment. On the other hand, the ICJ has utilised customary international law as the foundational basis for declaring a "stringent due diligence" standard that all states must uphold as a legal obligation. In this necessary context, it becomes incumbent to analyse the three decisions in comparison with one another, not merely to identify their commonalities and differences, but also to understand how their dicta affect the rights and obligations of the Global South. While mainstream international legal scholarship has largely celebrated these opinions as a historic step forward for climate justice, a closer look at their structural underpinnings reveals a more unsettling reality. The legal landscape is inseparable from the broader world economy, which is currently reeling from compounding social and ecological shocks, human development pressures, and the shattering of core planetary boundaries. In this blog, we analyse how, despite their progressive rhetoric, these three advisory opinions suffer from structural blind spots that inadvertently protect the status quo of international legal paradigms. Specifically, we want to explore how these tribunals have failed to address the temporal nature of the climate crisis, the persistent inadequacy in concretising historical reparations, and the inability to centre climate vulnerabilities at the doorstep of extractive capitalist interests. Finally, we will examine whether the foundational principle of Common but Differentiated Responsibilities and Respective Capabilities ("CBDR-RC") has been weakened or diluted in practice. By reading these judicial interventions through a Third World Approaches to International Law ("TWAIL") lens, we hope to evaluate the actual progress they have produced alongside the critical shortfalls they reveal.

Keywords: TWAIL; Climate justice; International Law; Advisory Opinions; Climate Change.

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1. Introduction

To understand the systemic limitations of the advisory opinions on climate change, we first need to map out the different legal paths each tribunal took. Global climate jurisprudence consists of three distinct structural paradigms. The first is the International Tribunal for the Law of the Sea ("**ITLOS**") paradigm. Part XII of the United Nations Convention on the Law of the Sea ("**UNCLOS**") lays the foundation for this by establishing a framework for environmental and marine pollution control (1982). Its main standards of conformity are the term "necessary measures" and environmental behaviour. The second is the Inter-American Court of Human Rights ("**IACtHR**") model, which is firmly rooted in the American Convention on Human Rights (Organization of American States 1969) and the San Salvador Protocol (Organization of American States 1988). The model is built on human rights and anthropocentric principles of protection, with enforcement focused on the autonomous right to a healthy climate. Third is the International Court of Justice ("**ICJ**") paradigm, which invokes customary international law, the Charter of the United Nations ("**UN Charter**") (United Nations 1945) and general principles of international law. It recasts climate change as an issue of intergenerational equity and obligations *erga omnes* and assesses state behaviour under a new "stringent due diligence" standard.

Prompted by a request from the Commission of Small Island States on Climate Change and International Law (**COSIS**) (COSIS 2022), the ITLOS opinion (ITLOS 2024) focused strictly on primary obligations of conduct under Part XII of UNCLOS (1982). The landmark determination made by ITLOS was that anthropogenic greenhouse gas ("**GHG**") emissions, in and of themselves, fall within the ambit of marine pollution under the convention. The ITLOS brought climate change squarely under the law of the sea by classifying GHGs as substances or energy introduced by humans that cause deleterious effects, such as ocean acidification and warming. However, ITLOS carefully limited its own scope, confirming that its jurisdiction extended only to clarifying rules of conduct, meaning how states should behave, rather than rules of result, which would dictate what specific targets they must achieve. Article 194(1) (UNCLOS 1982) obliges states to take all necessary measures to prevent, reduce, and control marine pollution. While ITLOS made it clear that satisfying the Paris Agreement (United Nations 2015) is not enough to discharge a state's duties under UNCLOS, it also noted that the obligation does not require states to stop all polluting activities immediately. Instead, it is a standard of evolving due diligence, tied directly to the individual state's capabilities.

Colombia and Chile jointly approached the IACtHR, requesting an analysis of regional human rights treaties (IACtHR 2025). In 2017, the IACtHR Advisory Opinion numbered OC-23/17 (IACtHR 2017) explicitly recognised the human right to a healthy climate as an autonomous right, moving beyond the broader right to a healthy environment (IACtHR 2017, pr. 62). The IACtHR's approach focuses heavily on how environmental degradation directly hurts the rights to life, health, and Indigenous self-determination. Crucially, the court expanded extraterritorial jurisdiction, holding that states can be liable for human rights violations if domestic emissions cause foreseeable transboundary climate harm to people outside their borders. The Court recognised the disproportionate vulnerability of Indigenous communities, Afro-descendant populations, and economically marginalised groups in the Global South.

A General Assembly resolution led by Vanuatu tasked the ICJ to synthesise the entire corpus of international law (United Nations General Assembly 2023). The ICJ's mandate was broad, requiring it to interpret everything from the UN Charter (United Nations 1945), the International Covenant on Civil and Political Rights ("**ICCPR**") (United Nations General Assembly 1966a), and the International Covenant on Economic, Social and Cultural Rights ("**ICESCR**") (United Nations General Assembly 1966b), to the United Nations Framework Convention on Climate Change ("**UNFCCC**") (United Nations 1992), the Paris Agreement (United Nations 2015), and general principles of environmental law. The ICJ focused heavily on the harm principle, which is the customary obligation to prevent transboundary environmental harm, and the principle of intergenerational equity. It declared that states possess an *erga omnes* obligation, an obligation owed to the international community, to protect the climate system from irreversible damage. The ICJ established a stringent due diligence standard. A state's failure to adopt adequate domestic mitigation and adaptation measures is an international wrong that would trigger state responsibility.

2. The Structural Paradigm Shift

While most academics focus on whether these opinions conflict with or support one another across different regimes, they tend to miss a fundamental structural bias: the underlying legal architecture remains trapped in a Eurocentric view of environmental law. This view prioritises spatial preservation over reparative spatiality. We can understand this ideological rift across three operational pillars. Under the first pillar, which addresses the primary objective, the Eurocentric pristine nature paradigm focuses heavily on stabilising atmospheric or marine baselines, such as keeping global warming below 1.5°C. Conversely, the Global South reparative spatiality paradigm demands the direct rectification of the historic and ongoing geographic transfer of ecological wealth from the periphery to the core.

The second pillar, however, concerns the nature of space itself. The Eurocentric paradigm labels the environment a global common or shared carbon sink. Protecting the environment requires collective, universal managerial oversight. The Global South understands space as a deeply fragmented landscape of survival, split apart by colonial boundaries and ongoing extractive capital.

Finally, the third pillar discloses a conflict of legal emphases. The Western management paradigm demands standardised procedural due diligence, strict reporting metrics, and harmonised national policies in all states. Nevertheless, the reparative paradigm insists on substantive liability for economic displacement, systemic loss and damage, and the repayment of ecological debt. In this broader comparison, the court views the climate crisis as a contemporary management issue of the commons, rather than a historical result of geographical exploitation. This is the standard bias that accounts for the failures discussed below.

2.1 The Temporal Trap

All three advisory opinions are flawed in common: they rely on a linear, future-orientated legal temporality that, in effect, absolves the Global North of historical responsibility. The modern concept of obligation in international law is quite recent: it relies on a state's compliance with existing treaties or evolving customary norms. This linear temporal model does not align with the physical and historical realities of the climate crisis. Climate change is not caused solely by current emissions; the cumulative concentration of GHGs trapped in the atmosphere over the last two and a half centuries drives climate change today. The Global North used up this atmospheric capacity to industrialise and accumulate immense wealth, leaving the Global South to bear the brunt of the atmospheric saturation.

The ITLOS opinion clearly illustrates this linear trap. While it notes that the standard of due diligence must evolve as science improves, it limits the legal inquiry to present and future actions. Article 194(1) specifies that states must take necessary measures based on current scientific evidence. The opinion, therefore, legally neutralises a developed state's historical role in filling the marine carbon sink to near collapse. If that state is currently making its best efforts to harmonise policies going forward, it satisfies its due diligence obligation. The tribunal treats the ocean's current state as a tragic starting baseline rather than a historical crime scene.

The ICJ faces a similar doctrinal hurdle in the principle of the non-retroactivity of international law. Because the breach of an international obligation in force at the time the act occurs triggers state responsibility, the ICJ focuses heavily on obligations arising from the UNFCCC and the Paris Agreement. The ICJ's efforts to hold historic polluters accountable for emissions that occurred before climate change was formally recognised at the international level as a common concern are hampered by the court's placement of the strict due diligence standard largely within existing treaty frameworks. Thus, this institutional temporality becomes a legal rubber stamp for the Global South. It ignores the fact that the vulnerability of a small island state or an African nation today is a direct consequence of a century of unmitigated historical emissions by Western industrialised states.

2.2 The Erasure of Reparation

Linear time and a managerially focused view of environmental protection constrain the tribunals. In fact, they systematically fail to concretise historical reparations. Instead, they process the claims of the Global South through a structural pipeline that effectively dilutes radical demands for justice into soft, voluntary bureaucratic processes. This pipeline operates in three distinct chronological stages.

Stage one: International courts are approached by developing countries to seek structural restitution, historical accountability and binding financial liability for systemic climate destruction. The second stage: international courts conduct judicial sifting, filtering these demands by focusing mainly on rules of conduct rather than rules of result. Compliance is the constant measurement of procedures, domestic monitoring and the formation of domestic systems and the insulation of states from absolute retrospective liability. Finally, institutions re-inject hard legal claims of state responsibility into existing multilateral negotiation spaces. The substantive reparations are replaced by the soft, political, and underfunded voluntary funding systems of the UNFCCC so that the Global South must negotiate for financial help rather than claiming reparative justice as a matter of right.

When COSIS brought its request before ITLOS, it specifically sought clarification of states' obligations regarding the preservation of the marine environment. However, as ITLOS noted, COSIS felt compelled to clarify that they meant only clarification of the rules of conduct, not of the results. Thus, it sufficed to identify the obligations of state parties that are to be fulfilled rather than the extent to which such obligations are to reverse the harm of the past or result in immediate financial compensation. The fact that ITLOS narrowed the inquiry to a standard of conduct effectively shut the door to structural liability. The tribunal noted that failure to comply with UNCLOS obligations would entail international responsibility. However, it left the definition of enforcement mechanisms incredibly vague, reducing them to administrative oversight, monitoring and the mere availability of dispute-resolution mechanisms.

This dilution was vividly on display during the United Nations General Assembly debate over concretising the ICJ's findings on climate accountability (Chowdhury and Schnakenberg 2026). While a strong 141-8 majority of nations, led by Vanuatu and a coalition of frontline states, voted to give formal political force to the ICJ's mandate on historical reparations and fossil fuel phase-outs, the world's major historical polluters aggressively resisted the text. Powerful states in the Global North tried to stall and water down the resolution, claiming it impermissibly duplicated or interfered with the UNFCCC's existing voluntary negotiation processes. Moreover, that diplomatic friction points to precisely the legal disconnect we are looking at. When confronted with hard public international law obligations of restitution, the core systematically attempts to redirect the Global South back into the managed, non-binding arena of multilateral compromise.

2.3 The Corporate Blind Spot, Economic Disciplines, and Capitalist Extraction

All three advisory opinions are fundamentally flawed because they rely on a strictly state-centric paradigm of international law, which obscures or ignores the roles of transnational corporations and extractive capitalist interests. This erasure of responsibility produces a huge legal gap. The damage is done by the Global North corporate capital. The transnational corporations and carbon majors based in the West extract natural wealth, consume huge amounts of carbon all over the world and concentrate massive capital in the core. The point of impact, where the actual environmental degradation, resource depletion, and climate vulnerabilities are directly experienced, is the territories of developing nations and small island states. Finally, the international courts intervene with a specific legal measure that concerns only the state level. Instead of holding corporate entities accountable, they evaluate whether the host Global South nation has failed its due diligence obligations by failing to maintain adequate domestic administrative or regulatory oversight.

This state-centric framework operates in total isolation from the realities of international economic and investment law, creating an asymmetric trap for developing countries. Environmental tribunals direct states to regulate strictly based on due diligence standards. On the other hand, International Investment Agreements ("**IIAs**") provide broad-ranging legal protections for foreign investors and robust dispute resolution mechanisms. IIAs have not traditionally contained specific carve-outs for public-interest regulation. Developing countries attempting to regulate extractive industries or to phase out fossil fuels to fulfil their climate obligations are slapped with massive monetary compensation claims under Investor-State Dispute Settlement ("**ISDS**") frameworks. For example, as highlighted in investment governance challenges, cases like Philip Morris v. Uruguay (2016) and Vattenfall v. Germany (2011) show the routine agitation of domestic welfare and energy policies before arbitral tribunals like the International Centre for Settlement of Investment Disputes ("**ICSID**"), the United Nations Commission on International Trade Law ("**UNCITRAL**"), or the Permanent Court of Arbitration ("**PCA**").

The systemic bias becomes undeniable when we look at recent arbitral decisions. In Eco Oro v. Colombia (2021), the arbitral tribunal held that even if a state's environmental measure fell squarely within the parameters of a treaty's general exception provisions, the host state was still required to pay monetary compensation to the foreign investor. International legal architecture simultaneously commands a Global South state to execute "stringent due diligence" to protect its climate while punishing it financially through ISDS for failing to meet investor expectations. The ITLOS opinion explicitly entrenches this corporate insulation. The ITLOS found that where private bodies primarily carried out polluting activities, it would not be possible for the state to be held responsible, provided it had exercised due diligence.

This formulation shifts the structural blame from global capital and foreign investors onto the regulatory spaces of vulnerable host states. If a multinational corporation exploits resources, causing localised degradation of human capital or exceeding local environmental thresholds, the legal inquiry under international law focuses on whether the developing nation exercised adequate domestic due diligence. Meanwhile, international trade and investment policies continue to heavily subsidise carbon emissions, effectively giving polluting industries a massive financial edge. At the same time, local populations bear the social costs. By treating corporate actors as private actors subject to the oversight of the domestic state, international courts recast a systemic crisis of capitalist extraction as a localised failure of third-world governance.

2.4 The Dilution of Common but Differentiated Responsibilities and Respective Capabilities

Climate justice for the Global South is based on the principle of Common but Differentiated Responsibilities and Respective Capabilities ("**CBDR-RC**"). Article 3(1) of the UNFCCC (United Nations 1992) explicitly links a state's responsibility to act with its historical contribution to emissions and its economic capacity for development. However, a comparative analysis of the recent advisory opinions reveals a deeply concerning textual shift in the interpretation of the principle. Originally, the conceptual intent of CBDR-RC centred on historical equity, rooted in rectifying industrial exploitation, a colonial reckoning that recognised the core's exhaustion of shared atmospheric capacity, and a substantive exemption to ensure that developing states did not need to compromise their domestic socioeconomic survival. However, in the modern judicial reconstitution, the principle is narrowed to a standard of conduct based on international metrics and viewed as a logistical measurement of administrative capability rather than historical fault. It is weaponised to further a universal obligation binding all states to concurrent mitigation duties.

This deradicalisation occurs at a time when developing economies are already facing severe systemic crises. Global foreign direct investment ("**FDI**") flows recently fell, with investment in core Sustainable Development Goal ("**SDG**") (United Nations General Assembly 2015) sectors dropping across critical infrastructure, renewable energy, water, and sanitation. Simultaneously, the annual investment gap for achieving the SDGs in developing countries remains stalled at a staggering 2.5 trillion dollars (United Nations Conference on Trade and Development 2014). Despite these massive structural constraints and tight financing conditions, the international tribunals continue to hollow out the interpretation of CBDR-RC.

While the ITLOS opinion acknowledges that states with greater means should bear a heavier burden, it delivers a devastating blow to the core tenets of CBDR-RC by stating that the obligation to take such measures for mitigation is not exclusive to the developed states and that all states are obliged to do so. By shifting the focus from responsibility to capability, meaning what a state can realistically do with its available resources, ITLOS effectively universalises the climate burden. The tribunal states that a country's standard of due diligence is subject to considerations of capability, meaning that developing states are given a lower bar to clear or more time to comply, rather than being structurally exempt from bearing the costs of a crisis they did not create.

The ICJ's rigorous due diligence test is likely to have a similar homogenisation effect. If the ICJ elevates due diligence to the status of an obligation under customary international law, i.e., *erga omnes* obligation, it risks establishing a uniform minimum standard of environmental conduct for all states. While this sounds progressive, it forces developing countries to divert their limited national budgets away from vital poverty alleviation, healthcare, and education infrastructure toward complex administrative, monitoring, and reporting apparatuses required to demonstrate due diligence to the international community. Traditional measures like Gross Domestic Product ("**GDP**") already fail to capture the true value of social and environmental wealth, leading to resource depletion and inequality. By forcing developing nations to meet homogenised, Western-designed compliance metrics under the guise of due diligence, CBDR-RC is stripped of its radical, reparative potential and recast as a localised administrative tool.

3. Conclusion

The advisory opinions of the ITLOS, IACtHR and ICJ exemplify the potential of traditional international law within its existing structural limitations. They have provided clear definitions, elevated climate obligations to the status of *erga omnes* obligations, and structured diverse legal regimes coherently. Nevertheless, for the Global South, these opinions provide a deeply contradictory legacy; reinforcing a Eurocentric legal architecture that treats the climate crisis as a management issue to be resolved today, rather than as the structural manifestation of colonial and capitalist extraction.

If the Global South is to achieve true climate justice, we need to reimagine the judicial managerialism of Western-dominated tribunals. International law scholars, international lawmakers and tribunals must structurally reimagine the paradigm, break free from linear time, pierce the corporate veil of transnational capital, and restore the principle of CBDR-RC to its essential, restorative origins. Until then, these advisory opinions will be beautifully crafted documents that treat the symptoms of a burning world while systematically protecting the structures that started the fire.

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